



# **Growing Timber Insurance**

## **2021 Policy Wording**



# Foreword

This Policy is issued in accordance with and under the authority granted by Contract Number **Y016471QBE0121A**.

This Policy is underwritten by QBE UK Limited Ltd hereinafter referred to as "the Company" who authorise Tilhill Forestry Ltd, hereinafter referred to as "the Coverholder".

The Insured (as specified in the Policy Certificate of Insurance) and the Company agree that:

The Insured shall pay the Premium as agreed.

The Company will subject to the Terms, Conditions and Exclusions of this Policy, provide the insurance in the manner and to the extent provided in this Policy. All information supplied to the Company by the Insured shall be incorporated into and be the basis of this Policy.

Provided that this Policy shall not be operative unless countersigned on the Policy Certificate of Insurance by an authorised representative of the Company.

Signed for and on behalf of the Company.

 

Stuart Martin

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06 September 2021

# General Definitions

The following definitions apply to each Section throughout this Policy except where expressly varied within a specific Section:

<b>Insured</b>	shall mean <ul style="list-style-type: none"><li>a) the named parties shown on the Certificate of Insurance and Schedule</li><li>b) in the event of the death of the Insured the personal representatives of the Insured</li></ul> Provided such person shall as though he were the Insured observe fulfil and be subject to the terms exclusion conditions and endorsements of this Policy so far as they can apply.
<b>Business</b>	shall mean the description shown in the Schedule and no other for the purposes of this Insurance.
<b>Territorial Limits</b>	shall mean Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.
<b>Damage</b>	shall mean loss or destruction of or damage to the Property Insured by an Insured Peril and use by the Insured in connection with the Business.
<b>Declaration</b>	A Declaration shall be deemed to mean the area of land with the Property Insured thereon in one ownership (to include interests derived by lease or similar instrument) and at one location details of which are recorded separately for forestry management purposes (Stand).
<b>Policy Schedule</b>	Attached to and forming part of the Policy.
<b>Coverholder</b>	shall mean Tilhill Forestry Limited
<b>Company</b>	shall mean QBE UK Limited
<b>Stand</b>	A compartment, sub-compartment or component part which has its details recorded separately for forestry management purposes and has its own declared insured value.

## **Data**

Data means data of any sort whatever, including without limitation tangible or intangible data, and any programs or software, bandwidth, cryptographic keys, databases, documents, domain names or network addresses or anything similar, files, interfaces, metadata, platforms, processing capability, storage media, transaction gateways, user credentials, websites, or any information whatever.

## **Denial of service attack**

Denial of service attack means any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability or performance of networks, network services, network connectivity or **computer systems**. Denial of service attacks include, but are not limited to, the generation of excess traffic into network addresses, the exploitation of system or network weaknesses, the generation of excess or non-genuine traffic between and amongst networks and the procurement of such actions or instructions by other **computer systems**.

## **Electronic data**

Electronic data means facts, concepts and information converted to a form usable for communication, display, distribution, interpretation or processing by electronic and electromechanical processing or electronically controlled equipment, including programmes, software and other coded instructions for such equipment.

## **Hacking**

Hacking means unauthorised access to any **computer system**, whether the property of the **insured** or not.

## **Virus or similar mechanism**

Virus or similar mechanism means program code, programming instruction or any set of instructions constructed with the purpose and ability, or purposely used, to damage, interfere with, adversely affect, infiltrate or monitor computer programs, **computer systems**, **data** or operations, whether involving self-replication or not. Virus or similar mechanism includes but is not limited to, trojan horses worms and logic bombs and the exploitation of bugs or vulnerabilities in a computer program to damage, interfere with, adversely affect, infiltrate or monitor as above.

# Sections 1 and 2 Material Damage

In the event of any of the Property Insured described in the Schedule sustaining **Damage** by an Insured Peril the **Company** will pay to the **Insured** the value of the Property Insured calculated in accordance with valuation tables agreed by and lodged with the **Company** provided that the liability of the **Company** in respect of one loss or in the aggregate during any one period of insurance shall in no case exceed the sum insured in respect of each **Declaration** expressed in the **Policy Schedule**.

## Definitions (applicable to Sections 1 & 2)

### Windthrow

Shall mean the action of trees being damaged (excluding growing timber of 55 years of age or more), by being blown over or snapped, such that there is a loss of value to that part of the **Declaration (Stand)** in which they are located. Actions to cause windthrow are wind, rain, hail, ice, and snow.

