

# Section C - Environmental Damage

## The schedule will show if this section applies and the cover is in force

Note (not forming part of the policy)

It is important that as soon as **You** become aware of any **Claim** being made against **You** or any **Incident** or any circumstances that might reasonably be expected to bring about a **Claim** or **Incident** **You** notify us in writing or call the Environmental Damage Claims telephone number highlighted in the Claims Conditions section of this wording.

This insurance is provided on a 'Costs Inclusive' basis. This means that legal costs are included within the limit of indemnity specified in the schedule.

If **We** agree to include additional **Insureds** to the policy, please refer to the revised terms which will apply to this section. We will provide you with these revised terms at the relevant time.

## Definitions

Each time any of the following words or phrases appear in this section in bold type (or in capital letters in the schedule) they will take the meaning shown below or if not defined below in the General Definitions

Where words or phrases are not highlighted in this manner the everyday meaning will apply

**Biological contaminants** means mould mildew fungi or bacterial matter including any substance produced by emanating from or arising out of any such biological contaminants

**Bodily injury** means physical injury or sickness disease mental anguish or emotional distress where accompanied by physical injury including death resulting therefrom

**Business activity** means the day to day business as described in the schedule and as undertaken throughout the European Economic Area which shall include but not be limited to

- (a) **Your** day to day activities on property **You** own or lease
- (b) **Your** day to day activities at or on third party premises
- (c) transportation by **You** or on **Your** behalf and associated with **Your Business activity**

**Claim(s)** means a written demand from someone who is not an **Insured** (including but not limited to a body designated by a member state as responsible for enforcing obligations provided for in the European Union Directive 2004/35/EC on environmental liability and/or any equivalent local legislation that implements it) seeking a remedy or asserting liability against **You** for **Loss**

**Clean-up expense** means costs charges and expenses to investigate neutralise remove remediate monitor and dispose of **Pollutants**

- (a) that have actually been incurred by **You** as required by **Environmental laws** or
- (b) that have actually been incurred by any governmental entity duly acting under the authority of **Environmental laws** or
- (c) that have actually been incurred by third parties where required by **Environmental laws**

**Clean-up expense** shall also include the reasonable and necessary costs that **You** incur with **Our** approval which **We** will not unreasonably withhold or delay to restore repair or replace **Your** equipment structures or facilities to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **Clean-up expense**

Such restoration repair or replacement costs shall not exceed the net present value of such property immediately prior to incurring **Clean-up expense** or include costs associated with improvements or betterments

**Clean-up expense** shall not include any cost associated with the regular maintenance betterment or upgrade or improvement of **Your** own or leased equipment structures or facilities or the replacement of any equipment structures or facilities that was not damaged by the work performed in the course of incurring **Clean-up expense**

**Clean-up expense** shall not include **Defence expense**

**Deductible** means the amount stated in the schedule as applicable to the Environmental Damage Section of the Policy applied in accordance with the 'Limits and deductibles' part of this section

**Defence expense** means reasonable and necessary legal fees and all other charges costs and expenses that **You** have to pay resulting from the investigation adjustment defence and appeal of a **Claim**

**Defence expense** shall include any settlement or cost order or demand for claimants or government entity costs arising out of any **Claim**

**Defence expense** shall not include **Your** internal expenses or the salaries of **Your** employees

**Emergency situation** means an unplanned and unexpected event following which **You** have a legal duty to take immediate action to reduce mitigate remediate or prevent any further **Incident Claim** or further **Loss** under this policy provided that such an event has

- (a) suddenly arisen and
- (b) not been allowed to arise through a failure to maintain property equipment and all other assets related to your **Business Activity** in good repair.

**Environmental damage** means the measurable

- (a) adverse change to water land protected species or natural habitats or
- (b) impairment of a natural resource service caused by an emission event incident or activity and

for which **You** are legally responsible under European Union Directive 2004/35/EC on environmental liability and/or any local legislation that implements it

**Environmental damage expense** means reasonable and necessary costs charges and expenses to investigate and/or undertake Primary Compensatory or Complementary Remediation required pursuant to the European Union Directive 2004/35/EC on environmental liability and/or any local legislation that implements it

Primary Compensatory or Complementary Remediation are as defined by the European Union Directive 2004/35/EC on environmental liability and/or any local legislation that implements it

**Environmental laws** means any applicable European Community directive regulation or decision any national statute statutory instrument regulation by-law rule regulation ordinance circular or guidance provided that they have the force of law or any permit consent licence notice order or instruction of any national or local governmental or statutory authority agency court or like entity

