

# Terraffirm Indemnity Policy

This policy and 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 specifically agreed between the Underwriters and the Insured.

## Operation of Cover

- a. A proposal (including any additional information, statements and/or declarations), together with payment of the premium, has been accepted by the Underwriters for this indemnity, and is the basis of this contract
- b. The Insured agrees to comply with the terms and conditions of this policy.

## Definitions

Unless the context requires otherwise, the 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.

**Notice** means a statutory notice served on or written communication sent to the Insured by an Enforcing Authority pursuant to 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 Property prior to the Policy Commencement Date.

**Restoration Costs** means costs and expenses necessarily incurred in the repair or replacement of the Property or a Third Party Property (as appropriate) to the equivalent of its original state, to the extent that harm or damage is being or has been caused directly due to contamination arising at the Property prior to the Policy Commencement Date.

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

## Cover

### Section 1 – The Property

If the Insured receives a Notice from an Enforcing Authority, directly attributable to the Insured Risk, the Underwriters will indemnify the Insured against:

- a. 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 in respect of Remediation Costs incurred by or on behalf of the Enforcing Authority
- c. any Restoration Costs
- d. any residual reduction in the market value of the Property, in accordance with the Insured Use, as a direct result of a claim having been made pursuant to clauses a. and c. arising upon sale of the Property by the Insured on the open market during the remainder of the Policy Term, the values to be determined by a surveyor with reference to prices current at the date of sale. The surveyor will be appointed jointly by the parties or, in absence of mutual agreement, by the President for the time being of the Royal Institution of Chartered Surveyors
- e. any other costs and expenses directly incurred by the Insured with the written consent of the Underwriters.

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The contaminated land policy for commercial property

# Terraffirm Indemnity Policy

## Section 2 – Third Party Property Damage

If any person(s) or corporation (including an Enforcing Authority) establishes, through legal proceedings, a legal liability on the part of the Insured for contamination of Third Party Property, as a direct result of contamination arising from the Property that was present at the Property prior to the Policy Commencement Date, the Underwriters will indemnify the Insured against:

- a. costs and expenses incurred in complying with a Notice issued on Third Party Property including but not limited to Remediation Costs
- b. any Restoration Costs
- c. any material loss of use
- d. any residual reduction in the market value of the Third Party Property, in accordance with its existing use, as a direct result of a claim having been made pursuant to clauses a. and c. the values to be determined by a surveyor with reference to prices current at the date of the claim. The surveyor will be appointed jointly by the parties or, in absence of mutual agreement, by the President for the time being of the Royal Institution of Chartered Surveyors.

## Section 3 – Legal Defence Costs

The Underwriters will 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.

## Section 4 – Third Party Bodily Injury

If any person(s) establishes, through legal proceedings, a legal liability on the part of the Insured for loss arising through accidental bodily injury, sickness, disease, psychiatric damage or shock sustained by any person(s) (including resulting death) caused by contamination of the Property or any Third Party Property, as a direct result of contamination arising from the Property that was present at the Property prior to the Policy Commencement Date, the Underwriters will indemnify the Insured against all loss, costs and expenses arising from such accidental bodily injury, sickness, disease, psychiatric damage or shock (including resulting death).

## Exclusions

Claims arising from or relating to:

- a. act or omission by the Insured or anyone acting on behalf of the Insured
- b. use of the Property that, at the time of any claim, is materially different from the Insured Use, other than if previously approved in writing by the Underwriters
- c. communication entered into with or received from an Enforcing Authority by the Insured (or their predecessor(s) in title), prior to the Policy Commencement Date and material to the cover provided, other than if previously approved in writing by the Underwriters
- d. contamination arising from any nuclear fuels, nuclear waste, radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or component, any lead based paint or asbestos in any form in on 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)
- e. injury to any person arising out of and in the course of being employed by the Insured
- f. act of vandalism or dumping by any third party after the Policy Commencement Date
- g. leakage of any tanks at the property unless they have been professionally decommissioned, emptied, foam-filled, closed and secured, or removed from the Property, prior to the Policy Commencement Date.



# Terraffirm

The contaminated land policy for commercial property

# Terraffirm Indemnity Policy

## Non-Invalidation Clause

The interest in this policy of any Insured will not be invalidated by a breach of the policy terms or conditions by any other party, unless:

- a. such party acted on the Insured's behalf or with the Insured's knowledge and consent
- b. where the Insured is a successor in title, they had knowledge of a breach of the policy terms or conditions or of previous non-disclosure or misrepresentation to the Underwriters.

## General Conditions

- a. Any act or omission by the Insured, or anyone acting on the Insured's behalf, which in whole or in part induces a claim under the policy may prejudice the Insured's position and could invalidate the policy
- b. The Insured or anyone acting on the Insured's behalf will not without the Underwriters prior written consent disclose the existence of this policy, or any information relating to it, to any third party other than bona fide prospective purchasers, their lenders, lessees and respective legal advisers
- c. The total liability of the Underwriters under this policy will not exceed 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 must:

- a. provide written notice and details to the Underwriters, without unnecessary 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 the Insured's own expense
- d. notify the Underwriters of the proposed sale of the Property prior to exchange of contracts.

### 2. Rights of the Underwriters

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

- a. take or defend proceedings in any court or tribunal in the name of the Insured
- b. exercise, in the name of the Insured, any rights or remedies available to the Insured in any proceedings including the right to abandon or submit to judgement
- c. compromise, settle or compound the claim and deal in such manner as they think fit
- d. 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.



# Terraffirm Indemnity Policy

## 4. Other Insurance

If, at the time of the 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.

## 5. Arbitration

If any difference arises as to the amount to be paid under this policy (liability being 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.

Specimen



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