



## **CONTRACT WORKS POLICY TERMS AND CONDITIONS**

### **WHAT YOU ARE INSURED FOR**

#### **Section 1 - Contract Works**

The Dominion will indemnify you, the Insured, in respect of any accidental loss or damage not otherwise excluded by this policy to the property described within the Policy Schedule and at the situation described within the Policy Schedule (not exceeding the limits and or sums insured stated within the Policy Schedule) and subject to the Terms and Conditions of this Policy.

#### **Section 2 - Third Party Liability**

The Dominion will indemnify you, the Insured in respect of all sums you shall become legally liable to pay (but not exceeding the limits and or sums insured stated within the Policy Schedule and subject to the Terms and Conditions of this Policy.) consequent upon accidental Property Damage or Personal Injury occurring in Tonga during the period of Insurance and directly arising from the Contract Works insured under Section 1 of this policy.

### **LIMITS OF INDEMNITY**

#### **Section 1 - Contract Works**

The limits and or sums insured stated within the Policy Schedule

#### **Section 2 - Third Party Liability**

- (a) All sums which the Insured shall become legally liable to pay in respect of
- (1) Accidental death or bodily injury of any person.
  - (2) Accidental loss of or damage to property
- AND
- (b) In respect of a claim against the Insured to which the indemnity expressed in this Policy applies.
- (1) All costs and expenses of litigation recovered by any claimant against the Insured
  - (2) All costs and expenses of litigation incurred with the written consent of the Dominion.

The liability of the Company under Clauses (a) and (b) above of this Policy for all sums payable to any claimant or any number of claimants in respect of or arising out of any occurrence or in respect of or arising out of all occurrences of a series consequent on or attributable to one source or original cause or in respect of the aggregate of all claims during any one period of insurance shall not exceed the limit of indemnity specified in the Schedule.

### **WHAT YOU ARE NOT INSURED FOR - DEDUCTIBLES AND EXCLUSIONS.**

#### **Section 1 - Contract Works**

- 1 In respect to the property or part immediately affected:
  - (a) The cost of repairing or replacing faulty materials
  - (b) The cost of putting right faulty workmanship
  - (c) The cost of putting right work performed to a faulty or defective design plan or design specification
  - (d) The cost of putting right faulty or defective work where the fault or defect results from error or omission in design plan or design specification.
- 2 Consequential loss of any kind whatsoever including penalties, losses due to delay, lack of performance, loss of contract.
- 3 Loss or damage to evidence of debt, cash, bank notes, currency notes or negotiable instruments.
- 4 Loss revealed solely by the taking of an inventory, unless the loss can be reasonably attributed to an insured cause.
- 5 Loss or damage arising directly or indirectly from Cyclone, Hurricane or Windstorm
- 6 Loss or damage arising from damage directly caused by water, flooding or overflow of the sea.
- 7 Loss or damage arising from burglary or theft.
- 8 Loss or damage to wharves, jetties, animals, motor vehicles, motor cycles, watercraft, outboard motors, aircraft.
- 9 Loss or damage arising from wear, tear, depreciation, mildew, mould, rot, corrosion, rust, gradual depreciation, contamination, pollution, mechanical or electrical breakdown, neglect of maintenance,
- 10 In respect to documents, manuscripts, magnetic media, business books, microfilm, technical drawings, plans, designs, patterns, models, moulds and other records which may be insured under this policy only their value as materials is insured. The value of the information is not insured.

#### **Section 2 - Third Party Liability**

- 1 Liability assumed by the Insured by agreement unless and in so far as such liability would have attached to the Insured notwithstanding such agreement.
- 2 Liability in respect of death or bodily injury including illness of any person arising out of and in the course of the employment of such person by the Insured or for compensation claimed from the Insured by an injured person or dependant under any Workers' Compensation Act or to any person who is a member of the Insured's family ordinarily residing with the Insured.

