

NON-OWNED FORM

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Words and phrases in bold have special meaning as defined in Definitions Section.

INSURING AGREEMENT

Now, therefore, subject to the limits, terms and conditions, provisions, definitions and exclusions herein stated.

SECTION A – CIVIL LIABILITY

The Insurer agrees to indemnify the Insured, the Insured's succession or legal representatives against the pecuniary consequences of civil liability the Insured may incur for loss or damage arising from the use or operation in the business described in the Declarations of any automobile not owned (in whole or in part) by or registered in the name of the Insured, and resulting from bodily injury to or death of others or damage to property of others not in the care, custody or control of the Insured. However, where the loss exceeds the amounts of insurance, the indemnity shall be applied first to the pecuniary consequences of civil liability incurred by the Named Insured.

EXCLUSIONS

The Insurer shall not be liable under this section:

- (1) except where the *Automobile Insurance Act* does not apply, for bodily injury or death covered under the said Act, the *Act respecting industrial accidents and occupational diseases* or the *Crime Victims Compensation Act*;
- (2) for any liability which arises from the use or operation of any automobile while personally driven by the Insured if the Insured is an individual;
- (3) for any liability imposed by any workmen's compensation law upon any person insured by this section;
- (4) for loss or damage sustained by the Insured or any employee, shareholder, officer, member, partner or mandatary of the Insured while engaged in the business of the Insured, except as provided under a Direct Compensation Agreement established in accordance with the aforementioned *Automobile Insurance Act*;
- (5) for any liability assumed voluntarily by any person insured by this section under any contract or agreement except for private passenger vehicles rented or leased by an Insured for a period of less than thirty (30) days;
- (6) for loss or damage to property carried in or upon an automobile personally driven by any person insured by this section or to any property owned or rented by, or in the care, custody or control of any such person;
- (7) for any sum in excess of the amount stated in the Declarations, and expenditures provided for in the Additional Agreements of this section, irrespective of the number of persons or interests insured;
- (8) for any loss or damage resulting from bodily injury to or death of any person or damage to property arising out of a **nuclear energy hazard** and in excess of the compulsory amount of liability insurance prescribed by the *Automobile Insurance Act* or the *Act respecting off-highway vehicles*, depending on the type of vehicle involved.

See also General Provisions, Definitions, Exclusions and Conditions.

ADDITIONAL AGREEMENTS

Where indemnity is provided by this section the Insurer further agrees:

- (a) immediately upon receipt of notice of loss to serve any person insured by this section by such investigation thereof, or by such transactions with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer;
- (b) to take up the interest of any person entitled to the benefit of the insurance and assume his defense in any action which may be brought against him;
- (c) bear, over and above the proceeds of the insurance, costs and expenses resulting from actions against the Insured, including those of the defense, and interest on the proceeds of the insurance;
- (d) if the injury is to a person, to reimburse any person insured by this section for expenses incurred for such medical aid as may be immediately necessary at the time of such injury;
- (e) to be liable up to the minimum amount(s) of liability insurance prescribed by any legislation respecting Automobile Insurance and applying in that province or territory of Canada or in that State of the United States of America in which the accident occurred, if that amount(s) is higher than the amount(s) stated in the Declarations;
- (f) not to set up any defense to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province or territory of Canada or in the state of the United States of America in which the accident occurred.

AGREEMENTS OF INSURED

Where indemnity is provided by this section, every person insured:

- (a) empowers the Insurer as their representative to appear and defend in any province or territory of Canada or in any State of the United States of America in which action is brought against the Insured arising out of the use or operation of an automobile with respect to which insurance is provided hereunder;
- (b) renounces his right to unilaterally revoke such mandate;
- (c) shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under this section.

GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS

1. TERRITORY

Unless extended by endorsement, insurance provided by this contract applies only within Canada, the United States of America and upon a vessel and/or aircraft serving ports of airports of those countries.

2. PERSONNEL OF OTHER GARAGES EXCLUDED

No person who is engaged in a **garage business**, shall be entitled to indemnity or payment under this contract for any loss, damage, injury or death sustained while using, operating or working upon the automobile in the course of that business or while so engaged is an occupant of or enters or gets onto or alights from such automobile, unless the person is the Insured or the Insured's employee, shareholder, member, partner or mandatary or is actually driving the automobile in Québec.

