

**ALBERTA  
GARAGE  
AUTOMOBILE  
POLICY  
(S.P.F. NO. 4)**

# **ALBERTA GARAGE AUTOMOBILE POLICY (S.P.F. NO. 4)**

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## S.P.F. NO. 4 – STANDARD GARAGE AUTOMOBILE POLICY

### INSURING AGREEMENTS

In consideration of the payment of the premium specified and of the statements contained in the application and subject to the limits, terms, conditions, provisions, definitions and exclusions herein stated and subject always to the condition that the Insurer shall be liable only under the Section(s) or subsection(s) of the Insuring Agreements for which a premium is specified in Item 5 of the application.

#### SECTION A – THIRD PARTY LIABILITY

The Insurer agrees

**OWNED AUTOMOBILES** (a) to indemnify the insured and, in the same manner and to the same extent as if named herein as the insured, every other person who with the consent of the insured personally drives any owned automobile or operates any part thereof, against the liability imposed by law upon the insured or upon such other person for loss or damage arising from the ownership, use or operation of any such owned automobile; and

**NON-OWNED AUTOMOBILES** (b) to indemnify the insured against the liability imposed by law upon the insured for loss or damage arising from the use or operation of any customer's automobile or non-owned automobile or part thereof;

AND RESULTING FROM BODILY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO THE PROPERTY OF OTHERS NOT IN THE CARE, CUSTODY OR CONTROL OF THE INSURED.

#### EXCLUSIONS

The Insurer shall not be liable under this Section:

- (a) for any liability imposed on any person insured by this Section
  - (1) by any workmen's compensation law or plan; or
  - (2) for bodily injury to or the death of any partner, officer or employee of such person while engaged in the business of such person;
- (b) for loss or damage to property carried in or upon an automobile owned or 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 person insured by this Section;
- (c) for loss or damage to any customer's automobile;
- (d) for any amount in excess of the limit(s) stated in Section A of Item 5 of the application, and expenditures provided for in the Additional Agreements of this Section; subject always to the provisions of the section of the *Insurance Act (Automobile Insurance Part)* (in Newfoundland, *The Automobile Insurance Act*) relating to the nuclear energy hazard; or
- (e) for any liability arising from contamination of property carried in the automobile.

See also General Provisions, Definitions, Exclusions and Statutory Conditions of this policy.

#### SECTION B – ACCIDENT BENEFITS

See wording attached

#### SECTION C – LOSS OF OR DAMAGE TO OWNED AUTOMOBILES

The Insurer agrees to indemnify the insured against direct and accidental loss of or damage to any owned automobile, including its equipment while attached thereto and forming part thereof:

##### SUBSECTION 1 – COLLISION OR UPSET

Caused by collision with another object or by upset.

##### SUBSECTION 2 – COMPREHENSIVE

From any peril other than by collision with another object or another automobile upon which it is being transported or by the upset of either such automobile. The words "another object" as used in this subsection 2 include (a) another automobile to which the automobile is attached or upon which it is being transported and (b) the surface of the ground and any object therein or thereon. Loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion, shall be deemed loss or damage caused by perils for which insurance is provided under this subsection 2.

##### SUBSECTION 3 – SPECIFIED PERILS

Caused by fire, lightning, theft or attempt thereof, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning or derailment of any railway car or watercraft in or upon which the automobile is being transported.

#### ADDITIONAL AGREEMENTS OF INSURER

Where indemnity is provided by this Section the Insurer shall:

- (1) upon receipt of notice of loss or damage caused to persons or property, make such investigations, conduct such negotiations with the claimant, and effect such settlement of any resulting claims, as are deemed expedient by the Insurer;
- (2) defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action that is at any time brought against such person on account of loss or damage to persons or property;
- (3) pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer's liability;
- (4) where the injury is to a person, reimburse any person insured by this policy for outlay for such medical aid as is immediately necessary at the time;
- (5) be liable up to the minimum limit(s) prescribed for that province or territory of Canada in which the accident occurred, if that limit(s) is higher than the limit(s) stated in Section A of Item 5 of the application; and
- (6) not set up any defence 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 in which the accident occurred.

