

MANDATORY CONDITIONS (NOVA SCOTIA) – AUTOMOBILE INSURANCE

In these Mandatory Conditions, unless the context otherwise requires, the word “insured” means a person insured by this contract whether named or not.

MATERIAL CHANGE IN RISK

- 1 (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 Act* (Canada);
- and, with respect to 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.

PROHIBITED USE BY INSURED

- 2 (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;
- (b) while his license to drive or operate an automobile is suspended or while his right to obtain a license is suspended or while he is prohibited under order of any court from driving or operating an automobile;
- (c) while he is under the age of sixteen 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;
- (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;
- (ii) while that person is under the age of sixteen 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 license or permit to drive an automobile may be issued to him;
- (b) by any person who is a member of the household of the insured while his license to drive or operate an automobile is suspended or while his right to obtain a license is suspended or while he is prohibited under order of any court from driving or operating an automobile;
- (c) for any illicit or prohibited trade or transportation; or
- (d) in any race or speed test.

REQUIREMENTS WHERE LOSS OR DAMAGE TO PERSONS OR PROPERTY

- 3 (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 legal process 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; nor
- (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.

REQUIREMENTS WHERE LOSS OR DAMAGE TO THE AUTOMOBILE

- 4 (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 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 ninety days after the date of the loss or damage a statutory declaration stating, to the best of his knowledge or 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 willful 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 Mandatory 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 any time any loss or damage occurs, and the loss or

damage shall be ascertained or estimated according to that actual cash value with proper deduction 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 seven days after the receipt of the proof of loss, it give written notice of its intention to do so.

NO ABANDONMENT; SALVAGE –

- (7) There can be no abandonment of the automobile to the insurer without its 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 after proof of loss has been delivered and until a specific demand therefor is made in writing.

INSPECTION OF AUTOMOBILE –

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

TIME AND MANNER OF PAYMENT OF INSURANCE MONEY

- 6 (1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it or, where an appraisal is made under, subcondition (8) of Mandatory Condition 4, within fifteen 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 Mandatory Conditions 3 and 4 are complied with nor 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 under the contract against the insurer in respect of a claim for indemnification for liability of the insured for loss or damage to property of another person or for personal injury to or death of another person shall be commenced within three years after the liability of the insured is established by a court of competent jurisdiction and not afterwards. Every other action or proceeding against the insurer under the contract in respect of loss or damage to the automobile shall be commenced within three years from the time the loss or damage was sustained and not afterwards.

WHO MAY GIVE NOTICE AND PROOFS OF CLAIM –

- 7 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.

TERMINATION –

- 8 (1) This contract may be terminated,
- (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail, or five 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 time expired 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 by cheque payable at par.
- (5) The fifteen days mentioned in clause (a) of subcondition (1) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

NOTICE

- 9 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 this 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 notified to the insurer. In this condition the expression “registered” means registered in or outside Canada.

LIMITATION WHERE SEAT BELT NOT WORN –

- 10 (1) Unless exempt by law from the requirement in the *Motor Vehicle Act* to wear a seat belt, where an injured person was not wearing a seat belt at the time of an incident, there shall be a reduction of at least twenty-five per cent in damages for bodily injury or death arising directly or indirectly from the use or operation of an automobile in respect of the incident.
- (2) In this condition “seat belt” has the same meaning as defined in the *Motor Vehicle Act*.