

TERRAFFIRM INDEMNITY POLICY

Interpretation

This Policy and the Policy Schedule are one contract and any word or expression to which a specific meaning has been attached shall have that meaning throughout. The law of England and Wales will apply to this contract unless otherwise specially agreed between the Underwriters and the Insured.

Definitions

Unless the context requires otherwise, the following words or expressions in this Policy shall have the following meanings:

Enforcing Authority means the authority with statutory powers to issue a Notice under the Acts.

Lessee means any individual partnership or company with a leasehold interest arising from a Lease granted for all or part of the Insured Property.

Mortgagee means any bank, building society or other similar lending institution with a charge against the Insured Property.

Notice means a statutory notice served on or written communication sent to the Insured by an Enforcing Authority pursuant to either or both of the Acts stating that the Insured Property or any part thereof:

- has been or may be identified by the Enforcing Authority (or its representatives) as contaminated land due to contamination arising at the Insured Property prior to the Date of Commencement; and/or,
- is or may be part of contaminated land which is required to be designated as contaminated land within the meaning of the Part IIA of the Environmental Protection Act 1990 due to contamination arising at the Insured Property prior to the Date of Commencement; and/or,
- is or may be part of land which is contaminated in such a way that the Enforcing Authority is required to serve a Works Notice within the meaning of the Water Resources Act 1991 due to contamination arising at the Insured Property prior to the Date of Commencement; and/or,
- requires or may require investigation and remediation works to be carried out to comply with the Acts or prevent a Statutory notice being served under the Acts.

Remediation Costs means costs necessarily incurred in the investigation, quantification, repair, immobilisation, containment, cleaning-up, removal, disposal and replacement of land directly as a result of contamination arising at the Insured Property prior to the Date of Commencement.

Restoration Costs means costs necessarily incurred in the repair or replacement of any Property to the equivalent of its original state, to the extent that such property is being or has been harmed or damaged by contamination arising from the Insured Property which occurred prior to the Date of Commencement or from necessary remediation or investigation works subsequently carried out.

Tenant means any individual partnership or company with a tenancy agreement for all or part of the Insured Property.

The Acts means:

- the Environmental Protection Act 1990 (as amended and including any statutory modification or re-enactment thereof); and/or
- the Water Resources Act 1991 (as amended and including any statutory modification or re-enactment thereof.)

Third Party Property means any property which is not in the ownership, occupation or tenancy of the Insured.

Operation of Cover**The Insured:**

1. A proposal (including any additional information, statements and/or declarations), together with payment of the premium, has been accepted by the Underwriters for this policy to cover claims arising in relation to contamination at the Insured Property which existed prior to the Date of Commencement, and is the basis of the contract.
2. The Insured is or will become the owner, lessee, tenant or mortgagee of the Insured Property and agrees to comply with the terms and conditions of this policy.

Cover**1. Insured Property**

If during the Period of Insurance, the Insured receives a Notice under the provisions of either or both of the Acts the Underwriters will, subject to the terms conditions definitions excess and exclusions of this Policy, indemnify the Insured against:

- a) the costs and expenses incurred by the Insured in complying with the Notice, including but not limited to Remediation Costs;
- b) any liability of the Insured to the Enforcing Authority under the Acts in respect of any Remediation Costs incurred by or on behalf of the Enforcing Authority relating to the Insured Property;
- c) any Restoration Costs and expenses necessarily incurred for the Insured Property following a claim hereunder;
- d) any other costs and expenses directly incurred by the Insured with the written consent of the Underwriters;
- e) any residual reduction in the market value of the Insured Property as a direct result of a claim having been made pursuant to clauses 1a) to 1c) and arising upon a sale of the Insured Property by the Insured on the open market during the remainder of the Period of Insurance, with reference to values current at the date of the sale and in accordance with The Property Use, such values to be determined by a surveyor appointed jointly by the parties or in default of such appointment by the President for the time being of the Royal Institution of Chartered Surveyors.

2. Third Party Property Damage

If during the Period of Insurance any person (including an Enforcing Authority) shall establish under legal proceedings a legal liability on the part of the Insured for contamination of Third Party Property, as a result of contamination arising from the Insured Property that was present at the Insured Property prior to the Date of Commencement, the Underwriters will, subject to the terms conditions definitions excess and exclusions of this Policy, indemnify the Insured against:

- a) the costs and expenses directly incurred in complying with a Notice issued on the Third Party Property, including but not limited to Remediation Costs;
- b) any Restoration Costs and expenses necessarily incurred for the Third Party Property following a claim hereunder;
- c) a material loss of use of the Third Party Property following a claim hereunder
- d) any residual reduction in the market value of Third Party Property as a direct result of a claim having been made default of such appointment by the President for the time being of the Royal Institution of Chartered Surveyors with pursuant to clauses 2a) to 2c), such reduction to be determined by a surveyor appointed jointly by the parties or in reference to the existing use of the Third Party Property and values current at the date of the claim.

