

Statutory Conditions

Misdescription or misrepresentation

1. If in an application the applicant falsely describes the location and acreage of the crop to the prejudice of the insurer or knowingly misrepresents or fails to disclose any fact required to be stated in the application, the insurance is void as to the item of the application in respect of which the misdescription, misrepresentation or omission is made.

Waiver of conditions

2. No term or condition of the contract is deemed to have been waived by the insurer, either in whole or in part, unless the waiver is clearly expressed in writing signed by or on behalf of the insurer.

Officer presumed an agent

3. Any officer or managing general agent of the insurer who assumes on behalf of the insurer to enter into a written agreement relating to any matter connected with the insurance is deemed to be the agent of the insurer for the purpose.

Indemnity limitation

4. No claimant is entitled to indemnity under the contract for any loss or damage that is found to be less than 5% of the crop on the acreage damaged by hail.

Conditions of indemnity

5. No claimant is entitled to indemnity under the contract:
 - (a) when the crop is wholly destroyed by any cause other than:
 - (i) hail; or
 - (ii) a cause that is set out in the endorsement and that is approved by the Superintendent to be set out in the endorsement;
 - (b) when the crop is over-ripe unless the crop has not been harvested due to circumstances beyond the control of the insured; or
 - (c) when the crop or any portion of the crop has been so injured by causes other than hail that the crop or any portion of the crop, as the case may be, would not yield profit over and above the actual cost of harvesting and marketing it.

Notice of claim of loss

6. (1) Any person claiming under the contract must give notice of claim of loss or damage in writing to the insurer or at the location designated by the insurer within 3 days after the occurrence of loss, stating the number of the policy, the day and hour of the storm, the estimated damage to each portion of the insured crop and the names of other insurers carrying insurance on the area damaged by hail.
(2) Notwithstanding subsection (1) of this condition, failure to give notice within the time referred to in that subsection does not, subject to Statutory Condition 9, invalidate the claim if it is shown that it was not reasonably possible to give notice within that time and that notice was given as soon as was reasonably possible.

Right of access of insurer

7. After any loss or damage to the insured crop, the insurer has an immediate right of access and entry by accredited representatives sufficient to enable them to survey and examine the crop and to make an estimate of the loss or damage.

Insurer and insured to ascertain percentage

8. (1) Within 30 days after the receipt of notice of claim of loss or damage, the insurer and the insured or their accredited representatives must together ascertain and agree on the percentage of loss or damage sustained on the acreage of the crop or any portion of the crop insured under any item of the policy.
(2) The amount of indemnity must be ascertained on the agreed percentage of the insurance on the acreage sustaining loss or damage by hail, subject to the terms of the policy or subject to the determination of the amount of the loss or damage by a dispute resolution process as provided in Statutory Condition 15.
(3) No account is to be taken of the cost of cutting or threshing the portion of the crop not destroyed or damaged.
(4) The determination of the percentage of loss or damage may be deferred to a later date agreed on in writing between the insurer and the insured.

Proof of loss

9. (1) A person making a claim under the contract must, within 30 days after the occurrence of a loss or within 30 days after the deferred adjustment date, unless that time is extended by the insurer with notification to the insured, provide a statutory declaration (in these conditions called the "proof of loss") on a form provided by the insurer, setting out the date and number of the policy, the date of the occurrence of the loss or damage, the location and acreage of the crop damaged, the estimated percentage of loss or damage sustained on the acreage of the crop or any portion of the crop insured under any item of the policy and whether the crop was damaged by hail before the time of the application.
(2) If the claimant fails to provide proof of loss, the claimant forfeits any claim under the contract.
(3) If the insurer, within 30 days after the occurrence of a loss referred to in subsection (1) of this condition, or at the time of the deferred adjustment, has ascertained the loss acceptably to the claimant or if the amount of loss has been determined by a dispute resolution process as provided in Statutory Condition 15, the insurer is deemed to have waived proof of loss unless proof of loss is requested by the insurer in writing.

Proof of loss may be made by a representative of insured

10. Proof of loss must be made by the insured even if the loss is payable to a third person, except that, in the case of the absence of the insured or the insured's inability or refusal to make proof of loss, proof of loss may be made by the insured's representative or by a person to whom any part of the insurance money is payable.

Fraud or false statement

11. Any fraud or willfully false statement in a proof of loss invalidates the claim of the person making proof of loss.

Payment of money within period

12. The insurer must pay the insurance money for which it is liable under the contract within 60 days after proof of loss has been received by it or, when a dispute resolution process is conducted under Statutory Condition 15, within 30 days after the percentage of damage is determined by the representatives or umpire.

