

# **BUILDING OWNERS' CORPORATION THIRD PARTY LIABILITY INSURANCE POLICY (December 2009)**

**(AIA recommended wording for the purpose of Section 28 of the Building Management Ordinance Cap. 344 & the Building Management (Third Party Risks Insurance) Regulation and no other)**

=====

**Please read this Policy carefully and ensure that it meets your requirements.**

This Policy, the Schedule and any Memoranda thereon shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or Schedule shall bear such specific meaning wherever it may appear.

## **THE INSURED AND THE COMPANY AGREE**

- (a) The Proposal shall be incorporated into and form the basis of the contract.
- (b) The Insured will pay the Premium specified in the Schedule.
- (c) The Company will provide insurance subject to the limits, terms, conditions and exclusions of this Policy in respect of any insured event occurring during the Period of Insurance.
- (d) The due observance and fulfilment of the terms, conditions and endorsements of this Policy relating to anything to be done or not to be done or to be complied with by the Insured; and the truth of the contents and statements in the Proposal, shall be conditions precedent to any liability of the Company under this Policy.

## **INSURING CLAUSES**

### **Section 1 - Death or Bodily Injury**

**THE COMPANY WILL** indemnify the Insured against legal liability for damages in respect of accidental Injury to or death of third parties occurring within the Geographical Limit during the Period of Insurance in connection with the Business of the Insured.

In respect of a claim for damages to which the indemnity expressed in this Policy applies, **THE COMPANY WILL ALSO** indemnify the Insured against:

- (a) all costs and expenses of litigation recovered by any claimant from the Insured,
- (b) all costs and expenses of litigation reasonably incurred with the written consent of the Company.

**PROVIDED THAT** in the event of any change to the Ordinance during or subsequent to the Period of Insurance altering the legal liability of the Insured under the Ordinance the liability of the Company under this Policy shall be limited to such sums as the Company would have been liable to pay if the Ordinance had remained unaltered.

## **Section 2 - Damage to Property (Optional)**

**THE COMPANY WILL** indemnify the Insured against legal liability for damages in respect of accidental Damage to tangible property belonging to third parties occurring within the Geographical Limit during the Period of Insurance in connection with the Business of the Insured.

In respect of a claim for damages to which the indemnity expressed in this Policy applies, **THE COMPANY WILL ALSO** indemnify the Insured against:

- (a) all costs and expenses of litigation recovered by any claimant from the Insured,
- (b) all costs and expenses of litigation reasonably incurred with the written consent of the Company.

### **DEFINITIONS**

For the purposes of this Policy:

- (a) "The Business" means the Insured's operation as an owners' corporation in connection with the common parts of the building(s) as specified in the Schedule and no others. For the purpose of this definition, "corporation" and "common parts" shall have the meaning as defined under section 2 of the Ordinance.
- (b) "The Company" means ABC Insurance Co., Ltd.
- (c) "Damage" means physical loss or damage, including resultant loss of use of the property physically lost or damaged. All such loss of use shall be deemed to occur at the time of the loss or damage giving rise thereto.
- (d) "Event" means one occurrence or all occurrences of a series consequent on or attributable to one source or original cause.
- (e) "Financial Loss" means any pecuniary loss, cost or expense unaccompanied by death, Injury or Damage.
- (f) "Geographical Limit" means the territorial limits of Hong Kong.
- (g) "Hong Kong" means the Hong Kong Special Administrative Region.
- (h) "Injury" means bodily injury and includes disease or illness.
- (i) "The Insured" means the owners' corporation of the building(s) specified in the Schedule.
- (j) "The Ordinance" means the Building Management Ordinance (Cap. 344) and its subsidiary legislation and regulations.
- (k) "The Policy" means this Building Owners' Corporation Third Party Liability Insurance Policy, the Schedule and any memoranda and endorsements contained herein or endorsed hereon which shall be read together as one document and any word or expression to which a specific meaning has been assigned shall bear such meaning wherever it may appear.
- (l) "Pollutant" means any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise including but is not limited to asbestos,

smoke, vapour, soot, fume, fibre, mould, spore, fungus, germ, bacteria, virus, acids, alkalis, chemicals, nuclear or radioactive material of any sort, sewage and waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

- (m) "Products" means all commodities, goods or products manufactured, sold, tested, processed or supplied (including those supplied as part of any service, rendered or contract work executed) by the Insured including any containers, packaging and instructions supplied therewith.
- (n) "The Proposal" means any signed proposal form and declaration and any information supplied by or on behalf of the Insured in addition thereto or in substitution therefor.

