

# Aviation Products Liability Section

## Definitions

### 1. Products Hazard

Products Hazard means the handling or use of (other than by you) or the existence of any condition in an Aviation Product, provided as regards Coverage A such Aviation Product has ceased to be in your possession or control, nevertheless it is understood and agreed that the indemnity provided by this Section shall not be invalidated when a completed aircraft or any Aviation Product is temporarily returned to you for modification or repair.

### 2. Grounding

Grounding means the complete and continuous withdrawal in the interests of safety (a) by the authorities in the United Kingdom or the United States of America or any similar Civil Airworthiness Authority or (b) by your mutual agreement with the Prime Manufacturer and the operators of the aircraft with which the authorities in the United Kingdom or the United States of America or any similar Civil Airworthiness Authority agree in writing at or about the same time of the withdrawal of one or more aircraft from flight operations because of a like condition or suspicion thereof in two or more such aircraft whether such aircraft so withdrawn are owned or operated by the same or different persons, firms or corporations.

A Grounding shall be deemed to commence from the date the first such order becomes effective following an Occurrence during the Period of Insurance and to continue until the date on which the last such order relating to the same existing, alleged or suspected like defect, fault or condition is withdrawn or becomes ineffective.

### 3. Aviation Product

Aviation Product means a completed aircraft and any article forming part thereof or supplied for installation in aircraft or for use in connection with aircraft or for spare parts for aircraft, including ground handling tools and equipment and also means training aids, instructions, manuals, blueprints, engineering or other data or any article in respect of which engineering or other advice, services and labour have been given or supplied by you.

For the purpose of this Section, aircraft shall include Missiles, air cushion vehicles/hovercraft, lighter-than-air aircraft, and helicopters.

### 4. Missiles

- a. Missiles means any non-manned, self propelled device capable of free flight, whether self-controlled or not and includes any ground support or control equipment.
- b. After the arrival of a Missile at a launching site, such Missiles shall be deemed not to be Owned By you, loaned to you, in your possession or control.
- c. When you remove a Missile from the launching site or recover a Missile after completion of its flight for the purpose of returning it to your premises other than a launching site, such a Missile will be deemed to be in your possession or control until such a Missile again arrives at a launching site or you surrender possession of such a Missile to a person or organisation who is not Insured under this Section.

## **5. Space Product**

Space Product means a spacecraft, satellite or launch vehicle designed to travel to/or from or in space or to orbit or to remain in geosynchronous orbit including parts detached en route and also articles forming part thereof, or supplied for installation therein, or for use in connection with or as spare parts for such spacecraft, satellites or launch vehicle and also means training aids, instructions, manuals, blueprints, engineering or other data or any article in respect of which engineering or other advice, services and labour given or supplied by you.

## **6. Prime Manufacturer**

Prime Manufacturer means any manufacturers who sell their Aviation Product directly to and/or enter into a contract of sale with an aircraft purchaser.

## **7. Occurrence**

In respect of Coverage A and Coverage B Occurrence means an accident or incident (other than a Grounding) which arises out of the Products Hazard and causes bodily injury or property damage which is neither expected or intended from your standpoint. A series of accidents or incidents following as a consequence of one Occurrence, shall be deemed to be one Occurrence.

In respect of Coverage C Occurrence means an accident or incident which results in bodily injury or property damage which is neither expected or intended from your standpoint. A series of accidents or incidents following as a consequence of one Occurrence, shall be deemed to be one Occurrence.

## **8. Insured/You/Your**

Insured means the Insured named in the Schedule and also includes any executive officer, employee or director thereof while acting within the scope of their duties as such.

## **9. In Flight**

An aircraft shall be deemed to be In Flight from the start of its take-off run until it has completed its landing run including incidental taxiing or, in the case of a helicopter, from the time the rotors start to revolve preparatory to take-off until its rotors cease revolving after landing.

A vertical take-off and landing aircraft, air cushion vehicle or hovercraft shall be deemed to be In Flight at such time as it is not supported by physical contact with the ground and/or water.

**10. Turnover**

Turnover means the sale price of Aviation Products delivered during the Period of Insurance.