- 3 Liability in respect of loss or damage to property:-  
 (a) Belonging to or held under a hire purchase agreement, hired, leased, rented or lent to or in the charge or under the control of the Insured or any servant or agent of the Insured whilst in the course of his duties as such, or of any member of the Insured family ordinarily residing with the Insured. Provided that where the contract works insured by Section 1 consist of alterations, extensions, repairs, replacements, additions or the like then this exclusion shall not apply to the existing structure or any other property (other than the works described in the schedule) on or about the Project site.  
 (b) Being that part of any property, goods, land, building or structure on which the Insured or any servant or agent of the Insured is or has been working if such damage is caused directly by the process of treatment alteration repair or construction of the part of such property goods land building or structure.
- 4 Liability in respect of death or bodily injury including illness of any person or loss of or damage to property caused by or in connection with or arising from:  
 (a) The ownership or possession or use by or on behalf of the Insured of any vehicle required to be registered for road use provided that liability in respect of the loading and unloading or collection of goods to or from a vehicle (in so far as liability is not covered by any other insurance policy) is not excluded hereunder.  
 (b) The ownership or possession of or use arising from the ownership or possession of any watercraft aircraft or thing made or intended to float on or in or travel on or through water air or space.  
 (c) Work which is being undertaken or has been undertaken by the Insured to any watercraft aircraft or thing made or intended to float on or in or travel through water air or space.  
 (d) Earthquake  
 (e) Property goods food or drink or the containers thereof sold supplied or constructed or property or goods which have been repaired altered renovated serviced or installed or poisoning of any kind but this Exclusion shall not apply or extend to -  
 (i) property or goods before such have passed from the control and actual physical custody of the Insured or of any person in the direct service of the Insured.  
 (ii) property or goods sold or supplied at or from a canteen provided by the Insured primarily for the use of employees or visitors of the Insured.  
 (f) Error or omission in design specification or advice remedial or other treatment given administered or prepared by the Insured or by any person acting on behalf of the Insured but the words advice remedial or other treatment shall have no application in respect of any employee of the Insured acting in the capacity of Industrial Nurse on behalf of the Insured.  
 (g) Vibration or the removal or weakening of or interference with the support of land or buildings.
- 5 Any liability arising from property damage or personal injury directly or indirectly caused by pollution or contamination, or for the cost of removing nullifying or cleaning up polluting or contaminating substances. However, the Company will indemnify the Insured for liability arising from Property Damage or Personal injury occurring in Fiji during the period of insurance and in connection with the business directly caused by pollution or contamination if the occurrence giving rise to the pollution or contamination is:  
 (a) sudden and accidental; and  
 (b) takes place during the Period of Insurance; and  
 (c) is discovered by the Insured or any employee of the Insured within 72 consecutive hours of it first happening; and  
 (d) all reasonable remedial action is immediately taken by the Insured upon discovery.
- 6 any liability arising directly or indirectly from:  
 (a) mining, processing, transporting, distributing or storing asbestos;  
 (b) manufacturing or processing materials containing asbestos;  
 (c) any process of decontamination, treatment or control of asbestos;  
 (d) the presence of asbestos in any building or structure;  
 (e) asbestos pollution or contamination;
- 7 Any liability in respect of any fine or penalty imposed upon the Insured, or any punitive or exemplary damages awarded against the insured.

#### **General Exclusions - Sections 1 and 2.**

- 1 The amount of any deductible as specified in the policy schedule in respect of each loss or series of losses arising out of one event.  
 2 Loss or damage resulting from earthquake or volcanic eruption.  
 3 War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military rising, rebellion, revolution, insurrection, terrorism, military or usurped power.  
 4 Nuclear weapons material or ionising radiation or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel.  
 5 Subsidence, landslip, erosion, settling, cracking or removal or weakening of support.  
 6 Confiscation, nationalisation or requisition by order of the Government or Local Authority.

### **ADDITIONAL PROVISIONS AND BENEFITS**

- 1 **Other Interests** - Where the Insured is under an obligation to insure the interest of any person or corporation having an insurable interest in any of the Insured Property, The Dominion will indemnify the Insured and that person or corporation as if a separate policy had been issued to each. However:  
 (a) The Dominion will not be liable to indemnify any person or corporation whose interest has not been declared to The Dominion by the time indemnity becomes payable; and  
 (b) The Dominion's liability will not be increased beyond the amount that would be payable if this extension had not been incorporated in the policy.
- 2 **Pairs & Sets** - Where an insured item consists of articles in a pair or set, this policy will not indemnify the Insured for more than the value of the part or parts which may be lost, without reference to any special value which such article or articles may have as a part of such pair or set; nor more than a proportionate part of the value of the pair or set.
- 3 **Reinstatement** - The sum insured for Section 1 shall not be reduced by the amount of any claims paid. The Insured undertakes to pay such premium at the applicable rate as may be required for this reinstatement.

