

INSURANCE ACT

New Policy Wording

Made possible



In order to give our Policies more clarity and greater accuracy to reflect the Insurance Act, we have undergone a review of the wordings for all of our product suite.

In this document, we have highlighted each amendment made to the Policies and provided an explanation as to why we have made that amendment.

NEW CLAUSE	WHY IT HAS CHANGED
<p>2.2 Limit of liability</p> <p>Except as provided for in 4.4 (a), the Insurer's liability will not exceed the Maximum Policy Liability and any amount in excess of the Maximum Policy Liability will be for the account of the Insured.</p>	<p>As a result of section 13A of the Insurance Act, the Insurer is liable for damages on any valid claims paid late, in addition to, and separate from, the Insurer's liability under the Policy itself. We have added some exception language here for clarity.</p>
<p>3.1 Limitations and exclusions</p> <p>This Policy excludes and does not cover losses:</p> <p>Assignment</p> <p>arising out of the Insured's assignment of any rights or benefits under this Policy, unless the Insurer's written consent has first been obtained;</p>	<p>Assignment has been moved from Section 5 - General terms and conditions to Section 3.1 - Limitations and exclusions</p> <p>The Policy has never provided cover for losses arising from the Insured's assignment of any rights or benefits under the Policy unless the assignment is agreed by the Insurer.</p>
<p>3.1 Limitations and exclusions</p> <p>Breach of Permitted Credit Limit</p> <p>arising out of the Insured's breach of any of the following or part of any of them:</p> <ul style="list-style-type: none"> a) the Credit Management Procedures; b) entry by the Insured into any other trade credit insurance policy that indemnifies the Insured, except with the Insurer's prior written consent; and c) the Insured not retaining for its own account: <ul style="list-style-type: none"> i. such part of an Insured Debt as exceeds the Insured Percentage; and ii. such indebtedness to the Insured of an Insured Buyer as exceeds the Permitted Credit Limit; and iii. any deductibles specified in the Schedule; and iv. all indebtedness after the Maximum Policy Liability or Maximum Country Liability has been exhausted; 	<p>Moved from 3.3 - Permitted Credit Limit condition precedent</p> <p>Breach of Permitted Credit Limit was previously a condition precedent which had to be complied with before the Insurer would be liable to pay a claim. There is a risk, under the Insurance Act, that, if breach of this Permitted Credit Limit condition precedent did not adversely impact the actual claim that occurred when and how it did, this provision could become unenforceable and the Insurer might not be able to rely on it. This provision is important enough as part of QBE's underwriting that we have decided therefore to convert it into an exclusion to avoid this risk.</p> <p>Moving this wording makes things clearer by placing it in the same section as the other Policy exclusions. This supports one of the key principles of UK regulation to make the wording clear and not misleading.</p>
<p>3.1 Limitations and exclusions</p> <p>Excluded Shipments</p> <ul style="list-style-type: none"> f) in circumstances where it is both legally and practically possible for the Insured, using reasonable means, to stop carriage of the goods before they leave the country of the Insured or the country which they are being exported; 	<p>Moved from 6.38 - Shipped and Shipment</p> <p>Part of the previous definition of Shipped and Shipment included a provision that goods will not be considered Shipped where it was possible for the Insured to stop carriage of the goods before they leave the country. We consider this provision sits better as an exclusion.</p>