**11. Owned By**

An Aviation Product to which you have retained title under a Conditional Sales Contract, Lease Contract, Chattel Mortgage or similar Lien, shall be deemed not to be Owned By you.

**12. Aircraft**

Aircraft means aircraft and shall be deemed to include Missiles, air cushion vehicles/hovercraft, lighter-than-air aircraft and helicopters.

**13. The Insurer/We/Us/Our**

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## Cover

We agree, in consideration of the payment of premium to us and upon the basis of your declarations incorporated herein to indemnify you in respect of Occurrences or Groundings occurring during the Period of Insurance, subject to the Policy terms, conditions, limitations, exclusions of this section and any endorsements to this Section in respect of

### Insuring agreements

#### 1. Coverage A.

##### **Bodily Injury and Property Damage Liability**

We will pay on your behalf all sums which you become legally liable to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom (hereinafter referred to as bodily injury) sustained by any person and/or because of damage to or destruction of property, including the loss of use of such property (hereinafter referred to as property damage) caused by an Occurrence arising out of the Products Hazard.

##### **Coverage B. Grounding Liability**

We will pay on your behalf all sums which you become legally liable to pay as damages for the loss of use of completed aircraft, occurring after delivery to and acceptance by a purchaser or purchasers or operator or operators of such aircraft for flight operations and caused by a Grounding resulting from an Occurrence arising out of the Products Hazard.

##### **Coverage C. Working Parties Liability**

We will pay on your behalf all sums which you become legally liable to pay as damages for bodily injury or property damage caused by an Occurrence arising in the course of any work or the performance of any duties carried out by you or on your behalf in connection with your business or operations away from your premises in connection with any Aviation Product including liability for property damage to such Aviation Product.

##### **Payment of Costs**

In addition to the payment of any claim for damages made under the above Coverages we will pay costs recoverable against you and interest accruing after judgment until we have paid, tendered or deposited in court such part of such judgment as does not exceed the applicable Limit of Liability.

#### 2. Defence, Settlement, Supplementary Payments

##### **With respect to the insurance given by the above Coverages we will:**

- A** Defend any suit against you alleging injury, sickness, disease, destruction or loss of use and seeking damages on account thereof, even if such suit is groundless, false or fraudulent, but we may make such investigation, negotiation and settlement of any claim or suit as we deem expedient.

**B. Pay the following:**

- 1** All expenses incurred in the defence of any such suit;
- 2** Premiums on bonds to release attachments for an amount not in excess of the limit of liability of this Section, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds.

The amounts incurred with our consent under this Insuring Agreement (2) are payable by us in addition to the Limit of Liability of this Section. However,

- a** If any claim is successfully resisted by you we will pay all costs, charges and expenses incurred by you in connection therewith up to but not exceeding the applicable Limit of Liability.
- b** If a payment exceeding the Limit of Liability has to be made to dispose of the claim, our liability to pay any costs, charges and expenses in connection therewith shall be limited to such proportion of the said costs, charges and expenses as the Limit of Liability bears to the amount paid to dispose of the claim.

However, we will not be obligated to defend any suit, pay any costs, charges and expenses incurred after the aggregate Limit of Liability under this Section has been exhausted and in this event you will have the right to take over control of proceedings from us.

**3. Period of Insurance**

- a.** Under Coverage A and Coverage C this Section applies only with respect to Occurrences which take place during the Period of Insurance provided that an Occurrence involving a missing or unreported aircraft shall be deemed to occur at the time such an aircraft commences flight or is last reported whichever the latter.
- b.** Under Coverage B this Section applies only with respect to Groundings which commence during the Period of Insurance regardless of the duration of each such Grounding.

## Exclusions

### This Section does not cover

1. Liability arising from the handling or use of or the existence of any condition in any Aviation Product owned by or loaned to you or, except with respect to Coverages B and C, whilst such Aviation Product is in your possession or control.

It is understood and agreed that notwithstanding anything to the contrary contained in this Section, cover remains in force when aircraft are flown by your aircrew after acceptance by a purchaser or lessee.