#### AGREEMENTS OF INSURED

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

- (1) by the acceptance of this policy, constitutes and appoints the Insurer his irrevocable attorney to appear and defend in any province or territory of Canada in which action is brought against the insured arising out of the ownership, use or operation of the automobile;
- (2) 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 policy.

#### SUBSECTION 4 – SPECIFIED PERILS EXCLUDING THEFT

Caused by fire, lightning, windstorm, earthquake, hail, explosion, riot or civil commotion, falling or forced landing of aircraft or of parts thereof, rising water, or the stranding, sinking, burning or derailment of any railway car or watercraft in or upon which the automobile is being transported.

#### DEDUCTIBLE CLAUSE

The Insurer's liability shall be limited to the amount of loss or damage in excess of the sum payable by the insured stated in the applicable subsection of Section C of Item 5 of the application.

The deductible clause shall apply to loss or damage to each automobile except with respect to automobiles insured under subsections 2, 3 and 4 where the deductible clause shall apply to each occurrence.

This deductible clause shall not apply to loss or damage caused by fire or lightning or theft of the entire automobile.

#### LIMITS OF LIABILITY

##### APPLICABLE TO SUBSECTIONS 2, 3 AND 4

- (a) Subject to Clauses (b) and (c) below, the Insurer shall not be liable in respect of any one occurrence for:
  - (i) any amount in excess of the limits of liability stated in subsections 2, 3 and 4 of Section C of Item 5 of the application at each specified location;

- (ii) any amount at a newly acquired location in excess of the lowest limit of liability stated for any specified location;
  - (iii) loss or damage to more than four owned automobiles at any location not used by the insured in the business specified in Item 3 of the application.
- (b) Where the premium is computed on a MONTHLY AVERAGE BASIS, if at the time of loss the insured has failed to file the report referred to in Clause 3 (b) (ii) of the General Provisions, Definitions and Exclusions, the Insurer's liability shall be limited to the amounts included in the last report filed; furthermore, if the delinquent report is the first report required to be filed, the Insurer shall be liable for not more than 75% of the applicable limit of liability stated in Item 5 of the application. In the event of loss, the Insurer's liability at each location shall be limited to the proportion of the loss that the amounts reported to the Insurer on the last report filed prior to the loss bears to the actual cash value of all automobiles at the location on the date for which the report is made.
- (c) Where the premium is computed on a COINSURANCE BASIS, the insured shall maintain insurance under this policy on the automobiles hereby insured at each specific location to the extent of at least 80% of the actual cash value thereof, and that, failing so to do, the insured shall be a co-insurer to the extent of an amount sufficient to make the aggregate insurance equal to 80% of the actual cash value of such automobiles at the time of loss or damage and, in that capacity, shall bear his proportion of any loss or damage that may occur. If the total loss or damage is confined to one automobile only, this co-insurance clause shall not apply.

### EXCLUSIONS

The Insurer shall not be liable:

- (1) under any subsection of Section C for loss or damage:
  - (a) to tires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection;
  - (b) caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the automobile under a mortgage, conditional sale, lease or other similar written agreement;
  - (c) caused by the voluntary parting with title or ownership, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense;
  - (d) caused directly or indirectly by contamination by radioactive material;
  - (e) to contents of automobiles or trailers;
  - (f) to tapes and equipment for use with a tape player or recorder, when such tapes or equipment are detached therefrom;
  - (g) where the insured drives or operates the automobile
    - (i) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile;

