



# INSURANS ISLAM TAIB GENERAL TAKAFUL

## MACHINERY ALL RISK TAKAFUL SCHEME

## MACHINERY ALL RISK CERTIFICATE WORDING

**WHEREAS** the Participant by a Proposal Form and Declaration which shall be the basis of this Certificate and is deemed to be incorporated herein has applied to Insurans Islam TAIB General Takaful Sendirian Berhad (hereinafter called "IITGT") for the Takaful provided by this Certificate and has paid or agreed to pay the contribution for such Takaful.

IITGT agrees subject to the terms exceptions limits and conditions specified herein or endorsed hereon that if during the period of Takaful, the Participant's property ("Covered Property") described in the Schedule shall suffer any unforeseen and sudden physical loss or damage from any cause other than those specifically excluded, and in a manner necessitating repair or replacement, IITGT will by payment or at its option by reinstatement, replacement or repair, indemnify the Participant against such loss damage or destruction.

### EXCLUSION

This Certificate does not cover any loss of or damage:-

1. A. directly or indirectly cause by or contributed to by or arising from:

- a) Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Solely for the purpose of this exception, combustion shall include any self-sustaining process of nuclear fission;
- b) Nuclear weapons material;
- c) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) civil war;
- d) Mutiny, civil commotion, assuming the proportion of or amounting to a popular rising military, rising insurrection, rebellion, revolution, military or usurped power;
- e) The act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of the Government de jure or de facto or to the influencing of it by terrorism or violence;
- f)
  - i) Permanent or temporary dispossession resulting from confiscation, nationalization, commandeering or requisition by any lawfully constituted authority;
  - ii) Permanent or temporary dispossession of any building resulting from the unlawful occupation of such building by any person provided that IITGT is not relieved of any liability to the Participant in respect of physical damage to the machinery occurring before dispossession or during temporary dispossession which is otherwise covered by this Certificate.

In any action suit or other proceedings where IITGT alleges that by reason of the provisions of Exceptions (c) (d) and (e) above by any loss damage or destruction is not covered by this Takaful, the burden of proving that such loss damage or destruction is covered shall be upon the Participant.

B. Caused by or contributed to, by or arising from:-

- a) The act of any person taking part together with others in any disturbance of the public peace (whether in connection with a strike or lockout or not) not being an occurrence mentioned (c) (d) and (e) above and the action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimising the consequences of any disturbance.

- b) the willful act of any striker or lock-out worker done in furtherance of a strike or in resistance to a lock-out and the action of any lawfully constituted authority in preventing or attempting to prevent any such act.
2. Arising out of the ownership or possession of or use under the control of the Participant or any person acting on behalf of the Participant of:-
  - a) Any vessel craft or thing made to or intended to fly, float or travel on or through water or air and/or property carried by stored in or mounted upon such vessel craft or thing.
  - b) Any power driven vehicle which is licensed for road use other than any mobile crane, mechanical navy shovel, grab, excavator site clearing and leveling plant or any self-propelled vehicle with plant permanently attached, which is not specifically covered/insured under any other Certificate of Takaful/Insurance.
3. Directly or indirectly occasioned by happening through or in consequence of:-
  - a) Typhoon, hurricane, cyclone, volcanic eruption, earthquake, subterranean fire or other convulsion of nature or atmospheric conditions.
  - b) Inevitable wear and tear erosion corrosion or other deterioration caused by or naturally resulting from ordinary work use or exposure or depreciation.
  - c) The wilful act or neglect of the Participant.
  - d) Mechanical or electrical breakdown failure or overheating or breakages or gradually developing flaws or fractures which do not necessitate immediate stoppage.
  - e) Testing or experiments in which normal operating stresses are willingly exceeded.
4. Any loss or damage to the Participant's property whilst in transit including loading and unloading to and from any conveyance.
5. The amount stated in the Schedule as the Deductible to be borne by the Participant in respect of each and every occurrence for which the Participant is indemnified by this Certificate.
6. The cost of maintenance or rectification of faulty workmanship occurring during the execution of repairs.
7. Loss or damage arising during any lifting or lowering operation in which a load is shared between two (2) or more machines unless the prior consent of IITGT has been obtained.
8. Liquidated damages, penalties for delay or detention or in connection with guarantees of performance or efficiency or loss of use or any form of consequential loss not specifically covered by this Certificate.
9. Installation or removal of damage to any item of the Covered Property arising during its initial installation, erection or its final removal or its final testing or commissioning.
10. Overloading, abnormal conditions or damage to any item of Covered Property caused by or arising from the imposition of abnormal conditions, deliberate overloading or overload testing other than overload testing in accordance with the Code of Practice for the Safe Use of Cranes BS 7121 including any subsequent amendments or revisions or overload testing in accordance with the Code of Practice for the Safe Use of Cranes BS 7121 including any subsequent amendments or revisions caused by or arising from a defect in the item.