Unless the context otherwise requires, words and expressions importing the masculine gender also include the feminine and neuter genders and words and expressions in the singular include the plural and words and expressions in the plural include the singular.

### **POLICY LIMIT OF INDEMNITY**

The limit of the Company's liability for damages (including interest) and claimant's costs and expenses in respect of or arising out of any one Event in any one Period of Insurance shall not exceed the Limit of Indemnity (as specified below) irrespective of the number of parties entitled to indemnity under this Policy.

The Company will also pay within the Limit of Indemnity all other costs and expenses of litigation incurred with its written consent.

Limit of Indemnity for any one Event under Section 1 – Death or Bodily Injury: HKD10,000,000

Limit of Indemnity for any one Event under Section 2 – Damage to Property: *As per the amount specified in the Schedule if insured*

### **JURISDICTION CLAUSE**

The Company shall not be liable under this Policy in respect of judgments against the Insured which are not in the first instance delivered by or obtained from a court of competent jurisdiction of Hong Kong.

### **POLICY EXCESS CLAUSE**

The Company shall not be liable for the amount of Excess if any as stated in the Schedule of this Policy in respect of each and every Event.

### **EXCEPTIONS**

The Company shall not be liable under this Policy in respect of:

- (a) death, Injury or Damage caused by or arising out of or in connection with the ownership possession or use by or on behalf of the Insured or any person entitled to indemnity of any
  - (i) mechanically propelled vehicle and trailer attached thereto other than legal liability arising out of

- the use of plant as a tool of trade on any site where the Insured is undertaking work where compulsory insurance or security in respect of legal liability to third party is not required by law
  - the use of plant at the premises of the Insured
  - the loading or unloading of any vehicle
- except where indemnity is provided by any motor insurance policy or by any other more specific insurance.
- (ii) vessel, craft or device designed made or intended to float on or in or to travel through water air or space.
  - (iii) locomotives.
- (b) any liability required to be covered by a policy of insurance under section 6(1)(b) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272).
  - (c) any claim arising under the Employees' Compensation Ordinance (Cap. 282).
  - (d) any liability arising out of a breach of any duty imposed by law in relation to
    - (i) any building within the meaning of the Buildings Ordinance (Cap. 123) erected in contravention of that ordinance; or
    - (ii) any building works or street works carried out in contravention of the Building Ordinance (Cap.123).

except in respect of all “designated exempted works” (as prescribed in the Building (Minor Works) Regulation) that has fulfilled the requirements of Section 39C(2), (3) and (4) of the Buildings Ordinance (Cap. 123).
  - (e) any claim arising out of liability assumed by the Insured under agreement unless such liability would have attached in the absence of such agreement.
  - (f) damage to
    - (i) any structure or land due or alleged to be due to vibration or to the withdrawal or weakening of or interference with the support.
    - (ii) property owned, leased, rented or occupied by the Insured.
    - (iii) property held in trust by or in the custody or control of the Insured other than premises at which the Insured is undertaking work in connection with the Business.
    - (iv) that part of any property worked upon by the Insured or any person acting on behalf of the Insured which arises out of such work.
  - (g) death, Injury or Damage caused by, resulting from or in connection with remedial or professional or other advice, service or treatment (other than medical first aid treatment) given, exercised, administered, prepared, rendered or agreed by the Insured or by any person acting on behalf of the Insured and any neglect, error or omission connected therewith.
  - (h) death, Injury or Damage caused by:-

