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DISCLOSURE OF MATERIAL FACTS OR CIRCUMSTANCES – DUTY OF FAIR PRESENTATION

The Insurance Act 2015 introduced a number of reforms, effective from 12th August 2016, including the Duty of Fair Presentation. Purchasers of commercial insurance have a duty to disclose every material fact or circumstance that they know, or ought to know, about the risk. A material fact or circumstance is something that would affect the judgement of an insurer in deciding whether to accept the risk and on what terms – at inception, renewal and on variation of a policy. This information must be disclosed in a clear and accessible manner, after all necessary enquiries have been made, to ensure that the information provided is both complete and accurate.

Failure to make a fair presentation of a risk may result in an insurer avoiding a policy and refusing all claims and, depending on the circumstances, premiums may not be returned.

Material Facts or Circumstances can include, but are not limited to, any partner, director or any other person responsible for managing the business which is the subject of the insurance proposal, or any other business in which you, or they, have been trading:

- Having any unspent or pending convictions, cautions, criminal offences or prosecutions
- Been declared bankrupt/insolvent, or the subject of bankruptcy proceedings
- Been officers of a company that has been declared insolvent, or had a receiver, administrator or liquidator appointed, or entered into arrangements with creditors in accordance with the Insolvency Act 1986 or any subsequent legislation
- Been the subject of a county court judgement (CCJ) in respect of debt, either as private individuals or in connection with any business
- Been the subject of a recovery action by Customs and Excise or the Inland Revenue
- Been disqualified under the Company Directors Disqualification Act 1986 or any subsequent legislation
- Had a proposal refused or declined or ever had an insurance cancelled, renewal refused, a claim repudiated or special terms imposed
- Been an officer of a company subject to Prohibition or Enforcement action by any regulatory bodies, including (but not limited to) HSE Fee For Intervention

Material Facts or Circumstances can include, but are not limited to:

- Legal ownership and insurable interest
 - Loss history/experience, including paid and outstanding claims and potential claims/circumstances/incidents/losses (whether insured or not)
 - Employees with unspent or pending convictions, cautions, criminal offences or prosecutions
 - The full scope of business activities undertaken not being disclosed (including processes, products, markets supplied to etc)
 - Handling, storing or transporting any hazardous substances, such as toxic chemicals, explosive substances, gases, asbestos, radioactive substances or any materials giving rise to dust, fumes or vapours
- Not having a written Health & Safety policy, and documented risk assessed working practises, if you have 5 or more employees



- Employees exposed to noise levels above 80 db(A), not being supplied with appropriate ear defenders
- Representation outside the UK
- Manual work away from the premises (exhibitions to be referred as well)
- Manual work outside of the UK
- Working at height or depth
- Importing raw materials, components or any other products
- Supplying products which will knowingly be used: in aircraft missile or for aviation or aerospace purposes / for the safety or navigation of marine craft of any sort / on off-shore rigs/platforms / in the automotive, marine, mining, petrochemical or nuclear industries / for medical or surgical purposes / for safety critical purposes / in USA/Canada
- Working in, on or at hazardous locations e.g. power stations or nuclear installations / oil rigs oil drilling platforms or refineries / offshore oil / chemical works / computer installations or computer rooms / towers steeples chimney shafts blast furnaces dams canals viaducts bridges or tunnels / airports / ships docks piers wharfs breakwaters or sea walls / railways or tramways / other restricted access locations
- Waiving rights of recovery against any suppliers
- Accepting additional liabilities by agreement or contract with any customers, suppliers or sellers
- Using Fork Lift Trucks on the public road, without separate Road Traffic Act insurance cover in place. *N.B. Case law has defined a public road to be 'where it is natural to suppose that the public may be found, such as car parks, laybys, loading bays, private roads through trading or industrial estates...'*
- Not complying with the statutory inspection requirements in respect of all: lifting equipment; boiler plant/pressure systems; local exhaust ventilation (LEV) systems; power presses; electrical equipment etc. *N.B. Whilst you may have an inspection contract in place, it is your responsibility to check and ensure that inspections are undertaken within the required timescales.*
- Any other special or unusual risk features
- Any particular concerns which led you to seek insurance cover
- Anything which would generally be understood as being something that should be disclosed for the type of risk in question

In respect of Property Risks, Material Facts or Circumstances can include, but are not limited to:

