

# POLICY CONDITIONS

## CC290M(06/02)

THIS POLICY is made and accepted subject to all the provisions, conditions and warranties set forth herein, which are specifically referred to and made a part of this policy, together with such other provisions, conditions and warranties as may be endorsed hereon, or added hereto; and no officer, agent or representative, other than Van Wagoner Co.'s, Inc., Richardson, Texas or Underwriters shall have power to have waived any provision, condition or warranty of the Policy unless such waiver, if any, shall be issued and executed by Van Wagoner Co.'s, Inc., Richardson, Texas, nor shall any privilege or permission affecting the insurance under this Policy exist by the Assured unless so issued and executed.

This entire Policy shall be void if the Assured has concealed or misrepresented any material fact or circumstances concerning this insurance or the subject thereof or in the case of any fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof before or after a loss.

Any endorsement(s)/other, as shown on the declaration page, attached hereto and made a part hereof shall supersede anything in the listed wording(s) appearing in this policy.

It is expressly understood and agreed by the Underwriters by accepting this instrument that Van Wagoner Co.'s, Inc. is not one of the Underwriters hereunder and neither is nor shall be in any way or to any extent liable for any loss or claim whatsoever, but the Underwriters hereunder are only those Underwriters whose names are on file as herein before set forth.

Loss, if any, shall be payable in Richardson, Texas, in United States Currency.

This Policy and attachments thereto shall not be valid unless signed by Van Wagoner Co.'s, Inc. endorsed hereon.

This Policy shall not be assigned either in whole or in part without the written consent of Van Wagoner Co.'s, Inc., endorsed hereon.

### WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (2) any act of terrorism.  
For the purpose of this endorsement, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

N.M.A. 2918 (08/10/01)

### SERVICE OF SUIT CLAUSE (U.S.A)

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon **Mendes & Mount, Inc., 750 Seventh Ave., New York, NY 10019** and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding

instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.  
N.M.A. 1998(24/4/86)

### **CLAIMS NOTIFICATION CLAUSE**

The Assured, upon knowledge of any occurrence likely to give rise to a claim hereunder, shall give written notice within thirty days from the date of loss to the Underwriters through Van Wagoner Co.'s., Inc., 1134 Commerce Drive Richardson, TX, who through the Underwriters, shall appoint an adjuster to assess the loss on behalf of the Underwriters.

The Assured shall give immediate notice to the Underwriters of any loss within thirty days after the loss, unless such time is extended in writing or on behalf of the Underwriters, the Assured shall render to the Underwriters a proof of loss, signed and sworn to by the Assured. The Assured, as often as may be reasonably required, shall submit to examinations under oath by any person named by the Underwriters and shall subscribe the same; and as often as may be reasonably required, shall produce for examination all books of accounts, bills, invoices and other vouchers, or certified copies thereof if original be lost, at such reasonable time and place as may be designated by the Underwriters or their representatives, and shall permit extracts and copies thereof to be made. It is a condition of this Policy that no suit, action or proceeding for the recovery of any claim under this Policy shall be maintainable in any court of law or equity unless the same be commenced within twelve (12) months after the time a cause of action for the loss accrues provided however, that if by the laws of the state shown in the address of Assured in this Policy such limitation is invalid, then any such claim shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such state.

### **CANCELLATION CLAUSE**

(Approved by Lloyd's Underwriters' Fire and Non-Marine Association.)

NOTWITHSTANDING anything contained in this Insurance to the contrary this Insurance may be cancelled by the Assured at any time by written notice or by surrender of this contract of insurance. This Insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Assured or by mailing to the Assured, by registered, certified or other first class mail, at the Assured's address as shown in this Insurance, written notice stating when, not less than 10 days thereafter, the cancellation shall be effective.

The mailing of such notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Assured the Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the customary short rate proportion of any minimum premium stipulated herein whichever is the greater.

If this Insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein whichever is the greater.

Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of Cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

N.M.A. 1331(20/4/61)

### **MINIMUM EARNED PREMIUM CLAUSE**

In the event of cancellation of this policy by the Insured, a minimum premium of 25% shall become earned; any cancellation of the policy to the contrary notwithstanding. Failure of the Insured to make timely payments of premium shall be considered a request by the Insured for the Company to cancel. In the event of such cancellation by the Company for non-payment of premium, the minimum premium shall be due and payable; however, such non-payment cancellation shall be rescinded if the Insured remits the full premium due within 10 days of receiving notice of cancellation. In the event of any other cancellation by the Company the earned premium shall be computed pro rata, not subject to the minimum premium.

### **POLICY FEE/INSPECTION FEE/ENDORSEMENT FEE**

The policy fee, inspection fee and endorsement fee, shown on the face of this policy or on any endorsement, is charged for the cost of preparing the policy, subsequent endorsements and for the inspection report. The fees are fully earned and nonrefundable.

### **TOTAL LOSS ENDORSEMENT**

In consideration of the premium charged under this policy, it is understood and agreed that in the event of a constructive total loss of the Insured property, the full policy premium for the property shall be deemed fully earned for all coverages insured hereunder. No return premium shall be payable to the Insured for the unexpired term of the policy.

## **RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE PHYSICAL DAMAGE-DIRECT**

(Approved by Lloyd's Underwriters' Non-Marine Association.)

This policy does not cover any loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination however such nuclear reaction, nuclear radiation or radioactive contamination may have been caused \*NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination any loss or damage arising directly from that Fire shall (subject to the provisions of this policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly or indirectly from that Fire.

\*NOTE – If Fire is not an insured peril under this policy the words from “NEVERTHELESS” to the end of this clause do not apply and should be disregarded.

N.M.A. 1191(7/5/59)

## **LAND, WATER AND AIR EXCLUSION**

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure land (including but not limited to land on which the insured property is located), water or air, howsoever and wherever occurring, or any interest or right therein.

N.M.A. 2341(24/11/88)

## **SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION**

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure:

- a) any loss, damage, cost or expense, or
- b) any increase in insured loss, damage, cost or expense, or
- c) any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instruction or request of, or by any agreement with, any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation),

which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

The term “any kind of seepage or any kind of pollution and/or contamination” as used in this Endorsement includes (but is not limited to):

- a) seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a “hazardous substance” by the United States Environmental Protection Agency or as a “hazardous material” by the United States Department of Transportation, or defined as a “toxic substance” by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and
- b) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

N.M.A.2342(24/11/88)

## **SEVERAL LIABILITY NOTICE**

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

LSW1001-(Insurance)

## **MANDATORY NUCLEAR ENDORSEMENT**

### **NUCLEAR CLAUSE**

(Applicable to the perils of fire and lightning); The word “fire” in this policy or endorsements attached thereto is not intended to and does not embrace nuclear reaction or nuclear radiation or radioactive contamination, whether controlled or uncontrolled, and loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this policy or said endorsements, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by “fire” or any other peril insured against by this policy or said endorsements; however, subject to the foregoing and all provisions of this policy, direct loss by “fire” resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured by this policy.

## **NUCLEAR EXCLUSION CLAUSE**

(Applicable to all perils insured against under this policy except the perils of fire and lightning which are otherwise provided for in the Nuclear Clause above): Loss by nuclear reaction or nuclear radiation or radioactive contamination, whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to or aggravated by any of the perils insured against by this policy; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, is not "explosion" or "smoke".

## **ELECTRONIC DATA ENDORSEMENT B**

### **1. Electronic Data Exclusion**

Notwithstanding any provision to the contrary within the Policy of any endorsement thereto, it is understood and agreed as follows:

- (a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagated themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to "Trojan Horses," "worms" and "time or logic bombs".

- (b) However, in the event that a peril listed below results from any of the matters described in paragraph (a) above, this Policy, subject to all its terms, conditions and exclusion, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils:

Fire

Explosion

### **2. Electronic Data Processing Media Valuation**

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

NMA2915(25/01/01)

### **Computer Virus Exclusion**

This Policy does not insure any loss, damage, loss of use, reduction in functionality, cost or expense of whatsoever nature arising directly or indirectly from COMPUTER VIRUS, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network.

**CC290M(06/02)**