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<p>3.1 Limitations and exclusions</p> <p>Other Insurances</p> <p>for which, at the time of any claim under this Policy, any other valid credit insurance is available to the Insured (other than insurance that has been declared to and accepted by the Insurer as being in excess of this Policy), and the Insurer shall have no liability under this Policy for any claim covered in whole or in part by such other credit insurance;</p>	<p>Moved from 5.14 - Other Insurances</p> <p>The Insured cannot have trade credit insurance cover in place from another provider without prior approval from the Insurer. This is an important requirement that operated as a condition precedent under the old law. There is now a risk that if a breach of this term, as a condition precedent, did not adversely impact the actual claim that occurred when and how it did, this provision could become unenforceable and the Insurer might not be able to rely on it. Therefore, it has been moved to Limitations and exclusions.</p>
<p>4. Duties in the event of a claim or potential claim</p> <p>The Insured must comply with the provisions of clauses 4.1 to 4.7 inclusive, which are each conditions precedent to the Insurer's liability for any claim under this Policy and the Insured must show that its non-compliance with any of these clauses did not increase the risk of any claim for which the Insurer would otherwise have been liable under this Policy.</p>	<p>This provision has been reworked but essentially remains unchanged in its effect. The redraft mitigates the risk of the Insurance Act undermining the way this and other important provisions operate and to make it clear that non-compliance with each of them means there is no cover under the Policy for that claim.</p>
<p>4.4 Insured's rights</p> <p>The Insurer shall pay any sum due in respect of a valid claim within a reasonable time, pursuant to section 13A of the Insurance Act 2015.</p> <p>The Insured must commence any action against the Insurer:</p> <ul style="list-style-type: none"> a) pursuant to section 13A of the Insurance Act 2015 no later than twelve (12) months from the date on which the Insurer has paid all sums due in respect of the claim; and b) in relation to any other claim or disputed claim under this Policy no later than twenty-four (24) months following the Claimable Event Date. 	<p>By virtue of section 13A of the Insurance Act, it is an implied term of every English law insurance contract that the Insurer is liable to pay valid claims within a reasonable time. The Policies have been updated to make this an express provision.</p> <p>The Insured has twelve months to bring an action from the date on which the Insurer paid all sums due in respect of that claim. This does not affect the Insured's existing contractual right to bring an action against the Insurer to dispute a claim, which is preserved.</p>
<p>4.7 Recoveries</p> <ul style="list-style-type: none"> c) If the Insurer has agreed to settle the claim, the Insurer may deduct the Recoveries from its calculation of liability under the Policy; otherwise, the Insurer's proportion of any Recoveries received by the Insured and due to the Insurer (as calculated in accordance with (b) above) is to be remitted by the Insured to the Insurer within thirty (30) days of receipt of the Recoveries by the Insured. 	<p>The amendments which have been made to Recoveries are essentially for clarity and neatness. There is no change to the substantive effect and no revision in light of the Insurance Act.</p>
<p>4.7 Recoveries</p> <ul style="list-style-type: none"> d) If the Insured receives Recoveries before submitting a claim under this insurance or, having submitted such a claim, before the Insurer has agreed to settle it, the Insured will not be required to pay its proportion of such Recoveries to the Insurer. If the Insurer has agreed to settle the claim, the Insurer may deduct the Recoveries from its calculation of liability under the Policy. 	<p>The amendments which have been made to Recoveries are essentially for clarity and neatness. There is no change to the substantive effect and no revision in light of the Insurance Act.</p>
<p>4.8 Settlement of claims</p> <p>The Insurer will pay to the Insured the Insured Percentage of the Insured Loss within thirty (30) days of receipt of a Confirmation of Debt (for Insolvency claims) or the judgment (if applicable) of a court of competent jurisdiction (for Protracted Default claims), after deducting any interim payments, Recoveries and any applicable deductible, but the Insurer shall be entitled not to do this if the Insured has failed to comply with any provision of this Policy.</p>	<p>The amendments to this provision are essentially for clarity and neatness. There is no change to the substantive effect and no revision in light of the Insurance Act.</p>