11. Scratching of painted or polished surfaces unless accompanied by other indemnifiable damage to the item.
12. Loss or damage for which manufacturers or suppliers are liable by the law or under contractual obligation.
13. Faults or defects known to you or any of your responsible employees at the time the contract was arranged and not disclosed to us;
14. Any process of heat treatment, welding, grinding, cutting, drilling, shaping or the application of tools to the machinery other than for the purpose of lifting or moving it;
15. Theft or conversion of any item of the machinery by the hirer of such machinery or his employees or agents;
16. Repair or replacement necessitated by wear and tear, corrosion, erosion, deposits of scale, sludge or other sediment or any other direct consequence of progressive or continuous influences of working or atmospheric or chemical action, rust or scratching of painted or polished surfaces;
17. Consequential loss, liquidated damages or penalties for delay or detention or in connection with guarantees of performance or efficiency; and
18. Any unlawful act(s) and other causes prohibited by the law and/or Syariah.

## **GENERAL CONDITIONS**

### **1. THE CONTRACT**

This Certificate and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Certificate or of the Schedule shall bear such specific meaning wherever it may appear. The headings used in this Contract are of ease of reference only and shall not be taken into account in the construction of interpretation of any provision to which they refer.

### **2. CONDITION PRECEDENT TO LIABILITY**

The due observance and fulfillment of the terms, conditions and endorsements of the Certificate insofar as they relate to anything to be done or complied with by the Participant and the truth of the statements and answers in the Proposal and Declaration shall be condition precedent to any liability of IITGT to make any payment under this Certificate.

### **3. NOTICES**

Every notice or communication to be given or made under this Certificate shall be in writing and shall be sent by registered post to or delivery by hand at IITGT.

### **4. SUM COVERED - AVERAGE**

The sum covered for each item described in the Schedule shall at all times be equal to the cost of the replacement of the item by a new item of the same specification and performance when purchased as an individual item including freight charges, erection costs, customs duties and taxes.

If any item shall at all time of any loss or damage be of greater value as calculated above than the sum covered for such item then the Participant shall be considered as being his own Insurer/Takaful Operator for the difference and shall bear a proportionate share of the loss accordingly.

## **5. LIMIT OF INDEMNITY**

All sums which may from time to time be paid under this Certificate during each period of indemnity shall be accounted in diminution of the respective sum covered so that during one period of indemnity, the total sum payable by IITGT shall not exceed the sum set opposite each item of the property or in the whole the total sum covered.

## **6. CLAIMS PROCEDURES AND PROVISIONS**

On the happening of any event giving rise or likely to give rise to a claim under this Certificate coming to his knowledge the Participant shall:-

- a) Give notice thereof to IITGT within fourteen (14) calendar days.
- b) Take precautions to prevent any further loss or damage, IITGT shall not be liable in respect of any further damage arising out of the continued use of damaged machinery until such machinery shall have been repaired to the satisfaction of IITGT.
- c) Take precautions to preserve any things which might prove necessary or useful by way of evidence in connection with any claims and so far as may be reasonably practicable, no alternation or repair shall without the consent of IITGT be made after the event until IITGT shall have had an opportunity of inspection.
- d) When called upon to do so deliver to IITGT or their representative a statement in writing of all particulars and details reasonably practicable of the machinery affected and the value thereof and the damage thereto and furnish all such vouchers proofs explanations and other evidence as may be reasonably required by IITGT together with a statutory declaration if required in verification of the statement.
- e) Take all practical steps to recover any machinery including in the event of property lost stolen or willfully damage.
- f) Inform the police immediately (not more than 24 hours) in the case of loss or damage due to burglary.
- g) At the expense of IITGT do or permit to be done all such acts and things as may be necessary or reasonably required by IITGT for the purpose of enforcing any rights or remedies or obtaining relief or indemnity from other parties to which IITGT shall be or would become entitled or subrogated upon their paying for or making good any loss or damage under this Certificate whether such acts and things shall be or become necessary or required before or after indemnification by IITGT.

