



## FAIRFIRST INSURANCE LIMITED

(Company No. PB 5180)

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### Motor Trade Policy

As the Insured named in Schedule hereto (hereinafter called the Insured) who is carrying on or engaged in the Business or occupation described in the Schedule and none other for the purposes of this insurance, by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein has applied to Fairfirst Insurance Limited (hereinafter called the Company) for the Insurance hereinafter contained and has paid or agreed to pay the premium stated in the Schedule as consideration for such Insurance, in respect of accident, loss or damage occurring during the Period of Insurance stated in the Schedule or during any period for which the Company may accept payment for the renewal of this Policy, this Policy witnesses that subject to the Terms, Exceptions and Conditions contained herein or endorsed or otherwise expressed hereon:

#### Section 1: Damage or loss 1

1. The Company will indemnify the Insured against loss of or damage to any Motor trade plate carrying vehicle described in the Schedule(s) hereto and/or its accessories and spare parts whilst thereon
  - (a) by accidental external means
  - (b) by fire, external explosion, self-ignition lightning or burglary, housebreaking or theft
  - (c) by malicious act
  - (d) whilst in transit by road, rail, inland waterway, lift or elevator but excluding:
    - (i) damage to tyres and tubes unless such vehicle sustains other damage at the same time in which event the liability of the Company in respect of damage to tyres and tubes shall not exceed 50% (percent) of the cost of replacement.
    - (ii) loss of or damage to accessories, spare parts or integral parts by burglary housebreaking or theft unless such vehicle is stolen at the same time
    - (iii) Air bags on vehicles unless such Motor Vehicle sustains other damage at the same time but in any event the liability of the Company in respect of air bags shall not exceed 50% (percent) of the cost of a new replacement.
    - (iv) loss of or damage to lamps, tyres, mudguards, buffers, buffer aprons, buffer brackets and/or paint work on all vehicle used for hiring purposes.
2. The Company shall not be liable to make any payment in respect of Consequential loss, depreciation, wear and tear, mechanical or electrical breakdown, failures or breakages, nor by overloading or strain or by the nature of the load such Motor trade plate carrying vehicle.
3. The Insured in respect of each and every event shall be responsible for the first Rs.1,000/- on all Motor vehicles (or any less expenditure which may be incurred of any expenditure hereunder. If the expenditure incurred by the Company shall include the amount for which the Insured is responsible hereunder such amount shall be repaid by the Insured to the Company forthwith. For the purposes of this Sub-Section the expression event shall mean an event or series of events arising out of one cause in connection with anyone vehicle in respect of which indemnity is provided under this Section.
4. In the event of such Motor trade plate carrying vehicle being disabled by reason of loss or damage covered under this Policy the Company will bear the reasonable cost of protection and removal to the nearest repairers approved by the Company and re-delivery to the Insured, but not exceeding Rs.1000/- in respect of anyone accident.
5. In the event of such Motor trade plate carrying vehicle sustaining damage for which the Company may be liable under this Policy immediate notice shall be given to the Company and no work shall be commenced nor shall any part of such Motor Vehicle be dismantled nor shall the Insured accept any estimate of the cost of any repair to such Motor trade plate carrying vehicle without the prior approval in writing of the Company.
6. In the event of loss or damage to such Motor trade plate carrying vehicle and/or its accessories necessitating the supply of a part not obtainable from stocks held in Sri Lanka, or in the event of the Company exercising the option under Condition 5 to pay in cash the amount of the loss or damage, the liability of the Company in respect of any such part shall be limited to:
  - (a)
    - (i) the price quoted in the latest catalogue or price list issued by the Manufacturer or his Agents in Sri Lanka, or
    - (ii) if no such catalogue or price list exists, the price list obtaining at the Manufacturer's works plus the reasonable cost of transport otherwise than by air to Sri Lanka and the amount of the relative import duty, and
  - (b) the reasonable cost of fitting such part.