**Extended reporting period** means the period as stated in the schedule

**Genetically modified product** means a genetically modified item animal and/or crop (including materials parts equipment containers labelling and packaging relating to such item, animal and/or crop)

**Imminent threat** means a reasonable likelihood that **Environmental damage** will occur if a fault within a facility structure or piece of equipment is not repaired or remediated within 72 hours from when the fault is first identified provided that such a fault has

- (a) suddenly arisen and
- (b) not been allowed to arise through a failure to maintain property equipment and all other assets related to **Your Business activity** in good repair

**Incident** means

- (a) any **Pollution release**
- (b) any actual or potential **Environmental damage** or
- (c) any identified **Imminent threat** or **Emergency situation**

**Loss** means as applicable

- (a) **Environmental damage** expense or
- (b) **Clean-up expense** or

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(c) **Defence expense** or

(d) **Third party damages expense**

**Nuisance** includes statutory public or private nuisance

**Policy period** means the period of insurance as stated in the schedule to this policy or any shorter period arising as a result of cancellation

**Pollutants** means any solid liquid gaseous or thermal irritant or contaminant including but not limited to smoke vapour soot fumes acids alkalis chemicals and waste

Waste includes materials to be recycled reconditioned or reclaimed

**Pollution release** means the emission discharge dispersal migration release or escape of **Pollutants** provided such are not naturally occurring

The entirety of any such **Pollution release** or any series of interrelated associated repeated or continuous **Pollution release** shall be deemed to be one **Pollution release**

**Property damage** means

- (a) Physical injury to or destruction of tangible property including all resulting loss of use and diminution in value of that property or
- (b) Loss of use but not diminution in value of tangible property that is not physically injured

**Responsible insured** means:

- (a) an officer director or partner of the **Insured** or
- (b) a manager or supervisor of the **Insured** responsible for environmental affairs property or compliance

**Retroactive date** means the date set out as such in the schedule

**Section limit** means the applicable limit of liability attaching to this section (Environmental Damage) as stated in the schedule

**Third party damages expense** means monetary awards or settlements of compensatory damages arising out of **Bodily injury Property damage** or **Nuisance** to a third party and where allowable by law aggravated exemplary or multiple damages for such **Bodily injury Nuisance** and **Property damage**

**Underground storage tank system** means a tank or tanks used to contain petroleum or chemical products which has at least ten (10) percent of its volume beneath the surface of the ground including any connected underground piping underground ancillary equipment and containment system

## Cover

We will pay on **Your** behalf all **Loss** described below arising from an unexpected and unintended **Claim Incident** or legal obligation to pay **Environmental damage expense** and it is a condition precedent to **Our** liability under this section that any such

- (i) awareness of **Your** legal obligation to pay **Loss** first occurs or
- (ii) Claim is first made against **You** or
- (iii) awareness of the **Incident** first occurs

during the **Policy period** and is reported to **Us** in accordance with the 'Claims conditions' part of this section

### A. Defence expense

**Defence expense** in response to **Claims** otherwise covered by this section

### B. Environmental damage

**Environmental damage expense** that **You** become legally obligated to pay as a result of **Environmental damage** or an **Imminent threat** associated with **Environmental damage** on or after the Retroactive date arising solely in connection with **Your Business activity**

### C. Business activity

**Clean-up expense** and **Third party damages expense** that **You** become legally obligated to pay as a result of

- (a) **Claims** arising from a **Pollution release** or
- (b) an **Emergency situation**

on or after the **Retroactive date** arising solely in connection with **Your Business activity**

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## Conditions

### 1. Reasonable care

**You** must take all reasonable care to prevent **Claims** or **Loss** and to maintain property equipment and all other assets related to **Your Business activity** in good repair and to comply with all environmental licences and permits statutory obligations and regulations

### 2. Extended reporting period

If **You** do not renew this section **You** have the right to the period of time stated in the schedule following the date of expiration in which to give notice of any covered **Loss**

### 3. Assignment

**You** may not assign this section or any rights contained within it without **Our** prior written consent which **We** will not unreasonably withhold or delay

### 4. Inspections surveys & audits

**We** or **Our** appointed representatives have the right but are not obligated to make inspections surveys or audits of **Your Business activity** at **Our** expense and at reasonable notice to **You** but during the **Policy period**

Any inspections, surveys or audits **We** undertake relate only to the insurability of the risk and the premiums to be charged

### 5. Dispute resolution

If any dispute arises in relation to this section the parties will initially try to settle it by mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure

If the dispute cannot be resolved by mediation within a period of 3 months from the commencement of mediation the dispute shall be referred to arbitration in London by a tribunal of three arbitrators under the provisions (both mandatory and non-mandatory) of the Arbitration Act 1996