3. DEFINITIONS

In this policy:

- (a) The term **garage business** includes any business involving the custody, selling, equipping, repairing, maintaining, storing, parking, moving or servicing of automobiles;
- (b) The term **hired automobiles** means automobiles hired or leased from others with or without drivers, used under the control of the Insured in the business stated in the Declarations but shall not include any automobile owned in whole or in part by or registered in the name of the Named Insured or any employee, shareholder, officer, member, partner or mandatary of the Insured;
- (c) The term **automobiles operated under contract** shall mean automobiles operated in the business of the Insured stated in the Declarations where the complete supervision, direction and control of such automobiles remain with the owner thereof, but shall not include any automobile owned in whole or in part by or registered in the name of the Named Insured or any employee, shareholder, officer, member, partner or mandatary of the Insured;
- (d) The words **nuclear energy hazard** mean the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada).

4. TWO OR MORE AUTOMOBILES

- (a) When two or more automobiles are insured hereunder the terms of this contract shall apply separately to each, but a motor vehicle and one or more trailer or trailers or semi-trailers attached thereto shall be held to be one automobile with respect to the amounts of insurance under Section A. Where two or more automobiles are insured under one or more contracts issued by the same insurer, only one amount of insurance, the highest, shall apply in the event of loss under section A;
- (b) If section B is included in this policy through endorsement Q.E.F. No. 6-94, Civil Liability for damage to hired automobiles and/or automobiles operated under contract, such automobiles shall be held to be separate automobiles with respect to the amount(s) of insurance, including any deductible provisions, under section B;
- (c) Section A shall apply to the Insured's liability for damage caused to a non-owned trailer, other than a trailer designed or used to carry passengers or for demonstration, sale, office or dwelling purposes, while:
 - attached to an **automobile of the private passenger type** insured under said section;
 - not attached to any other vehicle, provided such trailer is generally attached to an **automobile of the private passenger type** insured under said section.

Automobile of the private passenger type : commercial vehicles of 4 500 kg (10 000 lb) gross vehicle weight or less while used for private or pleasure purpose shall be deemed to be of the private passenger type.

5. ADDITIONAL INSUREDS

This contract also insures every employee, shareholder, officer, member, partner or mandatary of the Named Insured, who, with the consent of the owner of the automobile involved:

- (a) and in the business of the Named Insured stated in the Declarations, personally drives any automobile not owned in whole or in part by or registered in the name of (1) the Named Insured, or (2) such additional insured person, or (3) any person having the same domicile as the Named Insured or such additional insured person;
- (b) any automobile rented or hired in the name of the Named Insured and not owned in whole or in part by or registered in the name of such additional insured person.

6. PREMIUM ADJUSTMENT

The advance premiums stated in the Declarations and in Q.E.F. No. 6-94, if applicable, are computed on the estimated total "cost of hire" or "contract cost", as the case may be, for the contract period. The words "cost for hire" as used herein mean the entire amount incurred for **hired automobiles** and drivers when such automobiles are hired with drivers or the amount incurred for **hired automobiles** and the wages paid to drivers when such drivers are employees of the Insured. The words "contract cost" as used herein mean the entire amount paid by the Insured for **automobiles operated under contract** to the owners thereof.

The advance premiums are subject to adjustment at the end of the contract period when the Insured shall deliver to the Insurer a written statement of the total amounts expended for "cost of hire" and "contract cost" during the contract period based on the provisions contained in Q.E.F. No. 6-100, Final adjustment of premium computation statement.

7. AUDIT

Provided the Insured has authorized the Insurer in writing, the Insurer may at any time during regular business hours and upon fourteen (14) days' prior notice examine the books and records of the Insured insofar as they relate to the subject matter of the contract.

8. CROSS LIABILITY

Every Named Insured sustaining loss or damage because of another Named Insured shall, in respect of such loss or damage, be deemed to be a third party under this contract; provided that this provision shall not operate to increase the limit of the Insurer's liability.

9. EXCLUDED USES

Unless coverage is indicated in the Declarations or expressly given by an endorsement, the Insurer shall not be liable under this contract while:

- (a) the automobile is rented or leased to another;
- (b) the automobile is used to carry explosives, or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental thereto;
- (c) the automobile is used as a taxicab, bus, livery or sightseeing conveyance.