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<p>5.7 Fraudulent Claims</p> <p>If the Insured or anyone acting on its behalf makes a fraudulent claim under this Policy, the Insurer:</p> <ul style="list-style-type: none"> a) is not liable to pay the claim; b) may recover any part of the claim already paid from the relevant Insured; and c) may by notice to the Insured treat this Policy as having been terminated with effect from the time of the first fraudulent act, in which case the Insurer is not liable to that Insured in respect of a relevant event occurring after that time and may retain any premium. <p>These remedies shall not be available against any other entity insured under this Policy that was not implicated in the fraud.</p>	<p>This provision has been amended to reflect the position under the Insurance Act concerning fraudulent claims brought under the Policy.</p>
<p>5.9 Joint Insureds</p> <p>In the event there is more than one Insured, each of the Insureds together will be treated for all purposes under this Policy as a single entity.</p> <p>Representations by any of the Insureds will be considered representations of all, and breaches of any provision of this Policy by one will be considered breaches by all. The performance by any of the Insureds of any duty or obligation of the Insured under this Policy will be considered performance by all. Any limits imposed upon the Insured under this Policy will apply to all Insureds in the aggregate and not to each individually.</p>	<p>This provision has been amended slightly for neatness. "Breaches of any provision of this Policy" replaces "breaches of any warranties, conditions or any other terms or provisions of this Policy" in order to include any provision of the Policy and remove the risk that a particular type of provision is omitted if a set list was used.</p>
<p>5.10 Duty of fair presentation</p> <p>The Insured must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this insurance.</p> <p>Remedies for breach of the duty of fair presentation - proposing for this insurance.</p> <p>If the Insured or anyone acting on its behalf breaches the Insured's duty of fair presentation in relation to a variation of this Policy, the Insurer's remedies shall be as follows:</p> <ul style="list-style-type: none"> a) If such breach is deliberate or reckless, the Insurer may: <ul style="list-style-type: none"> i. by notice to the Insured treat this Policy as having been terminated from the time when the variation was concluded; and ii. retain this premium; b) if such breach is not deliberate or reckless, and the Insurer would not have entered into the variation but for the breach, the Insurer may treat this Policy as if the variation was never made, in which case the Insurer shall return any additional premium relating to the variation; and c) in all other cases if, but for the said breach, the Insurer would have entered into the variation but: <ul style="list-style-type: none"> i. on different terms (other than terms relating to the premium), the Insurer may require that the variation is treated as if it had been entered into on those different terms; ii. would have increased the premium by more than it did or at all, the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged} / \text{higher premium}) \times 100$; or iii. would not have reduced the premium by as much as it did or at all, the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged} / \text{reduced total premium}) \times 100$. 	<p>The Duty of fair presentation was introduced by the Insurance Act to replace the Insured's previous duty to disclose every material fact. The Duty of fair presentation includes an additional limb that the Insured must provide sufficient information to put the Insurer on enquiry.</p> <p>The Duty of fair presentation provision replaces the Material inaccuracy provision previously in the Policies which aimed to anticipate the new law. The Duty of fair presentation is an implied term of every English law insurance contract but is now expressly stated in the Policies. This provision sets out the Insured's duty to make a fair presentation and the remedies in place in the event of a breach of that duty.</p> <p>Although the Remedies for breach of the Duty of fair presentation pre-contract and pre-variation are identical in principle, they require separate paragraphs to make the effect clear. The result is some repetition, but we have decided that repetition is preferable to opaque language.</p>