Within 28 days of the failure of mediation each party will select a separate arbitrator with the third selected by the two party appointed arbitrators

If the two arbitrators cannot agree then the third arbitrator will be appointed by the President for the time being of the Chartered Institute of Arbitrators

Each arbitrator will be suitably qualified and be from either the environmental insurance or legal professions

The decision of this tribunal will be final and binding on all parties

The cost for the tribunal will be shared equally between all parties irrespective of its outcome

## Claims conditions

In the event of an **Incident Loss** or **Claim**

### 1. When to notify – Condition precedent

- a. It is a condition precedent to **Our** liability under this section that **You** shall notify **Us** in writing, or by using the Environmental Damage Claims telephone number highlighted below, as soon as practicable but in no event later than the end of the **Policy period** in which the **Incident** is identified the **Claim** is received or the awareness of **Your** legal obligation to pay **Environmental damage expense** occurs of any **Incident Claim** or **Loss**

**Environmental Damage Claims telephone number: 01872 277151**

To the extent possible such notification should include

- i) How when and where the **Incident** took place
- ii) The names and addresses of any injured persons and witnesses and
- iii) The nature and location of any injury or damage that has or could arise out of the

#### **Incident**

Any **Incident** reported to **Us** in accordance with this provision shall be subject to paragraph 2 'Extended Reporting Period' in the 'Conditions' part of this section

Notice of an **Incident** is not notice of a **Claim**

- b. If **You** or a **Responsible Insured** receive a **Claim** for **Loss** covered by this section **You** must

- i) immediately record the specifics of the **Claim** and the date received
- ii) see to it that **We** receive notice by telephone using the number provided above as well as written notice of the **Claim** as soon as practicable but in no event later than the end of this **Policy period**
- iii) immediately send **Us** copies of any demands notices summonses or legal papers received in connection with the **Claim**
- iv) authorise **Us** to obtain records and other information
- v) cooperate with **Us** in the investigation settlement or defence of the **Claim** and
- vi) assist **Us** upon our request in the enforcement of any right against any person or organisation which may be liable to the **You** because of injury or damage to which this insurance may also apply

### 2. After an incident has been identified

- a. **You** shall have the duty to where practicably possible reduce mitigate remediate or prevent any **Incident Claim** or further **Loss** under this section
- b. **You** shall have the duty to clean up **Pollutants** remediate **Environmental damage** and remediate or prevent an **Imminent threat** to the extent required by **Environmental laws**

**We** shall have the right but not the duty to review and approve all such actions

In accordance with the above paragraph **You** shall retain competent professional(s) or contractor(s) mutually acceptable to **Us**

**We** shall have the right but not the duty to review and approve all such parties

**You** shall notify **Us** of actions and measures taken pursuant to this paragraph as soon as practicable

Where such clean up is undertaken by **You** on **Our** behalf all rates will be limited to rates **We** would actually pay to competent professional(s) or contractor(s) that **We** would retain to undertake such clean up or remediation works

Any such expenses incurred by **You** or on **Our** behalf shall be subject to the **Deductible** and shall reduce the **Section limit**

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### 3. Voluntary payments

Except for when there is an **Imminent threat** or an **Emergency situation** **You** will not make any payments assume any obligation or incur any expense without **Our** consent

### 4. Our rights – Following an incident

**We** shall have the right but not the duty to clean-up remediate or mitigate an **Incident** upon receiving notice as directed in item 2 above

Any sums expended by **Us** will be deemed incurred or expended by **You** shall be subject to the **Deductible** and shall reduce the **Section limit**

### 5. Legal defence investigation and settlement

a. **We** will have the right and the duty to defend **You** against any **Claim** seeking those sums to which this insurance applies

**We** may at **Our** discretion investigate any **Pollution release** regardless of whether any **Claim** has been made

With respect to any **Claim** **We** defend subject to the **Section limit** **We** will pay **Defence expense** for the investigation defence or appeal of the **Claim**

In the event that the **Section limit** has been exhausted then **Our** right and duty to defend any **Claim** will cease

Any payment of **Defence expense** will be subject to the **Deductible** and shall reduce the **Section limit**

b. **We** shall not settle any **Claim** without the consent of the **Insured** against whom the **Claim** is made. If however **You** refuse to consent to any settlement recommended by **Us** and elect to contest the **Claim** or continue any legal proceedings in connection with such **Claim** subject to the **Section limit** **Our** liability for **Loss** shall not exceed the amount for which the **Claim** could have been settled plus **Defence expense** incurred up to the date of such refusal less the **Deductible** or the outstanding balance of the **Deductible**.