- (ii) while in a condition for which he is convicted of an offence under Section 253 of the Criminal Code (Canada) or under or in connection with circumstances for which he is convicted of an offence under Section 254 of the Criminal Code (Canada);
- (h) where the insured permits, suffers, allows or connives at the use of the automobile by any person contrary to the provisions of (g); or
  - (i) to any automobile sold by the insured and in the possession of a purchaser under any partial payment plan.
- (2) for loss or damage to any automobile while being carried in or upon any automobile owned, hired or leased by the insured which is designed for transportation of other automobiles, provided always that a tow truck shall not be deemed designed for such purpose;
- (3) under subsection 1, for loss or damage occurring after the theft of the automobile and before recovery by the insured, except where the theft has been committed by a person or persons (i) residing in the same dwelling premises as the insured, or (ii) employed by the insured in connection with the business described in Item 3 of the application;
- (4) under subsections 2 and 3, for loss or damage caused by theft by a person or persons (i) residing in the same dwelling premises as the insured, or (ii) employed by the insured in connection with the business described in Item 3 of the application;
- (5) under subsections 2 and 3, for loss or damage by theft from any open lot or unroofed space owned, rented or controlled by the insured except the theft of an entire automobile;
- (6) under subsection 4, for loss or damage occurring after theft of the automobile and before recovery of the automobile by the insured.

See also General Provisions, Definitions, Exclusions and Statutory Conditions of this policy.

### ADDITIONAL AGREEMENTS OF INSURER

Where loss or damage arises from a peril for which a premium is specified under a subsection of this Section, the Insurer further agrees:

- (a) to pay general average, salvage and fire department charges and customs duties of Canada or of the United States of America for which the insured is legally liable;
- (b) to waive subrogation against every person who, with the insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply (i) to any person having such care, custody or control in the course of the business of selling, repairing, maintaining, servicing, storing or parking automobiles other than an officer or employee of the insured, or (2) to any person who has (i) committed a breach of any condition of this policy or (ii) driven or operated the automobile in the circumstances referred to in (i) or (ii) of paragraph (1) (g) of the exclusions to Section C.

### AGREEMENT OF INSURED

By the acceptance of this policy, the insured agrees that in the event of loss or damage for which indemnity is provided by this policy, the insured shall, if so requested by the Insurer, replace the property or make the necessary repairs at actual cost to the insured.

## SECTION E – LEGAL LIABILITY FOR DAMAGE TO A CUSTOMER'S AUTOMOBILE WHILE IN THE CARE, CUSTODY OR CONTROL OF THE INSURED

The Insurer agrees to indemnify the insured against the liability imposed by law upon the insured for loss of or damage to a customer's automobile, including its equipment while attached thereto, including reimbursement of expenses incurred for taxicabs, public transportation or rental of a substitute automobile:

### SUBSECTION 1 – COLLISION OR UPSET

Caused by collision with another object or by upset.

#### EXCLUSIONS

The Insurer shall not be liable under this subsection 1:

- (a) for any amount in excess of the limit stated in subsection 1 of Section E of Item 5 of the application and expenditures provided for in the Additional Agreements of this section; or
- (b) for loss or damage:
  - (i) to contents of automobiles or trailers;
  - (ii) occurring after theft of the automobile and before recovery by the insured; or
  - (iii) caused directly or indirectly by contamination by radioactive material.

### DEDUCTIBLE CLAUSE

Each occurrence causing loss or damage covered under this subsection shall give rise to a separate claim in respect of which the Insurer's liability shall be limited to the amount of loss or damage in excess of the sum payable by the insured stated in subsection 1 of Section E of Item 5 of the application, but always subject to the limit shown for any one customer's automobile.

### SUBSECTION 2 – SPECIFIED PERILS

Caused by fire, lightning, theft or attempt thereat, malicious mischief, windstorm, hail, explosion, riot or civil commotion, rising water or the stranding, sinking, burning, derailment, collision or upset of any railway car or watercraft in or upon which the automobile is being transported.