- (i) contractor(s) of the Insured;
  - (ii) subcontractor(s) of the aforesaid contractors; or
  - (iii) persons engaged in or upon the service of such contractor(s) or subcontractor(s).
- (i) death, Injury or Damage directly or indirectly caused by or arising out of Pollutants.
  - (j) any cost and expense arising out of any direction or request whether governmental or otherwise that the Insured evaluate, test for, monitor, clean up, remove, control, contain, treat, detoxify or neutralise Pollutants.
  - (k) any claim arising out of the nature or conditions of any Products.
  - (l) (i) fine or penalty.
  - (ii) punitive or exemplary damages awarded by any court and any costs or interests associated with any such award.
  - (m) any loss, damage, cost and expense including consequential loss of whatsoever nature directly or indirectly caused by resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
    - (i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, riot, strike, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.
    - (ii) any terrorist act including but not limited to
      - the use or threat of force violence and/or
      - harm or damage to life or to property (or the threat of such harm or damage) including but not limited to nuclear radiation and/or contamination by chemical and/or biological agents
 by any person(s) or group(s) of persons committed for political, religious, ideological or similar purpose express or otherwise and/or to put the public or any section of the public in fear.
    - (iii) any action taken in controlling, preventing, suppressing or in any way relating to (i) or (ii) above.
    - (iv) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
    - (v) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
    - (vi) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
    - (vii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.
    - (viii) any chemical, biological, bio-chemical or electromagnetic weapon.

If the Company alleges that, by reason of this exception, any loss, damage, cost or expenses is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

- (n) any claim of whatsoever nature directly or indirectly caused by or contributed to by or arising from the Human Immune Deficiency Virus (HIV), the Acquired Immune Deficiency Syndrome Related Complex (ARC), the Acquired Immune Deficiency Syndrome (AIDS), any HIV, ARC or AIDS related virus complex or syndrome.
- (o) all claims and losses based upon arising out of directly or indirectly resulting from or in consequence of or any way involving:
  - (i) asbestos or
  - (ii) any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure or potential exposure to asbestos.
- (p) any Financial Loss.

#### **AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY**

If the Company is obliged by the Ordinance to pay an amount for which the Company would not otherwise be liable under this Policy, the Insured shall forthwith repay such amount to the Company.

#### **CLAIMS SETTLEMENT CONDITIONS**

- (a) **Reporting and Notice.** In the event of any occurrence which may give rise to a claim under this Policy (regardless of any Excess) the Insured shall immediately give notice thereof in writing to the Company with full particulars.

The Insured shall also give the Company notice in writing immediately the Insured becomes aware of any intention to prosecute the Insured any impending prosecution inquest or fatal inquiry in connection with any occurrence which may give rise to a claim under this Policy. Every letter, claim, writ, summons and process shall be forwarded to the Company immediately on receipt.

- (b) **Conduct of Claim.** No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company which shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim and shall have full discretion in the conduct of any proceedings and in the settlement of any claim. The Insured shall give all such assistance as the Company may require.
- (c) **Company's Rights.** The Insured shall pay on demand the amount of Excess to the Company prior to settlement of any claim.
- (d) **Company's Option.** In connection with any claim or series of claims made against the Insured consequent on or attributable to one source or original cause the Company may at any time after the deduction of any Excess pay to the Insured the Limit of Indemnity (after deduction of any sums already paid as damages, claimant's costs and expenses) or any lesser amount for which such claims can be settled and thereupon the Company shall relinquish the control of such claims and be under no further liability in connection therewith except for additional costs

and expenses for which the Company may be responsible under this Policy in respect of matters prior to the date of such payment.

- (e) **Other Insurance.** If at the time of any claim under the Policy the Insured is or would but for the existence of this Policy be entitled to indemnity under any other policy or policies, the Company shall not be liable except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this Policy not been effected.
- (f) **Waiver of Claims.** The Insured shall not become a party to any agreement the effect of which is that the Insured waives any claim which the Insured would otherwise have against any person in respect of or arising out of any occurrence resulting in liability on the part of the Insured for which indemnity is provided by this Policy or whereby any such claim is limited or qualified in any way.
- (g) **Subrogation.** The Company shall be entitled at its sole discretion to prosecute in the name of the Insured any claim for damages costs indemnity contribution or otherwise against any person who may be liable to the Insured in respect of any liability on the part of the Insured for which indemnity is provided by this Policy and shall have full discretion in the conduct of any such proceedings and in the settlement of any such claim. The Insured shall give all such information and assistance as the Company may from time to time require and execute any necessary documents for the purpose of vesting such rights in the Company. Any moneys recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by the Company in respect of any claim including any costs and expenses paid or incurred by the Company and costs and expenses incurred in prosecuting such recovery action.