Any payment of **Defence expense** will erode the **Section limit**.

c. If by mutual agreement or by law **You** are entitled to select defence counsel to defend any **Claim** at **Our** expense the legal fees and all other litigation expenses **We** must pay to that counsel are limited to the rates **We** would actually pay to counsel that **We** retain in the ordinary course of business in the defence of similar **Claims** in the community where the **Claim** arose or is being defended

**We** will have the right to require that such counsel have certain minimum qualifications with respect to competency including experience in defending claims similar to the one pending against **You** and to require such counsel to have errors and omissions insurance coverage

**You** agree that such independent counsel will timely respond to **Our** requests for information regarding any **Claim**

### 6. Subrogation

In the event of any payment under this section **We** shall be subrogated to all of **Your** rights of recovery against any third party and **You** shall do whatever is necessary to secure such rights. **You** shall do nothing to prejudice **Our** rights under this paragraph.

Any recovery as a result of subrogation proceedings shall accrue first to **You** to the extent of any payments in excess of the **Section limit** then to **Us** to the extent of **Our** payment under the section and then to **You** to the extent of **Your Deductible** or coinsurance

Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery

## Limits and deductibles

The **Section limit** and the rules below fix the most **We** will pay regardless of the number of **Insureds Incidents** or **Claims** subject to the applicable **Deductible**

The **Section limit** applies to the entire **Policy period**

If the **Policy period** is extended after policy issuance the additional period will be deemed part of the last preceding period for the purposes of determining the **Section limit**

### 1. Multiple policy periods and claims

a. When **We** issue claims made pollution liability coverage for **Your Business activity** in one or more policy periods and a **Claim** is first made against **You** and reported to **Us** in accordance with the terms and conditions of this section or **Loss** is incurred during this **Policy period** then all **Claims** or **Loss** arising during the policy periods of such subsequent policies issued by **Us** out of the same related or continuous **Incident** shall be deemed to have been first made and reported or incurred during this **Policy period**.

This is provided that **You** have maintained claims made pollution liability coverage with **Us** on a continuous uninterrupted basis since the first such **Loss** had been incurred or a **Claim** was first made against **You** and reported to **Us**

All such **Claims** or **Loss** will be subject to the terms conditions and **Section limit**

b. All **Claims** first made against **You** and reported to **Us** during the **Policy period** or all **Loss** incurred by **You** during the **Policy period** and arising out of the same continuous repeated or related **Incident** shall be deemed to be a single **Claim** or **Loss** and shall be deemed to have been made at the time the first of those **Claims** is made or **Loss** is incurred

### 2. Deductible

**Our** obligation to make payments under this section for **Loss** is excess of the applicable **Deductible** stated in the schedule

If the same related or continuous **Incident** result in cover under one or more separate covers only the **Deductible** amount stated in the schedule amongst all separate cover sections applicable to the **Claim** for **Loss** will apply

This section operates in excess of the **Deductible** however **We** may without any obligation whatsoever advance payment of part or all of the **Deductible** and upon notification of such payment made **You** will promptly reimburse **Us** within thirty (30) days

Payment of any **Loss** or amounts within the **Deductible** will not create any obligations or be construed as a waiver of **Our** rights under this section



# Section C - Environmental Damage

## Exclusions

We shall have no liability under this section for any **Loss** or **Claim** arising directly or indirectly from:

**1. Known prior incidents**

an **Incident** that occurred and of which **You** or the **Responsible insured** were aware prior to the **Policy period**

This exclusion will not apply to any **Incident** that is listed in an endorsement to this section

**2. Identified underground storage tank system**

any **Underground storage tank system** that is located at a property that **You** own or lease and that **You** or any **Responsible insured** as of the start of the **Policy Period** knew to be present

This exclusion does not apply to an **Underground storage tank system** that is;

- a. less than 10 years old as at the **Retroactive date**; or
- b. double skinned or has been relined within 10 years before the start of the **Policy Period** by a reputable servicer of **Underground storage tank systems**.