## **7. INDEMNIFICATION**

- i. If any claims in any respect fraudulent or if any fraudulent means or devices be used by the Participant or anyone acting on his behalf to obtain any benefit under this Certificate or if any loss or damage be occasioned with the connivance of the Participant all benefits under this Certificate shall be forfeited.
- ii. IITGT may at their own option repair, replace or reinstate any damaged item or part thereof or pay the amount of the damage in money.
- iii. The bases of indemnification are:-
  - a) In the case of repairable damage – the cost of restoration to normal working order comprising the value of replacement parts, labour charges at standard rates of wages, transport costs at ordinary rates (any additional charges resulting from the use of air freight are excluded) and the cost of dismantling and re-erection customs duties and taxes. The value of damaged parts replaced which can be used again in any way whatsoever may be deducted. The liability of IITGT is limited to the reinstatement of the item to its condition immediately prior to the loss or damage. If the value of an item or a part thereof of is increased by the repair, the liability of IITGT shall be reduced by the amount of such increase.
  - b) In the case of total loss – the market value of the item immediately before the loss or damage together with the cost of dismantling the damaged machinery and the cost of delivering and

erecting a replacement item but less the value of any salvage.

An item will be deemed to be a total loss if the costs of repairs are defined in paragraph 6(iii)(a) of this Condition equals or exceeds the market value immediately before the occurrence.

#### **8. RATEABLE PROPORTION**

If at any time of any loss or damage by this Certificate there shall be any other Takaful or insurance covering such damage effected by or on behalf of the Participant, IITGT shall not be liable for more than their rateable proportion of such damage. If such other Takaful or insurance is subject to the machinery being in good working condition/order, to enforce the observance by all persons of all proper safeguards against loss or damage to the machinery and to ensure that statutory and other regulations relating to the operation and inspection of the machinery are obeyed.

#### **9. RIGHTS OF ACCESS AND SECURITY**

IITGT's or its representatives shall have the right at all reasonable times to inspect and examine the machinery. Dismantling and re-assembling in connection with any examination shall be carried out by the Participant on such date or dates as IITGT and the Participant shall mutually agree for the making of such examinations.

#### **10. CHANGE OF RISKS**

The Participant shall notify IITGT of any defects to working conditions which affect the risk of loss or damage and shall cause such additional precautions to be taken as the circumstances require. IITGT shall not be liable for any loss or damage caused by a departure from normal working conditions with the Participant's approval and which creates an aggravated risk unless IITGT shall have given prior consent.

#### **11. AVOIDANCE**

If at any time after commencement of this Takaful:-

- a) The business of the Participant be wound up or carried on by liquidator or receiver or permanently discontinued.
- b) The Participant's interest ceased otherwise than by death, his Certificate shall be avoided unless its continuance be admitted by endorsement signed by or on behalf of IITGT.

#### **12. CANCELLATION**

The Participant or IITGT may cancel this Certificate at any time during the period of Takaful.

- a) Cancellation by Participant:
  - The Participant may cancel this Certificate at any time, by returning the Certificate to IITGT if no claim has occurred or was made during the period of Takaful.
  - After returning the Certificate, the Participant will be entitled to a refund of the balance of the Takaful contribution on a pro-rata basis for the period the Certificate was not in force.
  - IITGT will not return the *Wakalah* fee to the Participant unless the cancellation was made by the Participant due to unforeseen circumstances\* and subject to IITGT's discretion and approval, which shall not be unreasonably withheld. In such event, no cancellation fee will be imposed on the Participant who makes the cancellation.
- b) Cancellation by IITGT:
  - IITGT may also cancel this Certificate by giving the Participant fourteen (14) calendar days' notice by registered letter to the Participant at his last known address.
  - Participant will be entitled to a pro-rata refund of the contribution for the remaining period calculated on a pro-rata basis fourteen (14) calendar days from the date of the notice to the expiry date of the Certificate.
  - IITGT will return the *Wakalah* fee to the Participant on a pro-rata basis for the period the Takaful was not in force.

**\*Note:** "Unforeseen circumstances" means event of death, insanity (as certified by Qualified Medical Practitioner) and bankruptcy declared by the courts of Brunei Darussalam.

### **13. ARBITRATION**

The Participant and IITGT shall make every effort to amicably resolve, by direct informal negotiations, any disagreement or disputes arising or relating to this Certificate. If the Participant and IITGT are unable to amicably resolve any disagreement or dispute within thirty (30) business days from the date when the negotiation failed, either party shall notify in writing for the disagreement or dispute be referred for resolution by arbitration in accordance with the provisions of the Brunei Darussalam Arbitration Order, 2009. The arbitration tribunal shall consist of a single arbitrator, such person to be agreed between the Participant and IITGT, or failing agreement, to be nominated in accordance with the Arbitration Order, 2009. The applicable rules of arbitration shall be the UNCITRAL Rules of Arbitration. The seat and place of arbitration shall be Brunei Darussalam and the language of arbitration shall be English.