2. Damage to or destruction of property owned, rented, leased, occupied, used by you or in your care, custody or control at the time of the accident causing damage to or destruction of such property.
3. Any liability you assume under any contract or agreement, including a warranty of Aviation Products, greater than the liability which would have been imposed by law in the absence of any express contract or assumption of liability.
4. Any obligation for which you or any carrier as your insurer may be held liable under any Employers Liability or Workmens Compensation Law, unemployment compensation or disability benefits law, or under any similar law, or to bodily injury to any of your employees arising out of and in the course of their employment by you other than as an ordinary passenger in a passenger aircraft not in your care, custody and control.
5. Under Coverage A, loss of use of any aircraft which has not been physically damaged or destroyed except with respect to any aircraft which has made an emergency landing.
6. Loss of use of any aircraft caused by your failure to perform any obligation with respect to making available or delivering Aviation Products to the purchaser or operator of such aircraft.
7. Under Coverage B, loss of use of any aircraft occurring during maintenance, routine overhaul or alteration or whilst being modified for purposes other than those relating to Grounding.
8. Loss of use of any aircraft occurring during the period that you do not use reasonable diligence to find and eliminate the cause of the loss of use.
9. Under Coverage A, liability imposed upon you solely by reason of your ownership of an Aviation Product.

10. i loss of or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss  
ii any legal liability of whatsoever nature  
directly or indirectly caused by or contributed to by or arising from:  
a the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;  
b ionizing radiations or contamination by radioactivity from, or the toxic, explosive or other hazardous properties of, any other radioactive source whatsoever.
- 11.1 Claims directly or indirectly occasioned by, happening through or in consequence of:-  
a noise (whether audible to the human ear or not), vibration, sonic boom and any phenomena associated therewith,  
b pollution and contamination of any kind whatsoever,  
c electrical and electromagnetic interference,  
d interference with the use of property;  
unless caused by or resulting in a crash fire explosion or collision or a recorded operational emergency causing abnormal aircraft operation.
- 11.2 With respect to any provision in this Section concerning any duty of Insurers to investigate or defend claims, such provision shall not apply and Insurers shall not be required to defend;  
a claims excluded by Paragraph 11.1 above, or  
b a claim or claims covered by this Section when combined with any claims excluded by Paragraph 11.1 above (referred to below as "Combined Claims").
- 11.3 In respect of any Combined Claims, Insurers shall (subject to proof of loss and the limits of this Section) reimburse the Insured for that portion of the following items which may be allocated to the claim or claims covered by this Section:-  
a damages awarded against the Insured and  
b defence fees and expenses incurred by the Insured.
- 11.4 Nothing herein shall override any radioactive contamination or other exclusion clause attached to or forming part of this Section.

Paragraph 11.1.b shall not apply to claims arising from the pollution and/or contamination of a product sold or supplied by the Insured.

**12** Claims caused by

- a War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- b Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- c Strikes, riots, civil commotions or labour disturbances.
- d Any act of one or more persons, whether or not agents of a sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
- e Any malicious act or act of sabotage.
- f Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil military or de facto) or public or local authority.
- g Hi-jacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in Flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Insured.

Furthermore this Section does not cover claims arising whilst the Aircraft is outside the control of the Insured by reason of any of the above perils. The Aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the Aircraft to the Insured at an airfield not excluded by the geographical limits of this Section, and entirely suitable for the operation of the Aircraft (such safe return shall require that the Aircraft be parked with engines shut down and under no duress).

**13** Claims by or on behalf of any person, embryo or foetus in respect of fatal or non-fatal injury, or any cancer, tumour or growth (malignant or otherwise), or any illness, disease, disability, dysfunction, discomfort or disturbance at any time arising out of or in connection with the actual or alleged use or inhalation of or contact with any particles, dust or fibres of any size form or compound whatsoever, whether used alone or in conjunction with other materials.