#### LIMITS OF LIABILITY APPLICABLE TO SUBSECTION 2

The Insurer shall not be liable in respect of any one occurrence for:

- (i) any amount in excess of the limits of liability stated in subsection 2 of Section E of Item 5 of the application at each specified location and expenditures provided for in the Additional Agreements of this Section;

- (ii) any amount at a newly acquired location in excess of the lowest limit of liability stated for any specified location;
- (iii) loss or damage to more than four automobiles at any location not used by the insured in the business specified in Item 3 of the application.

### EXCLUSIONS

The Insurer shall not be liable under this subsection 2 for loss or damage:

- (a) from the explosion of tires or from explosion within the combustion chamber of the engine of the automobile, unless the loss or damage is coincident with other loss or damage covered by this subsection;
- (b) caused directly or indirectly by contamination by radioactive material;
- (c) by theft from any open lot or unroofed space owned, rented or controlled by the insured, except the theft of an entire automobile; or
- (d) to the contents of automobiles or trailers.

### CO-INSURANCE CLAUSE

If at the time the loss occurs there are in or on the premises at the location where the loss occurs a greater number of customers' automobiles than

the "Maximum Number of Customers' Automobiles" stated for such location in Section E of Item 5 of the application, the Insurer shall not be liable for a greater proportion of the amount for which it otherwise would be liable than the "Maximum Number of Customers' Automobiles" stated for such location bears to the total number of customers' automobiles in or on the premises at the location at the time the loss occurs.

### ADDITIONAL AGREEMENTS OF INSURER

Where indemnity is provided by this Section the Insurer shall:

- (1) upon receipt of notice of loss or damage, make such investigations, conduct such negotiations with the claimant, and effect such settlement of any resulting claims, as are deemed expedient by the Insurer;
- (2) defend in the name and on behalf of any person insured by this policy and at the cost of the Insurer any civil action that is at any time brought against such person on account of loss or damage; and
- (3) pay all costs taxed against any person insured by this policy in any civil action defended by the Insurer and any interest accruing after entry of judgment upon that part of the judgment which is within the limit(s) of the Insurer's liability.

## GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS

### 1. TERRITORY

This policy applies only to automobiles while being operated, used, stored or parked within Canada, the United States of America or upon a vessel plying between ports of those countries.

### 2. CONSENT OF INSURED

No person shall be entitled to indemnity or payment under this policy who drives or uses any owned automobile as defined in this policy without the consent of the insured, or who is an occupant of any other automobile which is being used without the consent of the owner thereof.

### 3. ADJUSTABLE PREMIUM COMPUTATION

- (a) (i) The advance premiums are computed according to the terms shown on the Premium Computation Statement for the policy period.
- (ii) The advance premiums referred to in (i) above are subject to adjustment at the end of the policy period when the insured shall deliver to the Insurer a written statement of the current information necessary to adjust the premium shown in the Premium Computation Statement. If the adjusted premium so computed exceeds the applicable advance premium stated in Item 5 of the application, the insured shall pay the difference. If such premium is less, the Insurer shall return to the insured the unearned premium subject to the Minimum Retained Premium stated in Item 5.
- (b) With respect only to subsections 2, 3 and 4 of Section C, if the premium is computed on a MONTHLY AVERAGE BASIS:
  - (i) the advance premiums shall be 75% of the annual premium computed on the limits of liability and the rates applying at each location;
  - (ii) the advance premiums referred to in (i) above are subject to adjustment at the end of the policy period. The earned premium shall be computed as follows:
    - 1. the insured shall report to the Insurer, in writing, not later than 30 days after the last day of each month the actual cash value of all owned automobiles held for sale at each location on the last business day of each month. The value of all owned automobiles not held for sale must be included in the values reported for the principal location in the municipality(ies) or district(s) in which the insured carries on business; and
    - 2. an average of the total values reported at each location shall be made and if the premium on such average values exceeds the applicable advance premium stated in Item 5 of the application the insured shall pay an additional premium for such excess. If such premium is less, the Insurer shall return to the insured the unearned premium. In the event of any report not being made within the period stipulated then, for the purpose of adjustment of premium only, the limit of liability at each location shall be taken as the value at risk.