CONDITIONS

This contract is subject to the *Civil Code of Québec*, the *Code of Civil Procedure of Québec*, the *Automobile Insurance Act* and its regulations and the *Act respecting off-highway vehicles* if applicable.

1. REPRESENTATION OF RISK

The client, and the Insured if the Insurer requires it, is bound to represent all the facts known to him which are likely to materially influence an insurer in the setting of the premium, the appraisal of the risk or the decision to cover it, but he is not bound to represent facts known to the Insurer or which from their notoriety he is presumed to know, except in answer to inquiries.

The client means the person submitting an insurance application.

2. MATERIAL CHANGE IN RISK

The Insured shall promptly notify the Insurer of any change that increases the risks stipulated in the policy and that results from events within his control if it is likely to materially influence an insurer in setting the rate of the premium, appraising the risk or deciding to continue to insure it.

On being notified of any material change in the risk, the Insurer may, under Condition 21., cancel the contract or propose, in writing, a new rate of premium. Unless the new premium is accepted and paid by the Insured within thirty (30) days of the proposal, the policy ceases to be in force.

If the Insurer continues to accept the premiums or if he pays an indemnity after a loss, he is deemed to have acquiesced in the change notified to him.

3. MISREPRESENTATIONS OR CONCEALMENT

Section A of the policy may be nullified at the instance of the Insurer where the Insured or the client has misrepresented or concealed relevant facts mentioned in Condition 1. and in the first paragraph of Condition 2. which are likely to materially influence a reasonable insurer in the decision to cover the risk. Unless such misrepresentation or concealment is established, the Insurer remains liable towards the Insured for such proportion of the indemnity as the premium he collected bears to the premium he should have collected.

Sections B of endorsement Q.E.F. No. 6-94 may be nullified at the instance of the Insurer where the Insured or the client has misrepresented or concealed relevant facts mentioned in Condition 1. and in the first paragraph of Condition 2. which are likely to materially influence a reasonable insurer, even in respect of losses not connected with the risk so misrepresented or concealed. Unless the bad faith of the Insured or the client is established or unless it is established that the Insurer would not have covered the risk if he had known the true facts, the Insurer remains liable towards the Insured for such proportion of the indemnity as the premium he collected bears to the premium he should have collected.

4. BREACH OF WARRANTY

A breach of warranty aggravating the risk suspends the coverage. The suspension ceases upon the acquiescence of the Insurer or the remedy of the breach.

5. PROHIBITED USE

The Insured shall not drive or operate the automobile nor permit the use of the automobile by others:

- (a) unless the driver is for the time being authorized by law or qualified to drive or operate the automobile, or while he is under sixteen (16) years of age or under such other age as is prescribed by law to drive an automobile;
- (b) for any illicit trade or transportation;
- (c) in any race or speed test.

6. INSPECTION OF AUTOMOBILE

The Insurer shall be permitted at all reasonable times to inspect the automobile and its equipment.

7. NOTICE OF LOSS

The Insured shall notify the Insurer of any loss which may give rise to an indemnity, as soon as he becomes aware of it. Any interested person may give such notice.

The failure to fulfil the obligation set out in the preceding paragraph entails forfeiture of the right to indemnity where such failure has caused prejudice to the Insurer.

8. INFORMATION TO BE PROVIDED

At request of the Insurer, the Insured shall inform the Insurer as soon as possible of all the circumstances surrounding the loss, including its probable cause, the nature and extent of the damage, the location of the insured property, the rights of third parties, and any concurrent insurance; he shall also furnish him with vouchers and swear or warrant to the truth of the information.

Where, for a serious reason, the Insured is unable to fulfil such obligation, he is entitled to a reasonable time in which to do so. If the Insured fails to fulfil his obligation, any interested person may do so on his behalf.

In addition, the Insured shall forthwith send to the Insurer a copy of any notice, letter, summons or proceeding received in connection with a claim.

9. DECEITFUL REPRESENTATION

Any deceitful representation relating to a loss entails the loss of the right of the person making it to any indemnity in respect of the risk to which the representation relates.

However, if the occurrence of the event insured against entails the loss of both property for occupational use and personal property, forfeiture is incurred only with respect to the class of property to which the representation relates.

