

Cause of loss module

Cover for the building and construction industry

This module extends the scope of this contract specifically for contractors working with JCT or similar forms of **sales contract**.

1 Cover

This module covers losses occurring directly and solely through the performance of the **sales contract** and includes;

- (i) goods that have been **delivered**
- (ii) applications for payment that have been approved for payment - in respect of **sales contracts** that require work and services performed to be certified and approved for payment by a quantity surveyor, architect (or similar professionally qualified person authorised to certify payment for work and services under the **sales contract**) acting on behalf of the buyer or the main contractor but that has not been paid for by the buyer. The application for payment must be submitted within the *maximum application for payment period* specified in the schedule to this contract.

In addition, you are covered for the following in the event of the **insolvency** of your buyer;

- (iii) work done and services performed (or in progress) in accordance with the **sales contract**, where an application for payment has been made by you but has not been certified or approved for payment at the date of the **insolvency** of the buyer.
- (iv) variations to the **sales contract** (including “goods brought in”, “day work” and “work done on site”) provided that they have been properly instructed and authorised and correctly submitted within the application for payment.
- (v) work done and services performed (or in progress) in accordance with the **sales contract** where an application for payment has not been made at the date of the **insolvency** of the buyer, provided that the work done and services performed have been conducted within a maximum of 3 months prior to the **insolvency**.
- (vi) you shall only be covered for the non-payment of Retention Monies or Final Account Balances due to the buyer’s **insolvency**. This is subject to a maximum value of 10% of the total value of the **net debt** incurred during the period of this contract.

For Retention Monies and Final Account Balances to be covered, the **sales contract** must have a provision that enables a maximum of 10% of the contract price to be retained by the buyer for a period not exceeding 24 months from the date of certification.

- (vii) sums falling due under an adjudicators binding decision provided that the work done and services performed have been conducted during the period of this contract.

2 Conditions of cover

- 2.1 This module does not apply where a credit limit has been determined by you within your discretionary limit [if applicable].

You must obtain a credit limit set by us for your buyer, and unless otherwise specified by us, the credit limit we provide applies to works carried out on or after the date we receive your request.

The credit limit sets the maximum outstanding balance covered, calculated as the value of the work and services in progress risk (i.e. pre-application for payment and/or pre-certification value) plus the maximum outstanding balance, covering the credit risk. The credit limit also specifies any conditions that may be applicable for the work and services in progress risk.

- 2.2 In the event that this contract is not renewed, when making your declaration of turnover to us you must specify the full value of all outstanding applications for payment and the value of all works and services performed but not submitted within an application for payment at the end of this contract.

- 2.3 You shall make a declaration of the value of the work and services performed (or in progress) within 30 days of the **insolvency** of a buyer.

- 2.4 In addition to the exclusions set out elsewhere in this contract, this module does not cover:
- **Sales contracts** that do not have an application for payment submitted within the *maximum application for payment period*.
 - Indirect costs and overheads that are not directly attributable to the performance of **sales contract** with the buyer
 - Pay-when-paid contracts - such contracts are excluded from the scope of this contract. This also applies to any right that your buyer may have to invoke pay-when-paid as a reason for non-payment in the event of the **insolvency** of your buyer's employer.
 - In the event that this contract is not renewed, any works and services performed that are not declared to us in accordance with 2.2 or 2.3 above.
 - Any Retention Monies or Final Account Balances owed to you after the *duration of this contract*.
 - Any Retention Monies or Final Account Balances relating to work undertaken prior to the start date of this contract.

3 Commencement of cover

Provided that all the conditions applicable to the cover we provide are met, cover will start when you and your buyer have approved all the provisions of the **sales contract** in writing.

If the commencement of the **sales contract** is subject to the fulfilment of a pre-condition, cover will only start on the date when such condition is met.

4 Risk management

In addition to the principles outlined in the General Provisions:

4.1 You must notify us in writing as soon as you become aware of any event that could cause payment under the **sales contract** to be delayed, including any potential involvement between you and the buyer in adjudication or arbitration proceedings.

4.2 You must take all reasonable measures to prevent or minimise the loss, in particular, withholding procurement, work in progress, shipment or **delivery** (including removing men from site).

If **insolvency** occurs or a **notification of overdue account** is made before you have fulfilled your contractual obligations, continuing to perform the **sales contract** without our written agreement would result in you not being covered under the terms of this contract.

4.3 For the purposes of this contract all payments received from a buyer shall be allocated to the oldest application for payment. Any amounts approved for payment that is less than the value of the application will not be considered **overdue** and will be carried forward to the end of the **sales contract**. You do not therefore need to **notify** us of such amounts unless you have **adverse information** on the buyer or are unable to agree the final contract price or to obtain a final completion certificate within 60 days of the final application.

5 Claim payment

5.1 In addition to clause 3.2 of our general provisions a claim payment will be made provided that you have sent us:

- the **sales contract** and a **notification of overdue account** showing the amount of the loss for which payment is claimed, together with all written evidence of your rights and proof of **debt**, as soon as the loss is established;
- a detailed loss account established in the *currency of this contract*. Income and expenditure in any currency other than the *currency of this contract* must be converted at the *exchange rate* in force on the day of payment.

5.2 Loss calculation

The loss account shall include the value of all work and services performed outlined in article 1 above.

If there is work done on site or work yet to be agreed and certified then we will not include these into the loss account until;

- the value has been confirmed (Confirmation of Debt) by the Insolvency practitioner, or
- the value of the outstanding work or applications for payment is measured and accepted by an independent quantity surveyor or architect approved by us. Any costs will be borne in accordance with article 6 below.

The following income shall be deducted from the value of the claim submitted;

- pre-payments made by your buyer, proceeds from the reselling, re-use value of goods ready for delivery or goods under production, procured materials, proceeds from the selling-up of **security** and the collection of any indemnities, etc.

5.3 Payment level

The claim payment is equal to the balance of the loss account, up to a maximum value of the credit limit on a buyer, multiplied by the *insured percentage*. The claim is paid subject to our receipt of the documents within 60 days of the cause of loss.

- 5.4 In the event of an occurrence of a loss, the credit limit agreed will first be assigned to the loss sustained to the applications for payment that have been certified and approved for payment. Any possible difference will then be assigned to the loss sustained on the uncertified work and services in progress.

6 Specialist investigation

We reserve the right to appoint a third party specialist to verify the nature and value of the loss you claim. You will provide this specialist with all the necessary information for him to perform his task and will give him full access to your books and records.

If the report of the specialist confirms the figures you have specified in your loss account, or is within 15% of this, we shall bear the specialist's fees. If the figure is valued at less than 15% of the figure claimed, you shall then pay for these fees. These fees may be deducted from the claim payment.

7 Cost of cover

The premium payable for the work and services in progress risk is calculated by applying the *premium rate* - which applies to both the non-payment risk and the work and services in progress - to the declared turnover.

Turnover is to be the value of all monies relating to applications for payment made during the period of this contract as well as the value of any work and services in progress specified in 2.2 and 2.3. It shall also include the value of all Retention Monies and Final Account Balances falling due during the *period of this contract*.