**14** Any liability for loss of or damage to or destruction of property of the Government of the United States of America, delivered under any procurement contract with the United States Government, incorporating the clauses 52.246-23 or 52.236-24 prescribed by paragraph 46.805 of the Federal Acquisition Regulations in accordance with DOD FAR supplement 25.7308 or the predecessor clauses 7-104.45(a) or 7-104.45(b) prescribed by 1-330 of Defence Acquisition Regulations or its earlier provision the Armed Services Procurement Regulations.

Nor to any liability for loss of or damage to or destruction of any property of any other government which in the absence of this insurance is assumed by any government under any contract or agreement or otherwise.



- 15** Any legal liability for your cost or expense for the inspection, repair, alteration, modification, replacement of or for work completed by you or on your behalf to an Aviation Product or any property of which it forms part by reason of a defect or deficiency known or suspected to exist in an Aviation Product not actually involved in an Occurrence.
- 16** Any claim, damage, injury, loss, cost, expense or liability (whether in contract, tort, negligence, product liability, misrepresentation, fraud or otherwise) of any nature whatsoever arising from or occasioned by or in consequence of (whether directly or indirectly and whether wholly or partly):
- a the failure or inability of any computer hardware, software, integrated circuit, chip or information technology equipment or system (whether in the possession of the Insured or of any third party) accurately or completely to process, exchange or transfer year, date or time data or information in connection with any change of year, date or time; whether on or before or after such change of year, date or time;
  - b any implemented or attempted change or modification of any computer hardware, software, integrated circuit, chip or information technology equipment or system (whether in the possession of the Insured or of any third party) in anticipation of or in response to any such change of year, date or time, or any advice given or services performed in connection with any such change or modification;
  - c any non-use or unavailability for use of any property or equipment of any kind whatsoever resulting from any act, failure to act or decision of the Insured or of any third party related to any such change of year, date or time;
- and any provision in this Section concerning any duty of Insurers to investigate or defend claims shall not apply to any claims so excluded.
- 17** Any claims of any kind whatsoever directly or indirectly relating to, arising out of or in consequence of:
- 1 the actual, alleged or threatened presence of asbestos in any form whatsoever, or any material or product containing, or alleged to contain, asbestos; or
  - 2 any obligation, request, demand, order, or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, neutralize, protect against or in any other way respond to the actual, alleged or threatened presence of asbestos or any material or product containing, or alleged to contain, asbestos.
- However, this exclusion shall not apply to any claim caused by or resulting in a crash fire explosion or collision or a recorded in-flight emergency causing abnormal aircraft operation. Notwithstanding any provisions of this Section, Insurers will have no duty to investigate, defend or pay defence costs in respect of any claim excluded in whole or in part under paragraphs 1 or 2 hereof.
- 18** Claims arising from any Space Product.

- 19** Property damage to property in your care, custody and control whilst on premises owned or occupied by you.
- 20** In respect of Coverage C, bodily injury or property damage arising out of any goods or products manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by you.
- 21** In respect of Coverage C, the cost of making good any faulty workmanship for which you, your contractors or sub-contractors may be liable (but this limitation shall not exclude resulting damage arising out of such faulty workmanship).
- 22** In respect of Coverage C, liability for which compulsory insurance or security is required by any applicable law governing road traffic or, in the absence of any applicable law, to liability arising from the use of any vehicle upon the public highway.  
In respect of such liability arising from Occurrences within the confines of an airport or airfield this exclusion does not apply to:
- i if there is no such applicable law
  - ii to your liability to pay an amount which is excess of:
    - a any prescribed limit that is required to be insured where insurance may be effected to comply with the law whether you effect an insurance policy in respect of such liability or not
    - b the limit of liability of the insurance policy effected by you insuring such liability whichever is the greater.
- 23** In respect of Coverage C, property damage to any space vehicle or satellite or the loss of use thereof or any of your liability arising out of or in the course of any work thereon.
- 24** In respect of Coverage C, property damage to any launch vehicle or the loss of use thereof or any of your liability arising out of or in the course of any work thereon.
- 25** The rights of a person who is not a party to this insurance or reinsurance to enforce a term of this insurance or reinsurance and/or not to have this insurance or reinsurance rescinded, varied or altered without his consent by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from this insurance.

## Conditions

### 1 Limit of Liability

Our Limit of Liability for all damages is as specified in the Schedule.