#### Section II - Liability to Third Parties

1. Subject to the Limits of Liability stated below the Company will indemnify the Insured against all sums, including claimant's costs and expenses, which the Insured shall become legally liable to pay in respect of:
  - (i) death of or bodily injury to any person caused by or arising out of the use of any Motor trade plate carrying vehicle described in the Schedule (including loading and/or unloading of such vehicle),
  - (ii) damage to property caused by the use of any Motor trade plate carrying vehicle described in the Schedule (including loading and/or unloading of such vehicle), provided always that the Company shall not be liable in respect of:
    - (a) death, injury or damage caused or arising beyond the limits of any carriageway or thoroughfare in connection with the bringing of the load to such Motor trade plate carrying vehicle for loading thereon or the taking away of the load from such Motor trade plate carrying vehicle after unloading therefrom,
    - (b) death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment,
    - (c) death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting onto or alighting from such Motor trade plate carrying vehicle at the time of the occurrence of the event out of which any claim arises,
    - (d) damage to property belonging to or held in trust by or in the custody or control of the Insured or a member of the Insured's household or being conveyed by such Motor trade plate carrying vehicle,
    - (e) damage to any bridge, weighbridge, viaduct and/or to any road and/or anything beneath by vibration or by the weight of such Motor trade plate carrying vehicle and/or load carried by such vehicle,
    - (f) damage to property caused by sparks or ashes from such Motor trade plate carrying vehicle,
2. The Company will pay all costs and expenses incurred with its written consent.
3. In terms of and subject to the limitations of the indemnity which is granted by this Section to the Insured the Company will indemnify any person who is driving such Motor trade plate carrying vehicle provided that such person:
  - (a) is not entitled to indemnity under any other Policy,
  - (b) shall as though he were the Insured observe, fulfil and be subject to the Terms, Exceptions and Conditions of this Policy in so far as they can apply.
4. In the event of the death of any person entitled to indemnity under this Section the Company will, in respect of the liability incurred by such person, indemnify his personal representatives in the terms of and subject to the limitations of this Section, provided that such personal representatives shall as though they were the Insured observe, fulfil and be subject to the Terms, Exceptions and Conditions of the Policy in so far as they can apply.

5. The Company may at its own option arrange for representation at any inquest or fatal inquiry in respect of any death which may be the subject of indemnity under this Section, and may undertake the defense of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section.
6. The Company shall be liable under Section 11- Liability to Third Parties, only in respect of claims arising from whilst the Motor trade plate carrying vehicle is being driven (not used) on a public road and shall not be liable for claims arising from whilst the Motor trade plate carrying vehicle is being used as a "tool of trade".

**Limits of Liability under Section II**

Limit of the amount of the Company's liability under Section II-1 (i)	Unlimited
Limit of the amount of the Company's liability under Section II-1 (ii) in respect of anyone claim or series of claims arising out of one event	15,000 or such greater amount as may be stated in the Schedule.

**Avoidance of Certain Terms and Right of Recovery**

Nothing in this Policy or any Endorsement hereon shall affect the right of any person indemnified by this Policy or any other person to recover an amount under or by virtue of the provisions of the Motor Traffic Act No. 14 of 1951, Sections 102 and 105, but the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions.

**Application of Limits of Indemnity**

In the event of any accident involving indemnity to more than one person, any limitation by the terms of this Policy and/or of any Endorsement hereon of the amount of any indemnity shall apply to the aggregate amount of indemnity to all persons indemnified, and such indemnity shall apply in priority to the Insured.

**General Exceptions**

The Company shall not be liable under this Policy in respect of:

- 1) any accident, loss, damage and/or liability caused, sustained or incurred outside the land limits of Sri Lanka,
- 2) any claim arising out of any contractual liability,
- 3) any accident, loss, damage and/or liability caused, sustained or incurred whilst such Motor trade plate carrying vehicle is:
  - (a) Being used for any purpose within the definition of 'Excluded Use' described in the Certificate of Insurance,
  - (b) being driven by or is for the purpose of being driven by him in the charge of an 'Excluded Driver' as defined in the Certificate of Insurance,
- 4) any accident, loss, damage and/or liability directly or indirectly, proximately or remotely occasioned by, contributed to by or traceable to or arising out of or in connection with Cyclone, Storm, Tempest, Flood, Typhoon, Hurricane, Tornado or other atmospheric disturbances, Volcanic Eruption, Earthquake, Earth slips, Landslides, Tsunami, Tidal Waves or other convulsion of nature, invasion, the act of foreign enemies, hostilities or warlike operations (whether before or after declaration of war), civil war, strike, riot, civil commotion, mutiny, rebellion, military or usurped power, or by any direct or indirect consequences of any of the said occurrences, and in the event of any claim hereunder the Insured shall prove that the accident, loss, damage and/or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequence thereof, and in default of such proof the Company shall not be liable to make any payment in respect of such a claim.
- 5) any accident, loss of or damage arising directly or indirectly whilst the Insured driving such Motor trade plate carrying vehicle having consumed any intoxicating liquor or any drugs or any person having consumed any intoxicating liquor or any drugs driving such Motor Vehicle.