- 4 **Demolition** - The cost of demolishing and removing the debris including contents for which a claim has been accepted is included within the sum insured. Also the cost of temporary repairs and other measures necessary to secure the property or to make it safe or suitable for continued use.
- 5 **Professional Fees** - Architects, engineers and other professional fees incurred in the rebuilding or repairs to the property for which a claim has been accepted under Section 1 is included providing these fees have been included within the sum insured.
- 6 **Progress Claim Payments** - In the event of loss or damage giving rise to a claim under this policy The Dominion will make progress claim payments on production of acceptable evidence of an insured loss. Provided that, if the aggregate of progress payments exceeds the total amount of the adjusted loss, the Insured will immediately refund the difference between the amount of adjusted loss and the aggregate of payments actually made.
- 7 **Protection Costs** - This policy extends to indemnify the Insured for any costs reasonably incurred by the Insured for the purpose of fighting or controlling any Insured Peril that involves or threatens to involve Insured Property.
- 8 **Cross Liabilities:-** This insurance indemnifies each of the Insured's separately in the same manner and to a like extent as though separate policies had been issued in their separate names. In particular (but without limiting the generality of the foregoing) the Policy will indemnify each of the Insured's in respect of claims made by the other, or by employees or agents of the other. Each Insured shall be separately subject to the terms, exclusions and conditions of the Policy in the same manner and to a like extent as though separate policies had been issued. Provided that the liability of the Dominion will not exceed Limit of Liability in respect of the aggregate of all sums for which all Insured's are liable.
- 9 **Expediting Costs:** Where a claim is payable under Section 1 this policy The Dominion will also indemnify the insured for such additional costs of express freight, air freight and overtime labor as are reasonably incurred for the purpose of expediting that reinstatement. Provided the liability of the Dominion will not be increased, by reason of this clause, by more than 10% of the amount for which the Dominion would have been liable in the absence of this clause.

## CONDITIONS

- 1 **Fraud:** If any claim under this policy shall be false or fraudulent in any respect then this insurance shall be void, no benefits shall be paid, and any benefits already paid will be recoverable by the Dominion.
- 2 **Claims:-A.** The Insured shall:
1. Immediately notify the Dominion (and the Police where applicable) of any occurrence and/or impending prosecution, or proceedings which may give rise to a claim.
  2. Within 30 days submit in writing full particulars of the occurrence and/or claim in such a form or manner as may be reasonably required by the Dominion so that any claim is not prejudiced.
  3. Provide to the Dominion or their representative all books of account and give all information and assistance to the Dominion in the investigation of any claim.
  4. Immediately send to the Dominion any legal process issued or commenced against the Insured, and give all assistance to enable the claim to be settled or resisted.
  5. Take all reasonable steps to prevent further loss.
- B. The Insured shall not without the written consent of the Dominion;
1. Incur any expense of litigation.
  2. repudiate liability, negotiate or make any admission, offer, promise or payment.
- C. In the event of any claim the Dominion shall be entitled:
1. To take proceedings in the name of the insured to obtain relief from any third party and undertake the conduct, control or compromise of any such proceedings.
- 3 **Other Insurance:-**If at the time of any loss, damage or liability there shall be any other insurance covering such loss, damage or liability or any part thereof, the Dominion shall be liable only for the amount of loss not covered by such other insurance.
- 4 **Cancellation and Variations:-**
- (a) The Insured may cancel this policy at any time in which case the Dominion will refund 80% of the unused premium.
  - (b) The Dominion may cancel this policy or amend the terms, exclusions and limitations after 4.00pm on the 14th day following dispatch or written notice to the Insured's last known address. The Insured shall be entitled to a return of premium proportionate to the unexpired period of the cancelled policy.
- 5 **Jurisdiction:-**Notwithstanding anything contained in this policy to the contrary the indemnity provided herein shall not be apply to:
1. Any matter where an action for damages is brought in a court of law outsideTonga and not subject to Tongan law or where an action is brought in Tonga to enforce a foreign judgment whether by way of reciprocal agreement or otherwise.
  2. Costs and expenses of litigation which are not incurred within Tonga.
- 6 **Premium payment:-** Unless alternative premium payment terms have been agreed in writing this policy will become null and void 30 days after the original inception date or any subsequent renewal date unless the full premium has been paid to the Dominion.
- 7 **Policy Amendment:-** Any amendment to the terms and conditions of this policy must be evidenced by written confirmation signed by the Dominion.
- 8 **Precautions:** The Insured shall:-
- (a) take all reasonable endeavours to see that only competent employees are employed;
  - (b) exercise reasonable care to see that all buildings, ways, works, plant, machinery, furniture and fittings are substantial and sound and in proper order and fit for the purposes for which they are used;
  - (c) take all reasonable precautions to observe and comply with all statutory obligations, regulations, by-laws and directions;
  - (d) take all reasonable precautions to prevent Property Damage or Personal Injury.
- 9 **Observance:-** The requirements, Conditions, Claims Conditions and Clauses of this Policy relating to anything to be done or complied with by the Insured must be observed by the Insured and the statements and answers in the proposal and any other representations or statements made (whether by the Insured or not) must be true and correct before the Company has any liability under this Policy.
- 10 **Adjustment of Premium:-** Where the premium for Section 1(a) is stated in the policy schedule to be adjustable the premium charged is provisional only. Upon the termination of this policy the actual premium will be calculated based on the actual total contract value as at the end of the insurance period or as at the date of cancellation of this policy. If the actual premium exceeds the provisional premium paid, the Insured shall pay the excess to the Dominion; if less, the Dominion will return to the Insured the unearned portion paid by the Insured.