**3. Deliberate acts or omissions**

a deliberate or wilful act or omission by **You** or a **Responsible insured** where **You** or a **Responsible insured** either intends to cause **Environmental damage Bodily injury Property damage** or **Nuisance** or is reckless as to whether **Environmental damage Bodily injury Property damage** or **Nuisance** is caused

**4. Asbestos or lead based paint in buildings & structures**

the actual or alleged presence of or exposure to

- a. lead based paint or
- b. asbestos asbestos-containing material asbestos-based products asbestos fibres asbestos dust or asbestos waste

present installed stored or applied in or upon any building or structure

**5. Biological contaminants in buildings & structures**

the actual or alleged presence of or exposure to **Biological contaminants** present in or upon any building or structure unless caused by the processing or treatment of waste as part of the **Business activity**

**6. Upgrades and improvements**

the cost of upgrades improvements or maintenance of any equipment structures or facilities associated with **Your Business activity** whether or not such work is

- a. in compliance with any permit or licence requirements or
- b. directed by any government entity or
- c. undertaken in response to an **Imminent threat** or **Emergency situation**

**7. Material change in business activity or use of covered location**

a material change in

- a. use at a property that **You** own or lease or
- b. Your **Business activity** as declared in the proposal form or as modified by endorsement during the **Policy period**

**8. Sale or abandonment**

properties that **You** no longer own operate or control

## 9. Contractual liability

**Your** assumption of liability in a contract or agreement unless **You** would have this liability in the absence of such contract or agreement or assumed in a contract that is listed in an endorsement to this section

## 10. Products

any item that **You** sell supply manufacture construct alter repair service treat or distribute including materials parts equipment containers packaging or labelling once such item has ceased to be in **Your** possession or control

This exclusion also applies to warranties or representations that **You** make or are made on **Your** behalf in relation to the fitness quality durability performance or use of such item

## 11. Professional services

the performance of or failure to perform professional services by or on behalf of the **Insured**

Professional services will include but not be limited to recommendations opinions advice or strategies rendered by or on behalf of the **Insured** for a fee

This exclusion does not apply to improper or inadequate supervision of any entity for which the **Insured** is legally liable when operating at third party properties

## 12. Cargo at rest or wrongly delivered

cargo that is either no longer under the control of **You** or the entity transporting cargo on **Your** behalf has been relinquished to a third party or has been delivered to the wrong address or receptacle

This exclusion applies but is not limited to **Incidents** that occur

- a. after cargo is finally delivered or
- b. while the cargo is in storage having been off loaded from the vehicle that was transporting it or
- c. while the cargo is unsecured and at rest in excess of forty eight (48) hours

## 13. Property damage to cargo or vehicles

**Property damage** to cargo or any vehicle

## 14. Fines and penalties

fines penalties punitive (other than aggravated exemplary or multiple damages allowable by law) or liquidated damages or contractual penalties

## 15. Employer's liability

Bodily injury to

- a. **Your** employees while performing their duties as part of **Your Business activity** or
- b. any person whose right to assert a **Claim** against **You** arises by reason of any employment blood marital or other relationship with **Your** employees

This exclusion applies to any liability imposed by the provisions of any Employers Liability legislation

## 16. Territory and sanctions

an **Incident** or **Claim** where cover under this section would be prohibited by any applicable law or regulation including economic or trade sanctions

**We** shall have no liability to pay any claim or provide any benefit under the section where to do so would be a breach of any applicable economic or trade sanctions or other law or regulation

If payment of an otherwise valid and collectible claim under the section would be in breach of applicable economic or trade sanctions or other law or regulation such payment will only be due if an appropriate licence permitting such payment is obtained

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For any such time as it is reasonably likely that such a licence will be obtained such payment funds will be held in escrow for the benefit of the **Insured** or claimant as applicable until the requisite licence is obtained

### 17. Public & products liability

any **Claim** which is covered under Section B (Public Liability)

### 18. Genetically modified products and organisms

a. in connection with the **Business Activity**, the production manufacture distribution handling repair alteration treatment supply of or presence (on the **Farm** only) of any

**Genetically modified product** where **Your** liability may be attributed directly or indirectly to the genetic characteristics of such product or

b. the spread the fear of spread the threat of spread or the fear of threat of spread of genetically modified organism characteristics into the environment or any change to the environment arising from research into testing of or production of genetically modified organisms

### 19. Landfills

material or items which are landfilled or landraised on property that **You** own lease or control

### 20. Redevelopment

All **Loss** arising from a **Pollution release** or **Environmental damage** first discovered by the excavation or movement of any ground material (including but not limited to surface soils and subsurface soils) by a redevelopment refurbishment or voluntary site investigation completed at the **Farm**. For the avoidance of doubt this exclusion does not apply to below ground works required to install maintain or repair below-ground services on the **Farm**.



**Head office**

CMA House  
Newham Road  
Newham  
Truro  
Cornwall TR1 2SU  
Tel: 01872 277151  
Fax: 01872 223053

email: [enq@cornishmutual.co.uk](mailto:enq@cornishmutual.co.uk)  
[www.cornishmutual.co.uk](http://www.cornishmutual.co.uk)