### 4. AUDIT

The Insurer, through any authorized representative, and at all reasonable times, shall have access to the insured's books and records for the purpose of determining any fact relating to this insurance.

### 5. TWO OR MORE AUTOMOBILES

A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one automobile as respects the limits of liability under Sections A and B, separate automobiles as respects the limits of liability, including any deductible provision under Section C and separate automobiles as respects the limits of liability under Section E.

### 6. ADDITIONAL INSURED

The Insurer agrees to indemnify in the same manner and to the same extent as if named herein as the Insured:

**BUSINESS USE** (a) with respect to Sections A, B and E of this policy, every other person who, with the consent of the owner thereof, drives in connection with the business described in Item 3 of the application any automobile other than (i) an automobile owned by or registered in the name of such additional insured person, or (ii) an automobile whose operation or use is excluded in the General Provisions, Definitions, Exclusions or Statutory Conditions of this policy;

**DRIVING OTHER AUTOMOBILES** (b) with respect to Sections A and B of this policy, every active partner or full time employee of the insured for whose regular and frequent use an automobile is provided by the insured and the spouse/adult interdependent partner of such person and the spouse/adult interdependent partner of the insured, who with the consent of the owner thereof drives for pleasure purposes any automobile of the private passenger or station wagon type, provided that (i) neither such partner or employee or his or her spouse/adult interdependent partner or the spouse/adult interdependent partner of the insured is the owner of an automobile of the private passenger or station wagon type; (ii) such other automobile is not owned, hired or leased or regularly or frequently used by the insured or such employee or partner of the insured or by any persons residing in the same dwelling premises as any of the aforementioned persons; (iii) the operation or use of such other automobile is not excluded in the General Provisions, Definitions, Exclusions or Statutory Conditions of this policy.

### 7. OTHER INSURANCE

Insurance under Sections A and B of this policy is, in respect of a customer's automobile, first loss insurance. Section A coverage under any other valid motor vehicle liability policy in respect of that automobile is excess insurance only.

### 8. AUTOMOBILE DEFINED

**Under Sections A, B and C**

(a) Owned Automobile

The words "owned automobile" mean an automobile owned by the insured and used for pleasure or in connection with the business stated in Item 3 of the application and an automobile sold in such business by the insured but not delivered to the purchaser thereof, except an automobile the ownership, operation or use of which is excluded in the General Provisions, Definitions, Exclusions or Statutory Conditions of this policy;

**Under Sections A, B and E**

(b) Customer's Automobile

The words "customer's automobile" mean an automobile owned by another while such automobile is being towed or pushed by an automobile driven by the insured or an employee or partner or while in the care, custody or control of the insured in the business stated in Item 3 of the application but do not include an automobile:

- (i) owned or hired by any person insured by this policy or by any person residing in the same dwelling premises as such insured; or
- (ii) sold by the insured but not delivered to the purchaser thereof;

**Under Sections A and B**

(c) Non-owned automobile

The words "non-owned automobile" mean an automobile not owned by the insured and, not being a customer's automobile, used for pleasure or in connection with the business stated in Item 3 of the application.

**9. OCCUPANT DEFINED**

The word "occupant" means a person driving, being carried in or upon or entering or getting on to or alighting from an automobile.

**10. NEWLY ACQUIRED LOCATION DEFINED**

The words "newly acquired location" mean any new location acquired by the insured in the business specified in Item 3 of the application and notified to the Insurer within fourteen days following the date of such acquisition.