NEW CLAUSE	WHY IT HAS CHANGED
<p>5.10 Duty of fair presentation (continued)</p> <p>Material changes during the Policy Period</p> <p>The Insured must notify the Insurer within thirty (30) days of any material change to the Insured, its business or the risks insured if indemnity under this insurance is sought in relation to any such change.</p> <p>The Insurer shall not indemnify the Insured for any liability arising out of a material change for which indemnity would otherwise have been available under this insurance unless the Insurer has provided valid confirmation of cover, whether by an express term of this Policy, endorsement, written confirmation or otherwise.</p> <p>Remedies for breach of the duty of fair presentation – variation</p> <p>If the Insured or anyone acting on its behalf breaches the Insured's duty of fair presentation in relation to a variation of this Policy, the Insurer's remedies shall be as follows:</p> <ul style="list-style-type: none"> a) If such breach is deliberate or reckless, the Insurer may: <ul style="list-style-type: none"> i. by notice to the Insured treat this Policy as having been terminated from the time when the variation was concluded; and ii. retain this premium; b) if such breach is not deliberate or reckless, and the Insurer would not have entered into the variation but for the breach, the Insurer may treat this Policy as if the variation was never made, in which case the Insurer shall return any additional premium relating to the variation; and c) in all other cases if, but for the said breach, the Insurer would have entered into the variation but: <ul style="list-style-type: none"> i. on different terms (other than terms relating to the premium), the Insurer may require that the variation is treated as if it had been entered into on those different terms; ii. would have increased the premium by more than it did or at all, the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$; or iii. would not have reduced the premium by as much as it did or at all, the Insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the Insurer shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/reduced total premium}) \times 100$. 	
<p>5.11 Compliance with the Policy terms</p> <p>The Insured and anyone acting on its behalf must each comply with every applicable provision of the Policy.</p> <p>To the extent this insurance provides a benefit to any other party, the Insured shall arrange for each Insured party to comply with every applicable provision of this Policy.</p> <p>If the Insured or anyone acting on its behalf breaches any provision of the Policy, the Insurer may, without prejudice to any of the Insurer's other rights, reject or reduce sums payable to the extent that the Insurer's liability under the Policy has been incurred or increased by reason of the breach.</p> <p>If the Insurer has paid any sums to the Insured or anyone acting on its behalf for which the Insurer was not liable (whether by reason of breach of any provision of the Policy by the Insured or anyone acting on its behalf or for any other reason) the Insured shall promptly repay such sums to the Insurer.</p>	<p>The Compliance with the Policy terms provision has replaced the Observance provision which ceased to operate effectively under the Insurance Act. The new Compliance with the Policy terms provision sets out clearly the Insured's duties, together with the consequences of non-compliance.</p>

NEW CLAUSE	WHY IT HAS CHANGED
<p>6.14 Insured Debt</p> <p>Insured Debt means so much of any indebtedness (not including any collection costs) arising out of the trade falling within the description of trade in the Schedule and:</p> <ul style="list-style-type: none"> a) owing by an Insured Buyer to the Insured; and b) not exceeding a valid Permitted Credit Limit; and c) which is in respect of the invoice value of Shipments all of which: <ul style="list-style-type: none"> i. have occurred during the Policy Period; ii. are pursuant to a contract of sale providing for repayment of the debt within the terms of payment specified for the Approved Country of the Insured Buyer in the Approved Countries & Conditions Table in the Schedule; and iii. have been invoiced by the Insured within the Maximum Invoicing Period. 	<p>The slight amendment to this definition is for clarity and neatness. There is no change to the substantive effect and no revision in light of the Insurance Act.</p>
<p>6.38 Shipped and Shipment</p> <p>Shipped and Shipment mean:</p> <ul style="list-style-type: none"> a) in respect of goods: <ul style="list-style-type: none"> i. if an Insured Buyer is located in the same country as the Insured, the time (which must be within the Policy Period) at which the goods physically pass from the Insured into the exclusive physical control of the Insured Buyer or the Insured Buyer's agent; or ii. if an Insured Buyer is not located in the same country as the Insured, the time (which must be within the Policy Period) at which the goods pass to the first independent carrier in the process of being carried to the place where the Insured Buyer or its agent is required to accept them; and b) in respect of services, the time (which must be within the Policy Period) when the service has been rendered to the Insured Buyer provided that the Insured has invoiced the Insured Buyer within the Maximum Invoicing Period after the work has been completed or services have been rendered. 	<p>As explained above in 3.1 Excluded Shipments, the last paragraph (carriage) of the old definition has been removed and placed within the Limitations and exclusions section of the Policy.</p>

We hope that you will find the Policy amendments of benefit. QBE Policies have previously aimed to anticipate the effect of the Insurance Act in key respects. By incorporating the Insurance Act's effect into the Policies we are trying to ensure clarity and to reflect the positive effects of the new law for the customer.



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Made possible



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