Insured liable for expenses incurred

13. If the insured claims for loss or damage under the contract and it is found that the insured is not entitled to indemnity under the conditions of the contract, the insured is liable for the expenses incurred in the adjustment of the insured's claim.

Cancellation of contract

14. (1) The contract may be cancelled at any time by the insured by giving notice to that effect to the insurer and the insurer must refund within 15 days from the date of notice the excess of paid premium above the customary short rate premium for the time the contract has been in force.
(2) If a note or other undertaking was accepted as payment of the premium, the insured shall pay the insurer the earned portion as payment of the premium and on payment or tender of that amount the insurer shall return that note or undertaking to pay, or if the insured does not pay or tender the amount, the insurer shall endorse on the note or other undertaking a credit of the amount of the unearned portion of the premium.
(3) An insurer may only cancel a contract if the insured has failed to pay the premium in whole or part pursuant to the terms and conditions of the contract.
(4) When an insurer elects to cancel a contract pursuant to subsection (3), the insurer must:
 - (a) give the insured at least 15 days' notice by registered mail or personal service on the insured of cancellation of the contract for non-payment of premium; and
 - (b) allow the insured to avoid cancellation of the contract by payment of the outstanding premium to the insurer or the insurer's representative on or before the expiration of the 15 days.
- (5) Where an insured has failed to pay the premium in whole or part pursuant to the terms and conditions of the contract, the insurer may elect to keep the contract in force and:
 - (a) deduct the unpaid premium from any amount the insurer is obligated to pay to the insured under the contract; or
 - (b) sue the insured for the unpaid premium.

Dispute resolution

15. (1) In the event of a disagreement as to the percentage of damage by hail to any of the insured growing crops, whether the right to recover on the contract is disputed or not, the percentage must, when so required by either party, be ascertained by a dispute resolution process, which must be conducted as follows:
 - (a) the party desiring the dispute resolution process must, within 3 days after the disagreement, deliver or cause to be delivered to the other party a notice in writing requiring a dispute resolution process to be conducted and appointing a dispute resolution representative, who must act either alone or with a dispute resolution representative appointed by the other party to estimate the percentage of the damage;
 - (b) not later than 3 days after receipt of a notice under clause (a) the other party may appoint a dispute resolution representative and, within that period, must notify the first party of the appointment by notice in writing;
 - (c) if a party, after receipt of written notice from the other party under clause (a), fails or refuses to appoint a dispute resolution representative within the time set out in clause (b), the percentage of damage must be estimated and determined by the representative appointed by the party giving notice;
 - (d) where each party has appointed a dispute resolution representative, the representatives must together estimate the percentage of damage and if they fail to agree must submit their differences to an umpire, and subject to clause (e), the finding in writing of any 2 of them determines the percentage of the damage;
 - (e) notwithstanding clause (d), an umpire, in the umpire's sole discretion, may determine the percentage of damage where a finding pursuant to clause (d) would result in unfairness to the insured;
 - (f) the Superintendent shall appoint an umpire on the application of either representative:
 - (i) the dispute resolution representatives fail to agree on an umpire within 15 days after their appointment; or
 - (ii) the umpire fails or refuses to act or is incapable of acting or dies;
 - (g) the Superintendent must, as soon as is practicable, after receiving an application under clause (f) appoint an umpire from a list of eligible umpires compiled and maintained by the Superintendent;
 - (h) if only one dispute resolution representative has been appointed, the parties must share equally the representative's expenses;
 - (i) if 2 dispute resolution representatives have been appointed, each party must pay the expenses of the representative appointed by the party;
 - (j) if an umpire is required, the parties must share equally the umpire's expenses;
 - (k) the assessment of damage must be conducted within 2 days after the date on which:
 - (i) a dispute resolution representative is appointed under clause (b); or
 - (ii) if no dispute resolution representative is appointed under clause (b), the time for appointing a dispute resolution representative under clause (b) expires, or at a later date as agreed on by the 2 dispute resolution representatives, if 2 representatives have been appointed;
 - (l) if the dispute resolution representatives cannot agree on an extension of time under clause (k), the Superintendent may extend the time on the application of either representative.
- (2) An umpire is bound by the rules of procedural fairness in carrying out the umpire's functions under this Statutory Condition.

Limitation of actions

16. An action or proceeding against the insurer is subject to The Limitations Act.

Assignment or change of property

17. If the insured crop or the insurable interest of the insured in the insured crop is assigned without the permission of the insurer, the assignment is not binding on the insurer, but this condition does not apply to change of title by succession, by operation of law or by death.