### Additional Property Insured

1. Forest roads, footpaths and bridges, walls, gates, fences, dykes, highseats, picnic tables, signs, firefighting equipment and similar property.
2. Previously insured growing timber, lying on site after being cut and before being extracted from the insured area.

## Section 1

1. **Fire**
2. **Lightning**
3. **Explosion** but excluding
  - a) **Damage** occasioned by the bursting of a boiler economiser or other vessel machine or apparatus in which internal pressure is due to steam only and belonging to or under the control of the **Insured**.
  - b) **Damage** to or of vessels machinery or apparatus or their contents resulting from the explosion thereof.
4. **Aircraft** and other aerial devices or articles dropped therefrom.
5. **Earthquake**
6. **Landslip** not occasioned by or happening through
  - a) coastal or river erosion
  - b) the settlement or movement of reclaimed or in-filled ground
  - c) any process of erection, demolition, alteration, structural repair, renovation, vibration, removal or weakening of support
  - d) defective workmanship or materials or design
  - e) any cause which commenced prior to this Insured Peril being operative

## Section 2

### 1. Windthrow

Section 2 cover is only available when acquired in addition to Section 1, unless otherwise agreed by the **Company**.

## Limits of Indemnity (applicable to Sections 1 & 2)

As detailed on the Schedule prepared by the Insured but not exceeding:

- a) £3,000,000 any one **Declaration** in respect of **Damage** by an Insured Peril unless specifically agreed by the **Company** or such additional amounts as herein provided or subsequently endorsed hereon
- b) £25,000 in respect of Felled Timber any one claim any one **Declaration**
- c) £50,000 or 5% of the declared property value whichever is the greater subject to a maximum any one claim of £250,000 in respect of Additional Property as defined
- d) £30,000 any one **Declaration** in respect of Damage by Landslip

## Property Insured (applicable to Sections 1 & 2)

As stated in the **Policy Schedule** consisting of Growing and/or Felled Timber and/or Additional Property as defined belonging to the **Insured** or for which they are responsible

## Extensions (applicable to Sections 1 & 2)

### Management Felling

The **Company** will in addition pay 25% of original Storm loss amount, capped at £50,000, for Property Insured that is undamaged but has to be essentially felled for continued good management purposes.

### Fire Fighting Costs

The **Company** will in addition pay all reasonable costs and expenses incurred by or on behalf of the **Insured** in fighting fires on or around the Property Insured including those costs and expenses incurred in preventative measures taken to avoid fire spreading onto the Property Insured from adjoining properties. The use of helicopters is subject to notification to the Fire Brigade and to them assuming control of their use. Limit £150,000 per **Declaration**.

### Aerial Photography

The **Company** will in addition pay the costs of aerial photography where agreed desirable subject to a limit per claim per location of £2,500.

### Debris Removal

The **Company** will in addition pay costs and expenses necessarily incurred by the **Insured** with the consent of the **Company**:

- a) in removing and disposing of debris.
- b) for such additional work as may be necessary to allow continued good management as a result of in connection with **damage** by the Insured Peril.

The **Company** will not pay for any costs or expenses:

- i) incurred in removing debris except from the site of such property having sustained **Damage**.
- ii) arising from pollution as defined therein.

Subject to a limit per claim of £50,000

## Special Clauses (applicable to Sections 1 & 2)

### Additions

Insurance, as herein provided, is automatically effective from the time the **Coverholder** assumes cover on new Property Insured as herein described whilst within the **Territorial Limits** provided that::

- a) this cover shall not exceed £3,000,000 on any one **Declaration** unless specifically agreed
- b) the **Insured** undertake to give particulars of such additions as soon as practicable but not exceeding six months after such cover has been accepted and to effect specific insurance thereon retrospective to the date of commencement of the Company's liability.

### Errors and Omissions

The insurance by this **Policy** extends to include **Damage** for which the **Insured** is responsible but either the **Insured** or their Forestry Manager has omitted (either in part or in whole) to insure due to an error or omission for an amount not exceeding £250,000. This clause does not include under insurance through inflation or wrong values being applied to the Property Insured. Provided that as soon as the error or omission has been discovered the **Company** is notified immediately and the **Insured** pays any additional premium which the **Company** may require.

