

MULTIPLE INSUREDS' CLAUSE (LEG)

Subject otherwise to the terms, Conditions and Exclusions of the Policy

- i. It is noted and agreed that if the Insured described in the schedule comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this Multiple Insured's Clause) cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including any inner limits set by memorandum or endorsement stated in the policy.
- ii. It is understood and agreed that any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment Insurers liability to all such parties arising from any one event giving rise to a claim under this policy.
- iii. It is further understood that the insured parties will at all times preserve and enforce the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of physical loss or damage.
- iv. It is further understood and agreed that Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any of the insured parties in circumstances of fraud, misrepresentation, non-disclosure or breach of any warranty or condition of this policy committed by that insured party each referred to in this clause as a Vitiating Act.
- v. It is however agreed that (save as provided in this Multiple Insured's Clause) a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- vi. Insurers hereby agree to waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act in which circumstances Insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as an Insured.
- vii. The lenders to the project shall not be entitled to any indemnity under this policy for or arising from physical loss or damage in respect of which Insurers are by reason of a Vitiating Act no longer liable to indemnify any one or more other insured party.

MULTIPLE INSUREDS

London Engineering Group
Model Clause

Guidance Notes

Paragraph 1.

Insurers recognise that in some circumstances "The Insured" may comprise more than one insured party, each with differing extent of interest in the subject matter insured. It is understood that under English law each such party is regarded as being insured as if they each had a separate policy.

However, there may be occasions (for example in the case of a "Joint Venture") where the extent of interest of the parties is the same. In these cases it is understood that, under English law, the parties in these circumstances are regarded as one and are insured as such by one common policy.

The clause reflects this legal principle.

The clause, however, goes on to clarify that the sums insured / limits of indemnity or any applicable inner limits apply in total and do not replicate themselves for each of the insured parties.

Paragraph 2.

Where a loss sustained by one party is indemnified any sum insured or inner limit is reduced by the amount of such payment regardless of any later claim by another insured party arising out of the same incident and subject to the applicable limit.

Paragraph 3.

Fundamental to these engineering and construction insurance policies are the Conditions of the "Works" Contracts which bind the various parties concerned. In responding to the needs of the insured parties insurers expect such parties to ensure that the contractual obligations and responsibilities are adhered to and that in the event of failure by any such party to comply with the conditions of the Works Contracts the insurers expect the insured to seek to remedy any loss contractually and work with the insurer to recover any loss regardless of whether payment has been made by the Insurer or not.

Paragraph 4.

If an insured party fails to comply with policy conditions or warranties; misrepresents facts or fails to disclose material information insurers may regard such behaviour as a Vitiating Act. In such cases the Insurers are entitled to avoid liability and thus refuse to meet any claim by that party. The Insurers may either void all coverage for that party or alternatively refuse to meet an individual claim while agreeing to maintain future coverage. The Insurers may also claim damages against the party which commits a Vitiating Act.

A Vitiating Act is defined as one or more of the following:

Fraud
Misrepresentation
Non Disclosure
Breach of Warranty
Breach of Condition

Paragraph 5.

In spite of a Vitiating Act by one party Insurers will indemnify any other party (subject to the restriction regarding lenders - see paragraph 7) which has not also committed such act and which has suffered an insured loss. Insurers will no doubt wish to consider whether their premium rates reflect such exposures.

Paragraph 6.

In the event of a Vitiating Act Insurers have the right to subrogate against the vitiating party (or seek other recourse against them). However, Insurers agree that in the absence of vitiating of the policy by one or more parties rights of subrogation are waived.

Paragraph 7.

The benefits of this clause do not extend to protect lenders in the event of a Vitiating Act by any other insured party. Therefore if a vitiating party is denied cover the lender(s) are not entitled to claim. The lenders do, however, remain insured and have all the rights and benefits under the policy provided their claim(s) are not in respect of losses which result from any Vitiating Act by any party.

In practice the main exposure here to the lenders would be the failure of any party to obtain an indemnity for "Business Interruption" losses in the event of a Vitiating Act committed by the Owner. To provide such an indemnity to the lenders would be of little value since Insurers would in all likelihood subrogate against the Owner for recovery of the loss. A separate and distinct protection specifically tailored to meet the needs of lenders is therefore appropriate.

Example 1:

Insurers may refuse indemnity to a subcontractor because of an act by him which vitiates his cover - eg Breach of Warranty (Paragraph 4).

However, arising from the same event another insured party eg - the Main Contractor may suffer a material damage loss himself.

Part of such loss may be quite separate from that sustained by the subcontractor (eg: fire damage which has spread from the subcontractor's scope of works to works being undertaken by the Main Contractor). Another part of the Main Contractor's loss could be the expense incurred by him to make good the loss or damage sustained by the subcontractor and which the subcontractor has failed to remedy.

The Main Contractor may be regarded as a separate insured party and insured as if he had a separate policy (Paragraph 1).

Insurers will indemnify the Main Contractor (Paragraph 5), provided that the Main Contractor has not also committed such Vitiating Act.

Insurers expect the Main Contractor to contractually pursue an indemnity from the subcontractor under the terms of the subcontract (paragraph 3).

Furthermore, Insurers may subrogate against the subcontractor to recover their loss (Paragraph 6).

In this example the completion of the Project may be delayed as a direct result of the damage which has been caused by this Vitiating Act. As a consequence, from the date the Project was scheduled to complete the Owner suffers a loss of Gross Profit or incurs Interest and Standing Charges.

Insurers will indemnify the Owner for his loss (Paragraph 5).

Insurers may pursue an action against the subcontractor to recover such monies. In practice the decision whether to pursue a vitiating party in this way depends on the financial standing of such party and the likelihood of a successful recovery by insurers. However, the mechanism exists to do so

Example 2.

Insurers refuse indemnity to the Owner on account of Misrepresentation (Paragraph 4).

However, a material damage loss is sustained by the Contractor and/or subcontractors who have not committed such Vitiating Act.

Insurers will indemnify the Contractor(s) (paragraph 5).

Insurers have the right to subrogate against the Owner (Paragraph 6).

As a result of the material damage loss the Project completion is delayed and the Owner sustains, from the scheduled date of completion a loss of Gross Profit or incurs Interest payments and Standing Charges.

Insurers will not indemnify the Owner in these circumstances (Paragraph 4).

Furthermore, Insurers will not indemnify the Lender(s) (Paragraph 7).

London Engineering Group
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