#### GENERAL CONDITIONS

- (a) **Notices.** Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company and in the case of notice or communication to the Insured to his address specified in the Schedule.
- (b) **Precautions.** The Insured shall take reasonable precautions to prevent death, Injury and Damage and to comply with all obligations and regulations set out in any legislation applicable or imposed by any authority and to maintain all buildings furnishings ways and works machinery and plant in sound condition. The Insured at his own expense shall cause any defect or danger to be made good or remedied as soon as possible after discovery and in the meantime shall cause such additional precautions to be taken as the circumstances may require.
- (c) **Change in Risks.** The Company shall not be liable if after this Policy has been effected the risk be increased from any cause whatsoever unless the Company has signified its assent thereto in writing.
- (d) **Right of Inspection.** The Company shall have the right and opportunity at all reasonable times to inspect the works machinery plant and appliances used in the Business.
- (e) **Assignment.** No assignment of interest under this Policy shall bind the Company unless the written consent of the Company is first obtained and endorsed hereon.
- (f) **Cancellation.** This Policy may be terminated at any time at the request of the Insured, in which case the Company will retain the customary short period rate for the time the Policy has been in force. This Policy may also at any time be terminated at the option of the Company in which case the Company shall give seven days' written notice to the Insured to that effect and be

liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of the cancellation.

- (g) **Premium Adjustment.** If any part of the Premium or Renewal Premium is based on estimates furnished by the Insured the Insured shall keep an accurate record containing all relative particulars and shall allow the Company to inspect such record. The Insured shall within one month from the expiry of each Period of Insurance furnish such information as the Company may require. The Premium or Renewal Premium shall thereupon be adjusted and the difference paid by or allowed to the Insured.
- (h) **Arbitration.** All differences arising out of this Policy shall be determined by arbitration in accordance with the Arbitration Ordinance as amended from time to time. If the parties fail to agree upon the choice of the arbitrators, then the choice shall be referred to the Chairman for the time being of the Hong Kong International Arbitration Centre. It is hereby expressly stipulated that it shall be a condition precedent to any right of action or suit upon this Policy that an arbitration award shall be first obtained. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
- (i) **Governing Law.** This Policy is subject to the exclusive jurisdiction of Hong Kong and is to be construed according to the laws of Hong Kong.

\*\*\*\*\*

**HONG KONG SPECIAL ADMINISTRATIVE REGION 香港特別行政區**  
**BUILDING MANAGEMENT ORDINANCE (CHAPTER 344) 《建築物管理條例》(第 344 章)**  
**NOTICE OF INSURANCE 保險通告**  
**For the purpose of Section 28 of the Building Management Ordinance Cap 344**  
**按《建築物管理條例》(第 344 章)第 28 條制定**

Policy No. 保單號碼	:	
All parties please take notice that the policy numbered above against third party risk claims has been issued by the undersigned insurance company to the assured owners' corporation named below covering the area as described 現謹通知各方，作出下述簽署的保險公司，已向以下指名的業主立案法團發出載有上述號碼的關於第三者風險申索的保單，以承保所描述的範圍		
Assured Owners' Corporation 業主立案法團的名稱	:	
Address of Assured Owners' Corporation 業主立案法團的地址	:	
Description of building and premises covered under the policy 保單承保的建築物及處所的說明	:	
Effective date of the policy for the purpose of the above Ordinance 為上述條例目的而定的保單開始生效日期	:	
Date of expiry of the policy 保單屆滿日期	:	
Amount insured 受保數額	:	HK\$10,000,000.00 in respect of any prescribed liability that may be incurred in respect of the death, or the bodily injury, or both, arising out of one event 任何因有人死亡、身體受傷，或兩者同時出現而可能需要負上的指定責任賠償，每宗事故上限為港幣 10,000,000.00

I/We hereby certify that the insurance policy to which this notice of insurance relates is issued in accordance with the provisions of the abovementioned Ordinance  
本人／本公司茲證明此保險通告訂明之保單乃按照上述條例之條文發出

For and on behalf of  
代表

ABC INSURANCE COMPANY LIMITED  
ABC 保險公司

\_\_\_\_\_  
Authorized Signature  
授權簽署

Date of Issue :  
發出日期 :