In the event of more than one Insured being covered by this Section, each shall have the same protection as would have been available had this Section been issued individually; provided, however, the inclusion hereunder of more than one Insured shall not operate to increase our liability beyond the amount for which we would have been liable had there been only one Insured under this Section.

### 2 Material Change

Should there be any material change in the circumstances or nature of the risks which are the basis of this contract you will give immediate notice thereof to us and no claim arising subsequent to such a change shall be recoverable hereunder unless such a change has been accepted by us.

### 3 Assignment

This Section shall not be assigned in whole or in part except with our consent and verified by endorsement hereon.

### 4 Notice of Occurrence or Grounding

When an Occurrence or Grounding takes place, written notice will be given by you or on your behalf to us through our authorised agents as soon as practicable.

Such notice shall contain reasonably obtainable information respecting the time, place and circumstances of the Occurrence or Grounding and the names and addresses of the injured and of available witnesses.

### 5 Notice of Claim or Suit

If a claim is made or a suit is brought against you, you will as soon as practicable forward to our authorised agents every demand, notice, summons or other process you or your representative receives.

### 6 Assistance and Co-operation of the Insured

You will co-operate with us and, upon our request will attend hearings and trials and will assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits.

You will not make any payments, assume any obligation or incur any expenses without our prior consent.

### 7 Law and Jurisdiction

This Section will be construed in accordance with the Law of England and Wales whose courts shall have exclusive jurisdiction in any dispute or difference between you and us, however any dispute or difference may be submitted to arbitration in London in accordance with the Statutory provision for arbitration for the time being in force.

## **8 Action Against Insurers**

No action shall lie against us unless, as a condition precedent thereto, you have fully complied with all the terms of this Section, nor until the amount of your obligation to pay has been finally determined either by judgment against you after actual trial or award against you in any arbitration proceedings against which we do not wish to appeal or by written agreement of you, the claimant and us.

Nothing contained in this Section shall give any person or organisation any right to join us as a co-defendant in any action against you to determine your liability.

## **9 Premium**

At the inception of this Section you will pay us a premium based on your declared estimated Turnover.

At expiry, the actual Turnover for the Period of Insurance shall be declared. In the event that the actual Turnover deviates by 25% or more from the estimated Turnover, we reserve the right to review the premium charged.

## **10 Cancellation**

This Section may be cancelled at any time at your written request or may be cancelled by or on our behalf provided 15 days notice in writing is given.

If you cancel this Section, we will retain the short rate proportion of the Premium, for the period this Policy has been in force calculated in accordance with the customary scale.

If we cancel this Section, we will retain pro rata of the Premium for the period this Section has been in force. Our notice of cancellation will be effective even though we make no payment or tender of return premium.

## **11 Other Insurance**

- a If any claim under this Section is also covered in whole or in part by any other insurance, our liability will be limited to our proportional share of such claim.
- b If any insurance is specifically arranged by or for you for a sum in excess of the total amount of insurance afforded by this Section then our liability to pay any costs, charges and expenses in connection therewith shall be limited to such proportion of the said costs, charges and expenses as the sum insured by this Section bears to the amount paid to dispose of the claim.

## **12 Subrogation**

In the event of any payment under this Section, we will be subrogated to all your rights of recovery thereof against any person or organisation and you will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. You shall do nothing after loss to prejudice such rights.

**13 Fraud**

If you make any claims knowing them to be false or fraudulent as regards amount or otherwise, this Section shall become void, and all claims hereunder shall be forfeited.

**14 Inadvertent Errors or Omissions**

Inadvertent errors, omissions or failure to give us notice as herein required will not relieve us of liability under this Section, provided that such errors or omissions shall be corrected as soon as discovered.

**15 Reasonable Care**

You will at all times exercise reasonable care in seeing that the ways, implements, plant, machinery and appliances used in your business are substantial and sound and in proper order and fit for the purpose for which they are used, and that all reasonable safeguards and precautions against accidents are provided and used.

**16 Compliance**

You shall comply with all International and Government Regulations and Civil Instructions.

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