**Conditions**

1. This Policy 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 Policy or of the Schedule shall bear such specific meaning wherever it may appear.
2. The insured or his legal representative shall give notice in writing to the issuing branch immediately upon the occurrence of any accident, loss of or damage which may give rise to a claim under this policy and shall submit completed claim form together with all related documentation to the issuing branch office not later than 30 days from the date of such accident loss or damage. Every, Letter, Claim, Writ, Summons and/or-process shall be forwarded to the company immediately on receipt by the insured. Notice shall also be given in writing to the company immediately the insured shall have knowledge of any impending prosecution in respect of any occurrence which may give rise to a claim under this policy. In case of theft or other criminal act which may be the subject of a claim under this policy the insured shall give immediate notice to the police and co-operate with the company in securing the conviction of the offender.
3. No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company, which shall be entitled if it so desires to take over and conduct in the name of the Insured the defense or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise, and shall have full discretion in the conduct of any proceedings or in the settlement of any claim, and the Insured shall give all such information and assistance as the Company may require.
4. At any time after the happening of any event giving rise to a claim or series of claims under sub-section 1 (II) of Section II of this Policy the Company may pay to the Insured the full amount of the Company's liability under that sub-section and relinquish the conduct of any defense, settlement or proceedings, and the Company shall not be responsible for any damage alleged to have been caused to the Insured in consequence of any alleged action or omission of the Company in connection with such defense, settlement or proceedings or of the Company relinquishing such conduct, nor shall the Company be liable for any costs or expenses whatsoever incurred by the Insured or any claimant or other person after the Company shall have relinquished such conduct.
5. The Company may at its own option repair, reinstate or replace any Motor trade plate carrying vehicle described in the Schedule or any part hereof and/or its accessories or spare parts, or may Pay in cash the amount of the loss or damage, and the liability of the Company shall not exceed the actual value of the parts damaged or lost plus the reasonable cost of fitting and shall in no case exceed the Insured's estimate of the value of such Motor trade plate carrying vehicle (including accessories and spare parts) as specified in the Schedule, or the value of such Motor trade plate carrying vehicle (including accessories and spare parts) at the time of the loss or damage, whichever is the less.
6. The Insured shall take all reasonable precautions to safeguard from loss or damage and to maintain in road worthy and efficient condition any Motor trade plate carrying vehicle described in the Scheduler(s) hereto and the Company shall have at all times free and full access to examine such Motor trade plate carrying vehicle or any part thereof or any driver or employee of the insured. In the event of any accident or breakdown such Motor trade plate carrying vehicle shall not be left unattended without proper precautions being taken to prevent further loss or damage, and if such Motor trade plate carrying vehicle be driven before the necessary repairs are effected, any extension of the damage or any further damage to such Motor trade plate carrying vehicle shall be entirely at the Insured's own risk.
7. The Company may cancel this Policy by sending seven days notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium paid less the pro rata portion thereof for the period the Policy has been in force, or the Policy may be cancelled at any time by the Insured on seven days notice, and provided that all current Certificates of Insurance have been returned to the Company and that no claim has arisen during the then current Period of Insurance, the Insured shall be entitled to a return of premium less premium at the Company's short period rates for the period the Policy has been in force.
8. If at the time any claim arises under this Policy there is any other existing insurance covering the same loss, damage or liability, the Company shall not be liable to pay or contribute more than its ratable proportion of any loss, damage, compensation, costs or expenses, provided always that nothing in this Condition shall impose on the Company any liability from which but for this Condition it would have been relieved under provision(a) of Section II-3 of this Policy.

9. All differences arising out of this Policy shall be referred to the decision of an Arbitrator, to be appointed in writing by the parties in difference, or if they cannot agree upon a single Arbitrator, to the decision of two disinterested persons as Arbitrators, of whom one shall be appointed in writing by each of the parties within one calendar month after having been required so to do in writing by the other party. In case either party shall refuse or fail to appoint an Arbitrator within one calendar month after receipt of notice in writing requiring an appointment, the other party shall be at liberty to appoint a sole Arbitrator, and in case of disagreement between the Arbitrators the difference shall be referred to the decision of an Umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the Arbitrators and preside at their meetings. The death of any party shall not revoke or affect the authority or powers of the Arbitrator, Arbitrators or Umpire respectively, and in the event of the death of an Arbitrator or Umpire, another shall in each case be appointed in his stead by the party or Arbitrators (as the case may be) by whom the Arbitrator or Umpire so dying was appointed. The costs of the reference and of the award shall be at the discretion of the Arbitrator, Arbitrators or Umpire making the award. It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this Policy that the award by such Arbitrator, Arbitrators or Umpire of the amount of the loss or damage if disputed shall be first obtained. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to Arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
10. The due observance and fulfilment of the Terms, Conditions and Endorsements of this Policy in so far as they relate to anything to be done or complied with by the insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.
11. If the claim is in any respect fraudulent or if any fraudulent means, devices or documents be used by the insured or anyone acting on his behalf to obtain any benefit under this Policy or if any loss or damage is occasioned by the willful act of the insured or with the connivance of the insured, all benefits under this Policy shall be forfeited.

