

## GUIDE

# An insured's guide to insurance contracts

Insurance law is a complex area, which, if not dealt with correctly, can cause substantial difficulties for the unwary insured. This guide aims to set out some of the key points to be aware of when taking out insurance and making a claim.

### Special rules

As well as being governed by the general law of contract, there are a number of additional rules and features that relate to insurance contracts, and below we list some of the more important ones to be aware of:

#### ■ Duty of utmost good faith

An insurance contract is a contract 'uberrima fides'. This means that the insured and the insurer agree to act with the utmost good faith in their dealings with each other in the process of formulating the insurance policy, during the period of cover and in the event of a claim.

#### ■ Pre-contract disclosure

When taking out an insurance contract, the insured must disclose to the insurer any information which might influence a reasonably prudent insurer in deciding whether to accept the risk, and, if so, upon what terms. Failure to disclose can entitle an insurer to avoid (i.e. cancel) the insurance if he can show that the non-disclosure was material and influenced his decision to insure the risk or the terms upon which he was prepared to do so.

#### ■ The proposal form

Although not always required, this is normally the primary way in which pre-contract disclosure is made, i.e. by the insured completing a questionnaire and providing information about the risk the insurer is being asked to insure. The extent of the questions may limit the degree of disclosure required. Seemingly straight-forward questions may require far reaching responses.

#### ■ Duty to take reasonable care

Invariably the insurance policy will contain a clause requiring the insured to take proper care of his or her property and goods, as if they were not insured. The insured will only lose cover as a result of this clause in circumstances amounting to gross negligence or recklessness.

#### ■ Conditions and warranties

These are important terms of the policy. A breach by the insured may entitle insurers to repudiate liability for a claim or to avoid the policy even if the breach and the loss claimed have no causal link.

#### ■ The average clause

It is important that the amount of cover (the sum insured) in respect of the insured's property (buildings, stock, machinery etc.) is not less than the actual value or replacement cost of that property (the value at risk). If it is, then other than in circumstances of a total loss, the average clause in the policy will reduce the amount payable by the insurer proportionately.

### The structure of policies

#### ■ Form

Most contracts of insurance today are in standard form divided into sections for each risk or peril which is being insured against. Each section will usually have its own exclusions and limitations. General conditions applicable to all sections will be set out separately.





### ■ The Schedule

The policy schedule is particular to the insured. It will normally identify the insured, the cover, the sums insured and, by reference to relevant schedules or separate endorsements, any warranties or special conditions which may apply to any one or more of the sections.

### ■ Endorsements

Additional terms affecting the scope of the cover may be included as endorsements which may be issued during the currency of the cover to reflect changes in the risk (e.g. exclusions operating in relation to premises which have become unoccupied), or to the sums insured (e.g. to accommodate newly acquired plant or machinery). The policy document should always be read in conjunction with the proposal form to check for any pre-contractual statements which may have become binding terms of the contract of insurance.

### Common problems

#### ■ Misrepresentation

Misrepresentation is an inaccurate or untrue statement of fact made either innocently, negligently or fraudulently by one of the parties to the contract of insurance (usually the insured) prior to the conclusion of the contract.

#### ■ Non-disclosure

The insured must disclose to the insurer all the facts material to the insurer's appraisal of the risk which are known or deemed to be known by the insured but not the insurer. The duty to

make full disclosure of all material facts ceases at inception of the policy. There is no need to disclose facts which the insurer knows or is presumed to know, nor facts in respect of which the insurer waives enquiry.

#### ■ Breach of warranty or condition

A warranty or condition must be precisely complied with and need not be material to the risk. A breach may entitle the insurer to repudiate, even if remedied before the date of loss.

#### ■ No insurable interest

An insured must have an insurable interest in the property or goods in respect of which insurance is sought. It is not restricted to actual ownership but extends to some circumstances where a person is in possession of or responsible for property or goods.

### Insurance checklist

- Make full disclosure of all material facts.
- Read carefully all terms and conditions of the policy.
- Understand the precise requirements of conditions and warranties and comply with them.
- Ensure that the sums insured are adequate.
- Consult your broker or other competent insurance advisor if in doubt.

### Need more help?

For advice on making a commercial insurance claim please see our 'Guide to Making a Claim'.

## Our Team

If you would like further information please contact a member of our team:



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