3. Legal Defence Expenses

The Underwriters will subject to the terms conditions definitions excess and exclusions of this Policy, indemnify the Insured against legal defence expenses (including legal and expert costs, charges and expenses incurred in the investigation, settlement, adjustment or defence of claims) arising from claims under Sections 1, 2 and 4.

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4. Third Party Bodily Injury

In the event of any person establishing under legal proceedings a legal liability on the part of the Insured for contamination of any property as a result of contamination arising from the Insured Property that was present at the Insured Property prior to the Date of Commencement, the Underwriters will, subject to the terms conditions definitions excess and exclusions of this Policy, indemnify the Insured against any loss arising through accidental bodily injury, sickness, disease, psychiatric damage or shock sustained by any person(s) (including death resulting therefrom).

Non-Invalidation Clause

The interest in this Policy of any Insured will not be invalidated by a breach of the Policy terms and conditions by any other party, unless such party acted on the Insured's behalf or with the Insured's knowledge and consent.

Exclusions

Claims arising from or in relation to the following matters are excluded from the indemnity provided by this policy:

1. Wilful act or wilful omission of the Insured or anyone acting on behalf of the Insured.
2. Use of the Insured Property which at the time of any claim is materially different from The Property Use shown in the Policy Schedule, unless with the prior written consent of the Underwriters.
3. Communication that is entered into with or received from an Enforcing Authority by the Insured or their predecessor(s) in title to the Insured Property prior to the Date of Commencement and that is material to the cover provided, other than where such communication has been previously submitted to and agreed in writing by the Underwriters as acceptable.
4. Contamination arising from any nuclear fuels, nuclear waste, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or component thereof, any lead based paint or asbestos in any form in or applied to any fixture, building, or other structure and any naturally occurring matter in its unaltered form or altered solely through naturally occurring processes action or reactions (including but not limited to radon gas).
5. Injury to any person arising out of and in the course of being employed by the Insured.
6. Act of vandalism or dumping by any third party following the Date of Commencement.
7. Contamination arising from leakage of any tanks situated at the Insured Property.

General Conditions

1. The Insured or anyone acting on the Insured's behalf will not, without the Underwriter's prior written consent disclose the existence of this Policy, or any information relating to this Policy, to any third parties, other than prospective purchasers, lessees or tenants of the Property, or any prospective mortgagee, and their legal representatives, and where the Policy is disclosed in accordance with this condition, the Insured will request such third parties to keep details of the Policy and any information relating thereto confidential unless otherwise authorised by the Underwriters.
2. The liability of the Underwriters to any one or more of the Insured will not exceed, in total, the Limit of Indemnity.

Claims Conditions

1. Duties of the Insured

It is a condition precedent to liability that on becoming aware of any potential or actual claim, the Insured will:

- a. provide written notice and details to the Underwriters, without necessary delay
- b. not admit any liability whatsoever or take steps to compromise or settle the claim, without the prior written consent of the Underwriters
- c. provide all information and assistance that the Underwriters (and/or their agents, solicitors or surveyors) require, at their own expense
- d. provide to the extent reasonably practical full and immediate access to the Insured Property
- e. if applicable, be responsible for the Policy Excess as defined in the Policy Schedule
- f. in respect of section 1e of the Cover, notify the Underwriters of the proposed sale of the Insured Property prior to exchange of contracts.

2. Rights of the Underwriters

In dealing with any claims the Underwriters will at their discretion be entitled to:

- a. take or defend in any court or tribunal in the name of the Insured, any proceedings arising out of such claim
- b. exercise in the name of the Insured any rights or remedies available to the Insured in such proceedings, including the right to abandon or submit to judgement
- c. compromise, settle or compound any such claim and deal with any claims in such a manner as they think fit
- d. inspect, sample or monitor the Insured Property on a continuing basis
- e. pay at any time to the Insured the amount of the Limit of Indemnity or any lesser amount for which the claim can be settled and then relinquish control of and have no further involvement with the claim.

If the insured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall become void and the claim shall be forfeited.

3. Abandonment of the Property

The Insured will not be entitled to abandon the Property to the Underwriters

3. Other Insurances

If, at the time of any claim, there is other insurance (whether incepted by the Insured or any other party) under which the Insured may be entitled to make a claim, either wholly or partly in respect of the same interest or risk covered by this Policy, the Underwriters will not be liable to pay or contribute more than their rateable proportion of the claim.

4. Arbitrator

If any difference arises as to the amount to be paid under this Policy (liability otherwise admitted), the difference will be referred to an arbitrator (or in the absence of an agreement, an arbitrator appointed by the President of the Chartered Institute of Arbitrators) in accordance with the law at that time.

Where any difference is referred to arbitration, the making of an award shall be a condition precedent to any right of action against the Underwriters.