**11. EXCLUDED USES**

Unless coverage is expressly given by an endorsement of this policy, the Insurer shall not be liable under this policy while:

- (a) the automobile is rented or leased to another, provided that the following shall not be deemed to be renting or leasing of an automobile to another:
  - (i) the use by an employee of his automobile on the business of his employer and for which he is being paid;
  - (ii) the use of an owned automobile by a customer pending return of the customer's automobile which has been left with the insured for repairs or servicing; or
  - (iii) the use of an owned automobile by a customer for a period not exceeding 30 days, pending future delivery of an automobile for which a purchase order or a lease agreement has been placed with the insured by such customer;and further provided that this exclusion shall not apply while an owned automobile, rented or leased to another, is in the care, custody or control of the insured for the purpose of maintenance or repair, and in such case this policy shall be first loss insurance;
- (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, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be carrying passengers for compensation or hire:
  - (i) the use by the insured of the automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;
  - (ii) the occasional and infrequent use by the insured of the automobile for the carriage of another person who shares the cost of the trip;
  - (iii) the use by the insured of the automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse/adult interdependent partner;
  - (iv) the use by the insured of the automobile for the carriage of clients or customers or prospective clients or customers; or
  - (v) the occasional and infrequent use by the insured of the automobile for the transportation of children to or from school or school activities conducted within the education program; or

- (d) the automobile is being used
  - (i) for the carrying of goods or materials for compensation;
  - (ii) for public road construction, repair or maintenance; or
  - (iii) as farm or contractor's equipment on behalf of others for compensation.

**12. EXCLUDED AUTOMOBILES**

The Insurer shall not be liable under this policy for loss, damage, injury or death arising from the ownership, use or operation of any automobile;

- (a) owned by the insured in connection with or used for the purpose of any business conducted by or any employment or occupation for wages or profit engaged in by the insured other than as stated in Item 3 of the application;
- (b) owned by the insured which is designed or modified for racing purposes;
- (c) provided by the insured to any person for regular or frequent use, except an active partner or a full time employee of the business stated in Item 3 of the application, and provided that this exclusion does not apply while such person is using the automobile in the business stated in Item 3 of the application;
- (d) owned or hired by the insured, and
  - (i) designed for the bulk transportation of petroleum products or other materials while being used for such purposes; or
  - (ii) designed for the transportation of other automobiles, but a tow truck shall not be deemed designed for such purpose.

**13. PERSONNEL OF OTHER GARAGES EXCLUDED**

No person who is engaged in the business of selling, repairing, maintaining, storing, servicing or parking automobiles shall be entitled to indemnity or payment under this policy for any loss, damage, injury or death sustained while engaged in the use or operation of or while working upon the automobile as defined in this policy, in the course of such business, or while so engaged, an occupant of such automobile, unless the person is the insured, an employee or partner.

**14. WAR RISKS EXCLUDED**

The Insurer shall not be liable under Sections B, C or E of this policy for any loss, damage, injury or death caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operation of armed forces while engaged in hostilities, whether war be declared or not.

**STATUTORY CONDITIONS**

In these statutory conditions, unless the context otherwise requires, the word "insured" means a person insured by this contract whether named or not.

**1. MATERIAL CHANGE IN RISK**

- (1) The insured named in this contract shall promptly notify the insurer or its local agent in writing of any change in the risk material to the contract and within his knowledge.
- (2) Without restricting the generality of the foregoing, the words "change in the risk material to the contract" include:
  - (a) any change in the insurable interest of the insured named in this contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy and Insolvency Act* (Canada);and in respect of insurance against loss of or damage to the automobile,
  - (b) any mortgage, lien or encumbrance affecting the automobile after the application for this contract;
  - (c) any other insurance of the same interest, whether valid or not, covering loss or damage insured by this contract or any portion thereof.

**2. PROHIBITED USE BY INSURED**

- (1) The insured shall not drive or operate the automobile,
  - (a) unless he is for the time being either authorized by law or qualified to drive or operate the automobile; or
  - (b) while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
  - (c) while he is under the age of 16 years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him; or
  - (d) for any illicit or prohibited trade or transportation; or
  - (e) in any race or speed test.