- Composite panels and other non-standard construction (i.e. not constructed of Brick, Stone, Concrete or Dwarf brick with profile metal cladding with Non-Combustible linings on a Steel frame and roofed with Slates, Tiles, Concrete, Metal or profile metal cladding with Non-combustible linings)
- Built on made up ground; in an area with a known history of subsidence; having any visible cracks; and or the premises or any adjacent property previously suffering from any subsidence, heave or landslip
- In an area previously affected by flood
- High risk adjoining or neighbouring premises



- Not maintained in a good state of repair
- Not solely occupied by the proposer
- Any alarm system not being under the proposer's sole control
- Machinery left operational whilst the premises are unattended
- Fork lift truck charging whilst the premises are unattended
- Open fires, stoves, portable heaters and heating methods other than fixed mains gas/electric heating systems
- Combustible waste not being cleared up on a daily basis
- Fire extinguishers not being installed to scale and subject to an annual maintenance agreement
- Fire alarms that that are not maintained and tested
- Non compliance with minimum levels of physical security

The following is an example of a Minimum Levels of Physical Security Condition, however each insurer has their own specific wording, therefore it is essential that you refer to the policy wording for details of each insurer's requirements:

Doors

- Exit Doors (all external doors and internal doors which lead to another part of the Building which the Insured do not occupy): Five lever mortice deadlocks British Standard Kitemarked to BS3621
- External Aluminium or UPVC Doors: Cylinder operated mortice pivot bolt lock including anti-turn cylinder collar
- Steel Exit Doors and Sliding Exit Doors: Substantial padlocking bar and high quality close shackle padlock with minimum of five levers or mortice hook bolt lock which has five or more levers and/or conforms to BS3621 specification for thief resistant locks with matching steel box striking plate
- Plus on Double Doors: Flush or barrel bolts, top and bottom
- Plus on Outward Opening Doors: Hinge bolts or key operated locks, top and bottom

Manually Operated Roller Shutters

- Key operated "pinson" or "bullet" locks into each guide rail fitted as close to the bottom of the door as possible, or
- A locking bar and close shackle padlock, with a staple set into concrete and the locking bar secured to the shutter, or
- Operating chains secured with a hardened shackle padlock to the door frame or any other part of the building structure

Automatically Operated Roller Shutters

- As per above requirements for Manually Operated Roller Shutters, or
- On referral to insurers: Key operated isolation switches to the electricity supply to the controls



Wicket Gate Doors

- Five lever mortice deadlocks British Standard Kitemarked to BS3621, or
- A locking bar and padlock as noted for Steel Exit Doors and Sliding Exit Doors

Windows

- Opening basement and ground floor windows and fanlights and other opening windows fanlights and skylights which are accessible from roofs balconies canopies fire escapes or downpipes:
 - (i) Key-Operated Window Locks with the keys removed when in operation, or
 - (ii) Solid Steel Bars not less than 16mm (5/8") diameter and not more than 125mm (5") apart securely fixed to the brickwork or masonry surrounding the window, or
 - (iii) Lockable Steel Expanded Metal Window Gates or Weld Mesh Grilles, or
 - (iv) Shutters that are used to cover the whole of the window opening

N.B. With regards to padlocks, some insurers stipulate a minimum requirement for CEN Grade 4 or 5 therefore please refer to your insurer's policy wording for details of their specific requirements.

In respect of Motor Fleet, Material Facts or Circumstances can include, but are not limited to:

- Vehicles leased, hired or owned by employees, directors or anyone other than the policy holding company
- Private cars with 8 or more seats and/or commercial vehicles with 6 or more seats
- Vehicles modified in any way from the point of manufacture / imported and/or left hand drive
- Vehicles used to carry hazardous goods and/or goods which do not belong to the policyholder
- Vehicles used in hazardous locations
- Vehicles driven by any driver without a full UK licence
- Vehicles used for hire or reward
- Vehicles used for any purpose other than the policyholders business and/or social, domestic and pleasure purposes
- Drivers with convictions and/or undisclosed claims, losses and accidents and/or DVLA 'notifiable' medical conditions or disabilities

Please note that your duty to make a fair presentation is not confined to questions asked by us or your insurer. All material facts and circumstances should be disclosed, regardless of whether or not you have been asked specific questions.

If you have any doubt as to whether a fact is material, please advise us and we will confirm in writing by return.