All rights and obligations of the Participant and IITGT under this Certificate shall continue in full force and effect pending the final outcome of such arbitration. Any reference to arbitration under this clause shall be a submission to arbitration within the meaning of the Arbitration Order, 2009 for the time being in force in Brunei Darussalam.

### **14. CONTRIBUTION WARRANTY**

It is fundamental and absolute special condition of this contract of Takaful that the Takaful contribution due must be paid and received by IITGT within thirty (30) calendar days from the inception date of the Certificate. If this condition is not complied with, then this contract of Takaful is automatically cancelled and IITGT shall be entitled to the pro rata contribution on the period they have been on risk.

### **15. COMPLIANCE**

The Participant shall at his own expense take all reasonable precautions and comply with IITGT's reasonable recommendations to prevent loss or damage and comply with statutory requirements and manufacturers' recommendations.

### **16. REINSTATEMENT, REPLACEMENT AND REPAIR**

IITGT may reinstate, replace or repair the property or any part thereof, instead of paying the amount of the loss, destruction or damage, and may join with other companies in so doing. If IITGT elects to reinstate or replace, the Participant shall furnish to IITGT when required all information necessary or expedient for the purpose. Upon payment of any claims for loss under this Certificate, IITGT shall be legally entitled at its option to the Property in respect of which the payment is made.

In respect of each item, the amount of the excess shown in the Schedule against that item shall be deducted from the amount of indemnity calculated in accordance with the foregoing bases.

### **17. OPERATION AND MAINTENANCE**

The Participant shall ensure that all machines and equipment are maintained in good working order and that they are not habitually or intentionally overloaded. The Participant shall fully observe the manufacturers' instruction for operation, inspection and overhaul as well as governmental, statutory, municipal and all other binding regulations in force regarding the operation and maintenance of the participant's machines and equipment.

### **18. TABARRU'**

*Tabarru'* is an agreement by a Participant to relinquish as donation, a sum of contribution that he or she agrees to pay into a Takaful fund. Participants give sixty-five per cent (65%) of their contributions as *Tabarru'* with the purpose of providing mutual indemnity to Takaful Participants, where the *Tabarru'* acts as mutual help and joint guarantee should any fellow Participants suffer from a defined loss.

## **19. WAKALAH**

*Wakalah* refers to a contract in which a party as principal (Muwakkil) authorizes another party as his or her agent (Wakil) to perform a particular task, in matters that may be delegated, either voluntary or with imposition of a fee.

The Participant will make contribution to the Takaful fund as *Tabarru'*. Then all the Participants in a group will appoint or authorize IITGT as their agent (Wakil) to manage the Takaful fund for the purpose of executing Takaful activities such as underwriting, risk management and claims management. In this *Wakalah* arrangement, IITGT will charge a fee of thirty-five per cent (35%) from the contribution that has been determined and agreed upon in the proposal form.

*Wakalah* fee will not be returned to the Participant upon cancellation or surrender.

## **20. DISTRIBUTION OF SURPLUS**

The surplus will be determined at the end of financial period and the surplus (if any) from the Takaful fund will be allocated to Participants' Fund and IITGT with the proportion of seventy per cent (70%) to the Participants' Fund and thirty per cent (30%) to IITGT. The surplus in the Participants' Fund will then be declared and distributed to the eligible Participants. Based on *Ju'alah* concept, IITGT is entitled for the surplus distribution from the Takaful fund as fee for the good performance of IITGT in managing the Takaful fund. For the Participants who have incurred claims or received benefit, their portion of surplus will not be distributed back to them and shall be credited back as *Tabarru'* to the Takaful fund. For the Participants who have surrendered their Takaful Certificate before financial year end, they are entitled for the surplus. The surplus will be calculated based on their contribution and participation period in the Takaful fund.

## **21. TREATMENT OF SMALL PAYMENT AMOUNT**

For any amount due and payable to the Participants from refund/surrender/maturity/termination/claim that is B\$5.00 and below, IITGT will donate to charity which will be utilized as '*amal jariah*' on behalf of the Participants.

## **22. MISCELLANEOUS**

If these terms and conditions in this Certificate are translated into different languages (other than English) and there are inconsistencies or conflict between the English language version and any of the translation, the English version shall prevail.