## PROHIBITED USE BY OTHERS

- (2) The insured shall not permit, suffer, allow or connive at the use of the automobile,
- (a) by any person,
    - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile; or
    - (ii) while that person is under the age of 16 years or under such other age as is prescribed by the law of the province in which he resides at the time this contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to him;
  - or
  - (b) by any person who is a member of the household of the insured while his licence to drive or operate an automobile is suspended or while his right to obtain a licence is suspended or while he is prohibited under order of any court from driving or operating an automobile; or
  - (c) for any illicit or prohibited trade or transportation; or
  - (d) in any race or speed test.

## 3. REQUIREMENTS WHERE LOSS OR DAMAGE TO PERSONS OR PROPERTY

- (1) The insured shall,
- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident;
  - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under this contract; and
  - (c) forward immediately to the insurer every letter, document, advice or writ received by him from or on behalf of the claimant.
- (2) The insured shall not,
- (a) voluntarily assume any liability or settle any claim except at his own cost; or
  - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

## 4. REQUIREMENTS WHERE LOSS OR DAMAGE TO AUTOMOBILE

- (1) Where loss of or damage to the automobile occurs, the insured shall, if the loss or damage is covered by this contract,
- (a) promptly give notice thereof in writing to the insurer with the fullest information obtainable at the time;
  - (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage; and
  - (c) deliver to the insurer within 90 days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others therein, the encumbrances thereon, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.
- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subcondition (1) of this condition is not recoverable under this contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, shall be undertaken and no physical evidence of the loss or damage shall be removed,
- (a) without the written consent of the insurer; or
  - (b) until the insurer has had a reasonable time to make the examination for which provision is made in Statutory Condition 5.

## EXAMINATION OF INSURED

- (4) The insured shall submit to examination under oath, and shall produce for examination at such reasonable place and time as is designated by the insurer or its representative all documents in his possession or control that relate to the matters in question, and he shall permit extracts and copies thereof to be made.

## INSURER LIABLE FOR CASH VALUE OF AUTOMOBILE

- (5) The insurer shall not be liable for more than 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 according to that actual cash value with proper deductions for depreciation, however caused, and shall not exceed the amount that it would cost to repair or replace the automobile, or any part thereof, with material of like kind and quality, but, if any part of the automobile is obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.

## REPAIR OR REPLACEMENT

- (6) Except where an appraisal has been made, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality if, within 7 days after the receipt of the proof of loss, it gives written notice of its intention to do so.

## NO ABANDONMENT; SALVAGE

- (7) There shall be no abandonment of the automobile to the insurer without the insurer's consent. If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, shall vest in the insurer.

## IN CASE OF DISAGREEMENT

- (8) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, those questions shall be determined by appraisal as provided under the *Insurance Act* before there can be recovery under this contract, whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefor is made in writing and until after proof of loss has been delivered.

## 5. INSPECTION OF AUTOMOBILE

The insured shall permit the insurer at all reasonable times to inspect the automobile and its equipment.

## 6. TIME AND MANNER OF PAYMENT OF INSURANCE MONEY

- (1) The insurer shall pay the insurance money for which it is liable under this contract within 60 days after the proof of loss has been received by it or, where an appraisal is made under subcondition (8) of Statutory Condition 4, within 15 days after the award is rendered by the appraisers.

## WHEN ACTION MAY BE BROUGHT

- (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as therein provided or by a judgment against the insured after trial of the issue or by agreement between the parties with the written consent of the insurer.

## LIMITATION OF ACTIONS

- (3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

## 7. WHO MAY GIVE NOTICE AND PROOFS OF CLAIM

Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

## 8. TERMINATION

- (1) This contract may be terminated,
- (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered;
  - (b) by the insured at any time on request.

- (2) Where this contract is terminated by the insurer,
  - (a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and
  - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund shall be made as soon as practicable.
- (3) Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired term be deemed to be less than any minimum retained premium specified.

- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The 15 days mentioned in clause (a) of subcondition (1) of this condition commence to run on the day following the receipt of the registered letter at the post office to which it is addressed.

**9. NOTICE**

Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province. Written notice may be given to the insured named in this contract by letter personally delivered to him or by registered mail addressed to him at his latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.