## Exclusions (applicable to Sections 1 & 2)

### Pollution

**Damage** caused by Pollution or Contamination, but this shall not exclude **Damage** to the Property Insured, not otherwise excluded, caused by

- a) pollution or contamination which itself results from an insured Peril
- b) an Insured Peril which itself results from pollution or contamination

### Electronic risks

**damage**, or loss or interruption or interference caused by or contributed to by, directly or indirectly, distortion, erasure, corruption, or alteration of **electronic data** from any cause whatsoever (including, but not limited to, **virus or similar mechanism, hacking or denial of service attack**) or loss of use, reduced 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.

#### **War and terrorism** (applicable to Sections 1, 2 & 3)

- a) **damage**, or loss or interruption or interference caused by or contributed to, by or in connection with, in whatever form, directly or indirectly, any act of war or act of **terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the loss nor will the **Company** have any liability for loss, damage, costs and expenses directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action controlling, preventing, suppressing, retaliating against or responding to any act of war or act of **terrorism**.
- b) In any action, suit or other proceedings where the **Company** alleges that by reason of this exclusion any loss, destruction, damage, cost, expense, consequential loss or injury is not covered by this **policy**, the burden of proving that such loss is covered shall be upon the **insured**.

#### **Act of terrorism definition**

For all territories other than England, Wales and Scotland

Act of **terrorism** means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group (s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- a) endangers life other than that of the person committing the action; or
- b) involves violence against one or more persons; or
- c) involves damage to property; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

#### **For England, Wales and Scotland**

Act of **terrorism** means acts of persons acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of Her Majesty's government in the United Kingdom or any other government de jure or de facto.

#### **Windthrow**

**Damage** to any **Declaration** where **Damage** is to growing timber in excess of 55 years of age

#### **Change in Water Table**

**Damage** solely attributable to a change in the level of the Water Table.

## Limited Cyber Risk Exclusion

1. Except as stated in paragraph 3, this **policy** excludes any amount for which the **Company** would otherwise be liable directly or indirectly caused by, resulting from, arising out of, in connection with, attributable to, or occurring concurrently or in any sequence with:
  - 1.1. **cyber loss** unless subject to the provisions of paragraph 2.
  - 1.2. loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration, or reproduction of any **data**, including any amount pertaining to the value of such **data** unless subject to paragraph 3.
  - 1.3. Paragraph 1 shall not apply to any physical loss or physical damage to **property** insured and resulting business interruption under this **policy** caused by any fire or explosion directly and solely occasioned by a **cyber event**.
2. Subject to all the terms, conditions, limitations and exclusions of this **policy** or any endorsement thereto, should **data processing media** owned or operated by the **insured** suffer physical loss or physical damage insured by this **policy**, then this **policy** will cover the cost to repair or replace the **data processing media** itself 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 the **electronic data**. If such media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank **data processing media**. However, this **policy** excludes any amount pertaining to the value of **electronic data**, to the **insured** or any other party, even if such **electronic data** cannot be recreated, gathered or assembled.
3. The operation of paragraph 2 shall not increase the **policy [limit of liability]** which shall not exceed the amount stated in the cover summary document.

## Definitions

4. Definitions shall have the meaning ascribed to them in the **policy**, save as expressly stated below:
  - 4.1. **computer system** means any computer, hardware, information technology, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **insured** or any other party.
  - 4.2. **cyber act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax of such acts, involving access to, processing of, use of or operation of any **computer system**.
  - 4.3. **cyber event** means any programming or operator error whether by the insured or any other person or persons or any unintentional or unplanned whole or partial outage of the **insured's computer system** not directly caused by physical loss or damage; affecting access to, processing of, use of or operation of any **computer system**.

For the purposes of this endorsement, where a **cyber event** is caused by, contributed to by, resulting from, arising out of or in connection with a **cyber act** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **cyber act**, the **cyber event** will be considered to be a **cyber act**.

- 4.4. **cyber loss** means:
  - 4.4.1. an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax of such acts, involving access to, processing of, use of or operation of any **computer system**.



- 4.4.2. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **computer system** or any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system**.
- 4.5. **data** means facts, concepts, code and any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **computer system**.
- 4.6. **data processing media** means computer or other equipment or component or system item, insured by the **policy**, which processes and stores **electronic data**.
- 4.7. **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 programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment

## Special Conditions (applicable to Sections 1 & 2)

### Subrogation

Any claimant under this insurance shall at the request of and at the expense of the **Company** do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **Company** for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the **Company** shall be or would become entitled or subrogated upon paying for or making good any **Damage** under this Insurance whether such acts and things shall be or become necessary or required before or after their indemnification by the **Company**.