## ENDORSEMENTS

The following Endorsements only apply to this Policy when stated in the Schedule, and are subject otherwise to the Terms, Exceptions and Conditions of this Policy.

### **M03 All Claims Excess**

Notwithstanding anything to the contrary contained in Sections I and II of this Policy the Insured in respect of each and every event shall be responsible for the amount of the Excess described in the Schedule (or any less expenditure which may be incurred) of any expenditure for which provision is made thereunder (including any payments in respect of costs and expenses) and of any expenditure by the Company in the exercise of its discretion under Condition 3 of this Policy. If the expenditure incurred by the Company shall include the amount for which the Insured is responsible hereunder such amount shall be repaid by the Insured to the Company forthwith. For the purposes of this Endorsement the expression event shall mean an event or series of events arising out of one cause in connection with anyone vehicle in respect of or in connection with which indemnity is granted under this Policy.

### **M30 Strikes and Riots**

In consideration of the payment of an additional premium the Company undertakes that the words strike, riot, civil commotion in General Exception (4) of this Policy shall not apply to any accident, loss, damage or liability directly caused by:

- (1) the act of any person taking part together with others in any disturbance of the public place (whether in connection with a strike or lockout or not), or the action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance, or in minimizing the consequences of such disturbance,
- (2) the willful act of any striker or locked-out worker done in furtherance of a strike or in resistance to a lock-out, or the action of any lawfully constituted authority in preventing or attempting to prevent any such act or in minimizing the consequences of any such act,

provided that the indemnity given by reason of this Endorsement shall not apply to any accident, loss, damage or liability (except so far as is necessary to meet the requirements of the legislation) directly or indirectly, proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with:

- (a) war, invasion, the act of foreign enemies, hostilities or warlike operations (whether war be declared or not) or civil war.
- (b) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, rebellion, revolution, insurrection, military or usurped power, or any act of any person acting on behalf of or in connection with any organization 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, or by the direct or indirect consequences of any of the said occurrences.

In the event of any claim hereunder the Insured shall prove that the accident, loss, Damage or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences or any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of any such claim.

This extension is granted for and on behalf of the National Insurance Trust Fund and any liabilities whatsoever under this specific extension shall devolve solely upon the said fund. If any action, suit or proceeding where it is alleged that any loss or damage is not covered by this Endorsement, the burden of proving that such loss or damage is covered shall be upon the insured.

Subject otherwise to the terms, conditions, exclusions and exceptions of the policy.

### **M34 Specified Natural Perils Cover**

In consideration of the payment of an additional premium, this insurance is extended to include Cyclone, Storm, Tempest, Flood, Earthquake, Volcanic Eruption, Tsunami and Tidal waves caused by Earthquake and Volcanic Eruption, Typhoon, Hurricane, Tornado, Earth slips and Landslides. The word "flood" for the purpose hereof shall mean the overflowing of water from the normal confines of any natural or artificial water course (other than water tanks, apparatus or pipes), Lake, river, reservoir, canal or dam.

### **M80 Accidental Damage Excess**

Notwithstanding anything to the contrary contained in Section i of this Policy the Insured in respect of each and every event shall be responsible for the amount of the Excess shown in the Schedule (or any less expenditure which may be incurred) of any expenditure for which provision is made thereunder (including any payments in respect of costs and expenses) and of any expenditure by the Company in the exercise of its discretion under Condition 3 of this Policy. If the expenditure incurred by the Company shall include the amount for which Insured is responsible hereunder such amount shall be repaid by the insured to the Company forthwith. For the purposes of this Endorsement the expression 'event' shall mean an event or series of events arising out of one cause in connection with anyone vehicle in respect of or in connection with which indemnity is granted under this Policy.

### **M35 TOWING CHARGES**

In consideration of the Insured having paid an additional premium, the maximum amount payable in respect of item 4 of Section 1 of the Policy is increased to the amount stated in the Schedule subject to the terms, exceptions and conditions of this policy.

### **M37 THIRD PARTY PROPERTY DAMAGE**

In consideration of the Insured having paid an additional premium, it is hereby understood and agreed, subject otherwise to the terms, exceptions and conditions of this Policy the Company will indemnify the Insured against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of damage to property caused by the use of any vehicle described in the Schedule(s) thereto but such indemnity is limited to the sum stated in the Schedule(s) in respect of any one accident.

### **M54 AIRBAG EXTENSION**

In consideration of the payment of an additional premium, it is hereby declared and agreed that the within written Policy is extended to include cover for new airbag replacement as a result of loss/damage caused to the vehicle up to but not exceeding the sum specified in the Schedule of the within written Policy in respect of any one occurrence.