10. ABANDONMENT, SAFEGUARDING AND EXAMINATION OF PROPERTY

The Insured may not abandon the damaged property if there is no agreement to that effect with the Insurer.

The Insured shall facilitate the salvage and inspection of the insured property by the Insurer. He shall, in particular, permit the Insurer and his representatives to visit the premises and examine the insured automobile and its equipment.

In addition, the Insured shall at the expense of the Insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable hereunder. No repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the Insurer, except such repairs as are immediately necessary for the protection of the automobile from further loss or damage, or until the Insurer has had a reasonable time to make the examination provided for in Condition 6.

11. ADMISSION OF LIABILITY AND COOPERATION

No transaction made without the consent of the Insurer may be set up against him.

The Insured shall not admit any liability nor settle or attempt to settle any claim, except at his own cost.

The Insured shall cooperate with the Insurer in the processing of all claims.

12. VALUATION AND MANNER OF PAYMENT

The Insurer shall not be liable beyond the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated with proper deduction for depreciation, however caused, and shall in no event exceed what it would cost to repair or replace the automobile or any part thereof with material of like kind and quality provided that in the event of any part of the automobile being obsolete and out of stock, the liability of the Insurer in respect thereof shall be limited to the value of original equipment manufacturer parts at the time of loss or damage not exceeding the manufacturer's latest list price.

For the purpose of the above coverage, the value of damages caused to the automobile shall be based on original equipment manufacturer parts where the age of the automobile and mileage are less than two (2) years and forty thousand (40 000) kilometres, or less than one (1) year in the case of an automobile used for commercial purposes. Where the age and mileage are greater, such value may be based on similar automobile parts. However, the Insured may opt for original equipment manufacturer, if available, by communicating such option to the Insurer at the time of the notice of loss. The Insurer shall then specify the applicable conditions and additional costs that the Insured shall assume as a result of such option.

In the event of a total or constructive total loss, the Insurer agrees, at the option of the Insured and subject to supporting evidence, to cover reasonable expenses incurred to restore the automobile to the same condition as it was before the loss.

Except where an arbitration has been made and subject to the rights of preferred and hypothecary creditors, the Insurer, instead to making payment may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality, giving written notice of its intention so to do within seven (7) days after the receipt of the proofs of loss.

In all cases, the salvage, if any, shall revert to the Insurer.

13. ARBITRATION

Arbitration may take place in the event of a disagreement as to the nature, extent or amount of the loss or damage, or the adequacy of the repairs or the replacement and independently of all other questions respecting the validity of the contract.

The party seeking arbitration must notify the other party of his intention in writing, specifying the matter in dispute. The Insured's request for arbitration must be granted. The Insurer's request for arbitration may be granted subject to the Insured's consent.

If the Insured requests arbitration, the Insurer must send the Insured an acknowledgement of receipt no later than fifteen (15) clear days after receipt of this notice. If the Insurer so requests, the Insured must confirm acceptance or refusal within the same amount of time.

Each party shall name an expert and the two (2) experts shall work jointly to estimate damage (establishing the actual cash value and the damage separately) or to assess the adequacy of the repairs or the replacement. Failing to agree, they shall submit their differences to a disinterested arbitrator they have appointed.

If either party fails to appoint an expert within thirty (30) clear days of the date of the notice or if the experts fail to agree upon an arbitrator within fifteen (15) days of their appointment, or if an expert or the arbitrator refuses to act or is unavailable, the vacancy thus created must be filled, on the request of one of the parties, by a court with jurisdiction in the place of the arbitration.

Notwithstanding the arbitration procedure and if the validity or application of the contract is not being contested, the Insurer shall pay the uncontested portion of the damage amount. This payment must be made not later than sixty (60) days after receipt of notice of loss or receipt of the information or supporting documents required by the Insurer.

Subject to this clause, the arbitration shall follow the procedure in sections 940 to 951.2 of the *Code of Civil Procedure of Québec*, taking into account any required modifications. In accordance with section 944.1 of this Code, the arbitration may proceed according to a procedure determined by the arbitrator, insofar as this procedure does not contravene the above sections. The arbitration proceedings shall be held at a place in accordance with the domicile of the Insured.

The arbitrator shall settle the dispute in accordance with the applicable laws in the province of Québec. The arbitrator and the parties may use the language of their choice during the arbitration proceedings. Measures must be taken to ensure that all the participants understand the language used.