### Subrogation Waiver

In the event of a claim arising under this **Policy**, the **Company** agrees to waive any rights, remedies or relief, to which they might become subrogated against any **Company** standing in the relation of Parent to Subsidiary to Parent to the **Insured** or any Company who is a Subsidiary of a Parent Company of which the **Insured** are themselves a Subsidiary (in each case within the meaning of Section 154 of the Companies Act 1984).

### Arbitration

If any difference shall arise as to the amount to be paid under this insurance (liability being otherwise admitted) such differences shall be referred to an Arbitrator to be appointed by the Parties in accordance with the Statutory Provisions in that behalf for the time being in force. Where any difference is by this condition to be referred to arbitration the making of an award shall be a condition precedent to any right or action against the **Company**.

### Salvage

Salvage shall remain the property of the **Company**.

### Portfolio Excess Wording

Applicable only to owners with more than one property who have opted for the Portfolio Excess option in return for an additional premium charge. Where the portfolio excess applies as stated in the Certificate of Insurance the **Company** shall not be liable for:

- |           |   |
|-----------|---|
| Section 1 | the first £2,500 each and every claim in respect of damage from a single event to multiple properties under the same ownership. |
| Section 2 | the first £10,000 each and every claim in respect of damage from a single event to multiple properties under the same ownership |

### Claims

- a) On the happening of any **Damage** the **Insured** shall give notice, thereof in writing to the **Company** as soon as practicable
- b) The **Insured** shall within 30 days after becoming aware of any **Damage** or such further time as the **Company** may in writing allow at the expenses of the **Insured** deliver to the **Company** a claim in writing containing as particular an account as may be reasonably practicable of the several article or portions of Property Damaged and of the amount of **Damage** together with details of any other insurances on any property hereby insured. The **Insured** shall also give to the **Company** such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith. No claim under this insurance shall be payable unless the terms of this condition have been complied with.
- c) The eligibility of any discrete area of damage from a single event will be determined by the appointed qualified loss adjuster.
- d) If a claim has been submitted or there has been any incident likely to give rise to a claim during the current period of insurance, no premium refund will be given.

### Contribution

If at the time of **Damage** resulting in a loss under these Sections there be any other insurances effected by or on behalf of the **insured** covering such loss or any part of it the liability of the **Company** shall be limited to its rateable proportion of such loss. If any other insurance shall be subject to average (under insurance) this **policy**, if not already subject to any such condition of average, shall be subject to average in like manner.

### Declaration of Value

The insured undertake to declare to the **Company** at the inception of each Period of Insurance the Sum Insured on the Property Insured calculated in accordance with the agreed valuation tables, or as manually valued.

The **Insured** are authorised to make provisional declarations pending confirmation of the Sum Insured calculated in accordance with the agreed tables.

### Precautions

The **Insured** shall take all reasonable precautions for the safety of the property insured.

# Section 3 Property Owners' Liability

The **Company** will subject to the terms exclusion conditions and Limit of Indemnity of this Section and the General Exclusions Conditions and endorsements of this **Policy** indemnify the **Insured** against:

- a) All sums which the **Insured** shall become legally liable to pay as damages and in addition claimants costs and expenses in respect of
  - i) accidental Bodily Injury to any person
  - ii) accidental loss of or damage to Property
  - iii) accidental obstruction loss of amenities trespass nuisance or interference with any right of way light air or water

happening anywhere within the Territorial Limits during the Period of Insurance in connection with the **Business**

- b) All costs and expenses incurred with the written consent of the **Company** in respect of any claim against the **Insured**, which may be the subject of indemnity under this Section
- c) The payment of solicitors' fees incurred with the written consent of the **Company** for the representation of the **Insured** at
  - i) any Coroner's Inquest or Fatal Accident Inquiry in respect of death
  - ii) proceedings in any court arising out of any alleged breach of statutory duty resulting in Bodily Injury or loss of or damage to Property

which may be the subject of indemnity under this Section

## Limits of Indemnity (applicable to Section 3)

The maximum limit of liability for any one claim is £5,000,000.

