

Statutory conditions

556(1) Subject to sections 551(3), 557 and 584(2),

- (a) the conditions set out in this section are statutory conditions and are deemed to be part of every contract and must be printed in every policy under the heading “Statutory Conditions”, and
 - (b) no variation or omission of or addition to any statutory condition is binding on the insured.
- (2) In this section, “policy” does not include an interim receipt or a binder.

Statutory Conditions

In these statutory conditions, unless the context otherwise requires, “insured” means a person insured by the contract whether named in the contract or not.

MATERIAL CHANGE IN RISK 1(1) The insured named in the contract must promptly notify the insurer or its agent in writing of any change in the risk material to the contract and within the insured’s knowledge.

(2) Without restricting the generality of subparagraph (1) of this condition, “change in the risk material to the contract” includes

- (a) any change in the insurable interest of the insured named in the contract in the automobile by sale, assignment or otherwise, except through change of title by succession, death or proceedings under the *Bankruptcy and Insolvency Act* (Canada), and
- (b) in respect of insurance against loss of or damage to the automobile,
 - (i) any mortgage, lien or encumbrance affecting the automobile after the application for the contract, and
 - (ii) any other insurance of the same interest, whether valid or not, covering loss or damage insured by the contract or any portion of the contract.

PROHIBITED USE BY INSURED 2(1) The insured must not drive or operate the automobile

- (a) unless the insured is for the time being either authorized by law or qualified to drive or operate the automobile,
- (b) while the insured’s licence to drive or operate an automobile is suspended or while the insured’s right to obtain a licence is suspended or while the insured is prohibited under order of any court from driving or operating an automobile,
- (c) while the insured is under the age of 16 years or under any other age prescribed by the law of the province in which the insured resides at the time the contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to the insured,
- (d) for any illicit or prohibited trade or transportation, or
- (e) in any race or speed test.

PROHIBITED USE BY OTHERS (2) The insured must not permit or allow the use of the automobile

- (a) by any person
 - (i) unless that person is for the time being either authorized by law or qualified to drive or operate the automobile, or
 - (ii) while that person is under the age of 16 years or under any other age prescribed by the law of the province in which the person resides at the time the contract is made as being the minimum age at which a licence or permit to drive an automobile may be issued to the person,
- (b) by any person who is a member of the household of the insured while the person's licence to drive or operate an automobile is suspended or while the person's right to obtain a licence is suspended or while the person is prohibited under order of any court from driving or operating an automobile,
- (c) for any illicit or prohibited trade or transportation, or
- (d) in any race or speed test.

REQUIREMENTS WHERE LOSS OR DAMAGE TO PERSONS OR PROPERTY 3(1) The insured must

- (a) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property and of any claim made on account of the accident,
 - (b) verify by statutory declaration, if required by the insurer, that the claim arose out of the use or operation of the automobile and that the person operating or responsible for the operation of the automobile at the time of the accident is a person insured under the contract, and
 - (c) forward immediately to the insurer every letter, document, advice or writ received by the insured from or on behalf of the claimant.
- (2) The insured must not
- (a) voluntarily assume any liability or settle any claim except at the insured's own cost, or
 - (b) interfere in any negotiations for settlement or in any legal proceeding.
- (3) The insured must, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness, and must co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

REQUIREMENTS WHERE LOSS OR DAMAGE TO AUTOMOBILE 4(1) When loss of or damage to the automobile occurs, the insured must, if the loss or damage is covered by the contract,

- (a) promptly give notice of the loss or damage in writing to the insurer with the fullest information obtainable at the time,
- (b) at the expense of the insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and

- (c) deliver to the insurer within 90 days after the date of the loss or damage a statutory declaration stating, to the best of the insured's knowledge and belief, the place, time, cause and amount of the loss or damage, the interest of the insured and of all others in the automobile, the encumbrances on the automobile, all other insurance, whether valid or not, covering the automobile and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.
- (2) Any further loss or damage accruing to the automobile directly or indirectly from a failure to protect it as required under subparagraph (1) of this condition is not recoverable under the contract.
- (3) No repairs, other than those that are immediately necessary for the protection of the automobile from further loss or damage, may be undertaken and no physical evidence of the loss or damage may be removed
- (a) without the written consent of the insurer, or
 - (b) until the insurer has had a reasonable opportunity to make the inspection for which provision is made in Statutory Condition 5.
- (4) The insured must submit to examination under oath and must produce for examination at any reasonable place and time designated by the insurer or its representative all documents in the insured's possession or control that relate to the matters in question, and the insured must permit extracts and copies of the documents to be made.
- (5) The insurer is not liable for more than the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage must be ascertained or estimated according to that actual cash value with proper deductions for depreciation, however caused, and must not exceed the amount that it would cost to repair or replace the automobile, or any part of the automobile, with material of similar kind and quality, but if any part of the automobile is obsolete and unavailable, the liability of the insurer in respect of the automobile is limited to the value of that part at the time of loss or damage, not exceeding the maker's latest list price.
- (6) Except where a dispute resolution process has been initiated, the insurer, instead of making payment, may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of similar kind and quality if, within 7 days after the receipt of the proof of loss, it gives written notice of its intention to do so.
- (7) There must be no abandonment of the automobile to the insurer without the insurer's consent.
- (8) If the insurer exercises the option to replace the automobile or pays the actual cash value of the automobile, the salvage, if any, vests in the insurer.
- (9) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount of the loss or damage, those questions must be determined by a dispute resolution process as provided under the *Insurance Act* before there can be recovery under the contract, whether the right to recover under the contract is disputed or not, and independently of all other questions.
- (10) There is no right to a dispute resolution process until
- (a) a specific demand for it is made in writing, and
 - (b) the proof of loss has been delivered.

INSPECTION OF AUTOMOBILE 5 The insured must permit the insurer at all reasonable times to inspect the automobile and its equipment.

TIME AND MANNER OF PAYMENT OF INSURANCE MONEY 6(1) The insurer must pay the insurance money for which it is liable under the contract within 60 days after the proof of loss has been received by it or, where a dispute resolution process is conducted under Statutory Condition 4(9), within 15 days after the decision is rendered.

(2) The insured may not bring an action to recover the amount of a claim under the contract unless the requirements of Statutory Conditions 3 and 4 are complied with or until the amount of the loss has been ascertained as provided for under Statutory Conditions 3 and 4 or by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

WHO MAY GIVE NOTICE AND PROOFS OF CLAIM 7 Notice of claim may be given and proofs of claim may be made by the agent of the insured named in this contract in the case of absence or inability of the insured to give the notice or make the proof, such absence or inability being satisfactorily accounted for or, in the like case or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

TERMINATION 8(1) The contract may be terminated

- (a) by the insurer giving to the insured 15 days' notice of termination by registered mail or 5 days' written notice of termination personally delivered, or
 - (b) by the insured at any time on request.
- (2) If the contract is terminated by the insurer,
- (a) the insurer must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, but in no event may the prorated premium for the expired time be less than any minimum retained premium specified, and
 - (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to the amount, in which case the refund must be made as soon as practicable.
- (3) If the contract is terminated by the insured, the insurer must refund as soon as practicable the excess of premium actually paid by the insured over the short rate premium for the expired time, but in no event may the short rate premium for the expired term be deemed to be less than any minimum retained premium specified.
- (4) The 15-day period referred to in subparagraph (1)(a) of this condition starts to run on the day the registered letter or notification of it is delivered to the insured's postal address.

NOTICE 9(1) Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the province.

(2) Written notice may be given to the insured named in the contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest postal address as notified to the insurer.

(3) In this condition, "registered" means registered in or outside Canada.