The arbitration award shall be made in writing by the arbitrator. It must indicate the date and place where it has been made. It must state the reasons on which it is based and be signed by the arbitrator, then sent to the parties within thirty (30) days of the date on which it has been made.

Each party shall pay the expenses and fees of its expert and half the fees and expenses of the arbitration proceedings. The arbitrator is authorized to award the fees and expenses of the arbitration if he deems that the sharing method established by this clause is not justified or fair for each of the parties in the circumstances.

14. NON-WAIVER

Neither the Insurer nor the Insured shall be deemed to have waived any term or condition of this contract by any act relating to arbitration or to the delivery and completion of proofs of loss, or to the investigation or adjustment of the claim.

15. TIME OF PAYMENT

Claims under Section B shall be paid within sixty (60) days after receipt of notice of loss or of information or proof of loss required by the Insurer or, where an arbitration is held, within fifteen (15) days after award is accepted by the Insured.

16. CONTINUATION OF COVERAGE

Coverage is maintained after a loss.

17. PRESCRIPTION

Every action against the Insurer under this contract is prescribed by three (3) years from the date the right of action has arisen.

18. SUBROGATION

The Insurer shall be subrogated to the extent of the amount paid under this contract to the rights of the Insured against persons responsible for the loss except when they are members of the Insured's household.

The Insurer may be fully or partly released from his obligation towards the Insured where, owing to any act of the Insured, he cannot be so subrogated.

19. OTHER LIABILITY INSURANCE

Insurance under a contract evidenced by a valid owner's policy is, in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the Insured named in the policy and within the description or definition thereof in the policy, a first loss insurance, and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

However, insurance evidenced by a valid garage policy, not describing the specific automobile(s) insured, shall in respect to non-owned or customers' automobiles while being used, operated or worked upon in the course of the policyholder's business as a garage be a first loss insurance and insurance attaching under any other valid motor vehicle policy shall be excess insurance only.

20. RENEWAL OF CONTRACT

This contract shall be renewed of right, for the same premium and for the same period, at expiry, unless notice to the contrary is given by the Insurer or the Insured; if given by the Insurer, the notice of non-renewal or of a change in the premium must be sent to the Insured, at his last known address, not later than the thirty (30) days preceding the date of expiry, counting that date.

Where the Insured deals through a broker, the notice provided for in the first paragraph is sent by the Insurer to the broker, the latter being entrusted to remit it to the Insured.

21. CANCELLATION

This contract may be cancelled at any time:

(a) by each of the Named Insureds giving mere written notice to the Insurer. Cancellation takes effect upon receipt of the notice by the Insurer and the Insured shall therefore be entitled to a refund of the excess of the **premium actually paid** over the premium earned for the time the contract has been in force, on the basis of the Cancellation Table herein;

(b) within sixty (60) days after its coming into force, by the Insurer giving written notice to each Named Insured. Cancellation takes effect fifteen (15) days following receipt of such notice by the Named Insured at his last known address.

At the expiry of such period of sixty (60) days, the contract shall not be cancelled by the Insurer except in the case of an aggravation of risk which is likely to materially influence a reasonable insurer in the decision to continue to insure, or when the premium has not been paid. The Insurer so wishing to cancel the contract shall notify each Named Insured in writing; cancellation takes effect thirty (30) days following receipt of such notice by the Named Insured at his last known address or, if the Described Automobile, with the exception of a school bus, is an automobile contemplated in Title VIII.1 of the *Highway Safety Code*, fifteen (15) days after receipt of the notice.

The Insurer shall refund the excess of the **premium actually paid** over the earned premium computed on a day to day basis.

Where one or more of the Named Insureds have been mandated to receive or send the notices provided for under paragraph (a) or (b) above, notices sent or received by them shall be deemed to have been sent or received by all Named Insureds.

In this Condition, the words **premium actually paid** mean the premium actually paid by the Insured to the Insurer or its agent, but do not include any premium or part thereof paid to the Insurer by an agent unless actually paid to the agent by the Insured.

22. NOTICE

Any notice to the Insurer may be sent by any recognized means of communication to the Insurer or its authorized representative. Notice may be given to the Named Insured by letter personally delivered to him or by mail addressed to him at his last known address.