## Definitions (applicable to Section 3)

### **Bodily Injury**

Bodily Injury shall mean death, injury, illness or disease

### **Property**

For the purpose of this Section Property shall mean property which is material and tangible

### **Goods**

Goods shall mean any felled timber and any other thing sold or supplied by the Insured in the course of the Business

### **Pollution**

Pollution shall mean:

- a) pollution or contamination by naturally occurring or man-made substances forces organisms or any combination of them whether permanent or transitory and however occurring, and,
- b) all loss damage or Bodily Injury directly or indirectly caused by such pollution or contamination

**Employee**

Employee shall mean:

- a) any person under a contract of service or apprenticeship with the Insured
- b) any of the following:
  - i) any labour master or labour only subcontractor or person supplied by any of them
  - ii) any self-employed person
  - iii) any person under a contract of service or apprenticeship with another employer who is hired to or borrowed by the Insured
  - iii) any person participating in any Government or otherwise authorised work experience training study exchange or similar scheme

while engaged in working for the Insured in connection with the Business.

## Extensions (applicable to Section 3)

1. Notwithstanding Exclusion 1 c) of this Section the **Company** will be subject to the terms, exclusions, conditions and endorsements of this Section indemnify the **Insured** against liability in respect of **Bodily Injury** or loss of or damage to **Property** arising in respect of any of the Insured Property disposed of by the **insured** and occurring anywhere in the world.

Provided that the indemnity shall not apply in respect of loss of or damage to or any costs or expenses incurred in repairing, replacing or making refund in respect of such Insured **Property**.

2. If the **Insured** name in the Schedule comprises more than one party the **Company** will subject to the terms, exclusions, conditions and endorsements of this Section treat party as if a separate Section had been issued to each of them provided that nothing in this Extension shall increase the liability of the Company to pay any amount in respect of any one claim or during any one Period of insurance in excess of the amount stated in the Limit of Indemnity applicable to this Section.
3. The **Company** will subject to the terms, exclusions, conditions and endorsements of this Section indemnify the **Insured** against liability arising out of the granting of licences in connection with the **Insured Declarations**.

Provided that the indemnity shall not apply in respect of **Bodily Injury** or loss of or damage to **Property** arising out of direct shooting activities and/or any shooting syndicate or party operated by or participated in by the individual owner.

4. Notwithstanding Exclusion 5 of this Section but subject otherwise to the terms, exclusions, conditions and endorsements of this Section the **Company** will indemnify the **Insured** against liability in respect of **Bodily Injury** or loss of or damage to **Property** caused solely by **Pollution**

- a) which results from a sudden identifiable and unexpected incident and
- b) which takes place in its entirety at a specific and identified time and place during the Period of Insurance

Provided that

- i) all **Pollution** which arises out of any one incident shall be deemed to have happened at the time such incident takes place
- ii) the **Company** shall not indemnify the **Insured** under this Extension against any liability in respect of **Pollution** happening anywhere in the United States of America or Canada
- iii) nothing in this Extension shall increase the liability of the **Company** to pay an amount in excess of the Limit of Indemnity applicable to this Section.

5. The **Company** will subject to the terms, exclusions, conditions and endorsements of this Section indemnify the **Insured** against liability arising out of bare land sites or unplanted areas in or around woodlands declared hereunder.

## Exclusions (applicable to Section 3)

1. The **Company** shall not indemnify the **Insured** under this Section of this **Policy** against liability
  - a) for loss of or damage to **Property** belonging to the **Insured** or in the custody or control of the **Insured** or any **Employee** of the **Insured** other than Employees or visitors personal effects (including vehicles)
  - b) arising from the ownership possession or use under the control of the **Insured** or any **Employee** of the **Insured** of
    - i) any mechanically propelled vehicle but this exclusion shall not apply in respect of **Bodily Injury** or loss of or damage to **Property** arising in circumstances where compulsory insurance or security in respect of any such vehicle is not required by any road traffic legislation and the **Insured** is not entitled to indemnity under any other insurance
    - ii) any aircraft or other aerial devices hovercraft or watercraft (other than hand propelled watercraft or sailing craft not exceeding six metres in length)
  - c) caused by Goods after they have ceased to be in the custody or control of the **Insured** other than as insured under "Extensions to Section 3" No.1.
2. The **Company** shall not indemnify the **Insured** against liability which is assumed by the **Insured** by agreement unless liability would have attached in the absence of such agreement.
3. The **Company** shall not indemnify the **Insured** under this Section against liability for
  - a) punitive or exemplary damages
  - b) multiplied damages but this exclusion shall not apply in respect of the original award of damages made prior to the application of this multiplier
4. The **Company** shall not indemnify the **Insured** under this Section against liability
  - a) in respect of **Bodily Injury** sustained by any **Employee** which arises out of and in the course of his employment or engagement by the **Insured**
  - b) in respect of loss of or damage to or to any costs or expenses incurred in repairing, replacing, recalling or making any refund in respect of any Goods
5. The **Company** shall not indemnify the **Insured** under this Section against any liability directly or indirectly caused by or contributed to by or arising from **Pollution**.
6. The **Company** shall not indemnify the **Insured** for fines, liquidated damages or under any penalty clause.
7. The **Company** shall not indemnify the **Insured** for any losses occurring in the Republic of Ireland.

## Electronic data

liability arising from:

- a) loss, alteration or impairment of or damage to information and/or data in electronic form;
  - b) malicious acts of any person carried out by electronic means;
  - c) defamation or harassment carried out by electronic means;
- but this exclusion shall not apply in respect of:
- a) liability for any ensuing accidental **bodily injury** (save for mental injury or mental disease) or accidental **damage** which is not otherwise excluded; or
  - b) liability which arises under the Data Protection Act 1998, any subsequent amending legislation or the General Data Protection Regulation ('GDPR').

## Special Conditions (applicable to Section 3)

Property Owners Liability (POL) cover is compulsory and provided as part of the Growing Timber Policy and cannot be provided as sole cover where the material damage cover is arranged elsewhere.

### Claims

The insured shall:

- a) give notice, as soon as practicable, to the **Company** of anything which may give rise to a claim being made against the **Insured** and for which there may be liability under this Section
- b) advise the **Company** in writing immediately the **Insured** has knowledge of any impending prosecution inquest or fatal accident inquiry in connection therewith.

### Rights of the Company

The **Company** shall be entitled at its discretion to take over and conduct in the name of the **Insured** the defence or settlement of any claim and to prosecute at its own expense and for its own benefit any claim for indemnity or damages against any other persons and the **Insured** shall give all information and assistance required. No admission of liability or offer promise or other payment shall be made without the written consent of the **Company**.

### Payment Limit

The **Company** may at any time at its sole discretion pay to the **Insured** the maximum sum payable under this Section or any lesser sum for which any claim or claims can be settled and the **Company** shall not be under any further liability except in respect of costs and expenses of litigation incurred prior to such payment. Provided that in the event of a claim or series of claims resulting in a liability of the **Insured** to pay a sum in excess of the Limit of Indemnity the **Company's** liability for such costs and expenses shall not exceed an amount being in the same proportion as the **Company's** payment to the Insured bears to the total payment made by or on behalf of the **Insured** in settlement of the claim or claims.

### **Reasonable Care**

The **Insured** shall take all reasonable care to prevent accidents and on any defect being brought to the notice of the **Insured** by a complaint from tenants or otherwise shall forthwith take such temporary and additional precautions as the circumstances may require to prevent accidents and shall observe and comply with all bye-laws and directions made by statutory or local authority and shall see that the Property specified in the Schedule and plant and everything used in connection with the **Business** are kept in good repair.

Where the property insured contains, or is adjacent to, areas of frequent public access (e.g. roadsides, walkways, footpaths, rights of way and bridal paths), the **insured** shall take all reasonable precautions for the safety of the public and third parties.

### **Contribution**

If at the time of any accident there is or but for the existence of this Section there would be any other policy of indemnity or insurance in favour or effected by or on behalf of the **Insured** applicable to such claim the **Company** shall not be liable under this Section to indemnify the **Insured** in respect of such claims except as beyond the amount which would have been payable under such indemnity or insurance had this Section not been effected.

# General Exclusions (applicable to all Sections)

## This insurance does not cover:

1.
  - a) Any consequential loss or expense whatsoever .
  - b) any loss or damage or legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from
    - i) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.
    - ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
2. Loss or damage occasioned by pressure waves caused by aircraft and other Aerial devices travelling at sonic or supersonic speed.

## 3 Sanction Limitation and Exclusion Clause

The **Company** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **Company** or any member of the **Company's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

## 4 Communicable Disease Exclusion Clause

Regardless of any provision to the contrary, the **policy** excludes any amount for which the **Company** would otherwise be liable directly or indirectly caused by, resulting from, arising out of, in connection with, attributable to, or occurring concurrently or in any sequence with:

- a) a **communicable disease**;
- b) the fear or threat (whether actual or perceived) of a **communicable disease**;
- c) the costs to clean-up, detoxify, remove, monitor or test for the actual, alleged, perceived or suspected presence of a **communicable disease**; or
- d) the **insured's** actual or alleged non-compliance with any advice, guidance, regulation, order, decree or law issued by a **public authority** in response to a **communicable disease**.

This exclusion shall not apply in respect of and to the extent of the indemnity provided by the 'Notifiable disease, murder or suicide, food or drink poisoning' extension of the **policy**.

For the purpose of this exclusion, the following definitions apply:

### Communicable disease

Communicable disease means any disease which can be transmitted by means of any substance or agent where:

- a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation or mutation thereof, whether deemed living or not;
- b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and



- c) the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured;

regardless of the frequency or severity of an outbreak, or the size of the geographic area in which an outbreak is observed.

**Public authority**

Public Authority means any national, regional, local or municipal government or any national or international organisation with the responsibility to promote and protect public health.

# General Conditions (applicable to all Sections)

## Insurance Act 'Contracting In' Endorsement

The clauses below are added to and form part of the General terms and conditions of this **policy**.

**1. Basis of contract**

Any reference to 'basis of the contract' in this **policy** or in the proposal form (if any) is of no effect.

**2. Duty of fair presentation**

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.

**3. Remedies for breach of the duty of fair presentation – proposing for this insurance**

If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation then the **Company's** remedies shall be as follows:

- (a) if such breach is deliberate or reckless, the **Company** may:
- (i) treat this **policy** as having been terminated from its inception; and
  - (ii) retain the premium;
- (b) if such breach is not deliberate or reckless and the **insurer** would not have entered into this **policy** but for the breach, the **Company** may by notice to the **insured** treat this **policy** as having been terminated from its inception in which case the **Company** shall return the premium;
- and
- (c) in all other cases if, but for the said breach, the **Company** would have entered into this **policy** but:
- (i) on different terms (other than terms relating to the premium), the **Company** may require that this **policy** is treated as if it had been entered into on those different terms from the outset; or
  - (ii) would have charged a higher premium, the **Company** may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, the **Company** shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ .

#### 4. Material changes during the policy period

- 4.1 The **insured** must notify the **Company** 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.
- 4.2 The **Company** 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 **Company** has provided valid confirmation of cover, whether by an express term of this **policy**, endorsement, written confirmation or otherwise.

#### 5. Remedies for breach of the duty of fair presentation – variation

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 **Company's** remedies shall be as follows:

- (a) if such breach is deliberate or reckless, the **Company** may:
- (i) by notice to the **insured** treat this **policy** as having been terminated from the time when the variation was concluded; and
  - (ii) retain the premium;
- (b) if such breach is not deliberate or reckless, and the **Company** would not have entered into the variation but for the breach, the **Company** 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 **Company** would have entered into the variation but:
- (i) on different terms (other than terms relating to the premium), the **Company** 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 **Company** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **Company** 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 **Company** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **Company** shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/reduced total premium}) \times 100$ .

#### 6. Fraudulent claims

- 6.1 If the **insured** or anyone acting on its behalf makes a fraudulent claim under this **policy**, the **Company**:
- (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 **Company** is not liable to that **insured** in respect of a relevant event occurring after that time and may retain any premium.
- 6.2 These remedies shall not be available against any other entity insured under this **policy** that was not implicated in the fraud.

## 7. Incorporation

7.1 The provisions of this endorsement replace the following provisions in the **policy**:

- (a) Material inaccuracy clause;
- (b) Material alteration clause; and
- (c) Fraud clause (where applicable)

### Identification

The **Schedule** and the Sections of the Policy shall be deemed to be incorporated in and form part of this Policy and the expressions "this Policy" wherever used in this contract shall be read as including this said **Schedule** and Sections.

### Policy Voidable

The cover by this Policy shall be voidable in the event of misrepresentation, misdescription or non-disclosure in any material particular but only in respect of that Declaration to which such misrepresentations, misdescription or non-disclosure applies.

### Fraud

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the **Insured** or by anyone acting on behalf of the **Insured** to obtain any benefit under this Policy or if any **Damage** be occasioned by the wilful act or with the connivance of the **Insured** all benefit under this Policy shall be forfeited but only in respect of the individual **Insured** concerned.

### Misstatement

It is understood and agreed that any act omission statement or misstatement on the part of any individual **Insured** which may vitiate any claims or render this policy void shall have such effect only as to the rights and interests of that particular **Insured** and shall not prejudice the rights and interests of any other **Insured** under the policy.

### Inspection & Audit

The **Company** shall be permitted but not obliged to inspect the **Insured's** property at any time, subject to reasonable written notice being given to the **Insured**. Neither the **Company's** right to make inspections nor the making thereof nor any report thereon shall constitute any undertaking, on behalf of, or for the benefit of the **Insured** or others, to determine or warrant that such property is safe.

### Interpretation

In the event of any inconsistency of any word or expression to which a specific meaning has attached and the Schedule Definitions, Sections, Extensions, Exclusions, Special Conditions and Endorsements of this Policy shall be read together as one contract and shall prevail wherever they may appear.

### Self-Employed Persons

It is noted and agreed certain categories of self-employed persons are accepted by the **Company** as being "Employees of the Insured" and the **Company** agrees not to proceed with rights of subrogation against such persons without prior consent of the **Insured**.

### Other Interests

Various parties may from time to time have an interest in this insurance and the **Insured** undertake to declare the names of such parties to the **Company** prior to settlement of any claim hereunder.

### **Misdeclaration**

It is agreed that the **Company** will not invalidate claims where a misdeclaration has been made provided immediately an error is known to the **Coverholder** the Property Insured is correctly declared and the premium adjusted accordingly.

### **Material Alteration**

The **Insured** shall give the **Company** immediate notice in writing of any alteration which materially affects the Property Insured.

### **Choice of Law**

This Policy of insurance shall be governed by and construed in accordance with the laws of England and Wales for Declarations in England and Wales, and Scotland for Declarations in Scotland and the courts of such countries alone shall have jurisdiction in respect of disputes hereunder.

### **Contracts (Rights of Third Parties) Act 1999**

A person or company who is not a party to this Policy has no rights under the Contracts (Rights of Third Parties) Act 1999 in respect of this Policy. This condition does not affect any right or remedy which exists or is available notwithstanding such Act.

### **Late payment of claims**

The **Company** shall, pursuant to section 13A of the Insurance Act 2015, pay any sum due in respect of a valid claim within a reasonable time (which includes a reasonable time to investigate and assess the claim).

### **Data Privacy Notice**

Any personal data provided to the insurer will be processed in compliance with all applicable laws and regulations and in accordance with the privacy notice which can be found at <https://qbееurope.com/privacy-policy/>. Alternatively the insured may contact the **Company's** Data Protection Officer to request a copy of the full privacy notice by email: dpo@uk.qbe.com or by writing to the: Data Protection Officer, QBE European Operations, Plantation Place, 30 Fenchurch Street, London EC3M 3BD.

### **Cancellation**

The **Company** may at any time during the period of insurance serve written notice on the **insured** at the address shown on the Certificate of insurance cancelling the policy with effect from the (30<sup>th</sup>) day after service of the notice.

Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. Upon demand and subject to no claims having been notified under this policy, the **Company** will return to the **insured** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the policy.

Without prejudice to any forms of service, the notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post, properly addressed.

# Complaints

## Complaints to QBE

The **insured** can complain about this policy by contacting:

Customer Relations, QBE European Operations, 30 Fenchurch Street, London, EC3M 3BD

Email: [CustomerRelations@uk.qbe.com](mailto:CustomerRelations@uk.qbe.com)

Telephone: 020 7105 5988

## The UK Financial Ombudsman Service (UK FOS)

If the **insured** feels that its complaint has not been satisfactorily resolved, the **insured** may be eligible to contact the UK FOS to review the complaint. Information about the eligibility criteria is available on the UK FOS website: <http://www.financial-ombudsman.org.uk/consumer/how-to-complain>

The **insured** may be entitled to compensation from the FSCS if the Company is unable to meet its obligations under the policy. Further information is available from [www.fscs.org.uk](http://www.fscs.org.uk) or the insured can write to the Financial Services Compensation Scheme, PO Box 300, Mitcheldean, GL17 1DY.

# Excesses

The **Company** shall not be liable, in respect of:-

- |                  |   |
|------------------|---|
| <b>Section 1</b> | the first £2,500 each and every claim. Portfolio Excess Wording will apply if stated in the Certificate of Insurance.<br>(Landslip: the first £500 each and every loss of each and every Declaration) |
| <b>Section 2</b> | the first £10,000 each and every claim. Portfolio Excess Wording will apply if stated in the Certificate of Insurance.  |
| <b>Section 3</b> | the first £500 of each and every loss for third party property damage.  |