

**QUEBEC AUTOMOBILE INSURANCE POLICY**

**Q.P.F. NO. 1  
OWNER'S FORM AND ENDORSEMENTS**

**February 1<sup>st</sup>, 2010**

To all interested parties:

Enclosed please find the revised wording of the Quebec Automobile Policy, Owner's form (Q.P.F. NO. 1) as well as Q.E.F. NOS. 37 (A-B), 41 and 43 (A to F) endorsements.

These forms have been approved under Section 422 of the *Act respecting insurance* (R.S.Q. Chapter A-32) and they may be used by all insurers as of February 1<sup>st</sup>, 2010.

The Executive Director  
Solvency

A handwritten signature in black ink that reads "Danielle Boulet". The signature is written in a cursive style with a large initial 'D'.

Danielle Boulet

# Q.P.F. NO. 1

## QUEBEC AUTOMOBILE INSURANCE POLICY (OWNER'S FORM)

Approved by the *Autorité des marchés financiers*

### DECLARATIONS

#### ITEM 1

Full name and address of the Insured:

The described automobile is and will be chiefly used and usually kept in the town and province of the Insured's address stated above unless otherwise specified herein.

#### ITEM 2

Contract period

From ..... to .....  
12:01 A.M. standard time at the Insured's address stated above as to each of said dates.

#### ITEM 3

Particulars of the described automobile:

State name of creditor to whom loss, if any, under section B of the Insuring Agreements is payable, to the extent of the creditor's interest:

**ITEM 4**

Insurance is hereby provided against one or more of the perils mentioned in this item, but only under the section(s) or subsection(s) for which a premium is specified and upon the terms and conditions of this contract and subject to the following amount(s) and deductible(s).

INSURING AGREEMENTS		PERILS	AMOUNTS AND DEDUCTIBLES	PREMIUM
<b>SECTION A</b> Civil liability		BODILY INJURY TO OR DEATH OF OTHERS OR DAMAGE TO THEIR PROPERTY	\$ (Exclusive of interest, expenses and costs) FOR LOSS OR DAMAGE RESULTING FROM BODILY INJURY TO OR THE DEATH OF ONE OR MORE PERSONS, AND FOR LOSS OR DAMAGE TO PROPERTY, REGARDLESS OF THE NUMBER OF CLAIMS ARISING FROM ANY ONE ACCIDENT	\$
<b>SECTION B</b> Loss of or damage to insured automobile	<b>S U B S E C T I O N S</b>	1 ALL PERILS	\$ DEDUCTIBLE PER OCCURRENCE EXCEPT FOR LOSS OR DAMAGE BY FIRE OR LIGHTNING	\$
		2 COLLISION OR UPSET		\$
		3 COMPREHENSIVE (excluding collision or upset)		\$
		4 SPECIFIED PERILS		\$
<b>ENDORSEMENTS:</b>				\$
<b>Premium due date:</b>			<b>Total premium:</b>	\$

**ITEM 5**

Unless otherwise stated the Insured is both the registered owner and actual owner of the described automobile. If not, state the name of:

- a) the registered owner:
  
- b) the actual owner:

**ITEM 6  
IMPORTANT STATEMENTS FOR UNDERWRITING THE RISK**

**ITEM 7  
NOTICE**

Agent or Broker:

At:

## INSURING AGREEMENTS

Now, therefore, subject to the limits, terms, conditions, provisions, definitions and exclusions herein stated and subject always to the condition that the Insurer shall be liable under the section(s) or subsection(s) of the following Insuring Agreements A and B for which a premium is specified in Item 4 of the Declarations and no other:

### SECTION A – CIVIL LIABILITY

The Insurer agrees to indemnify the Insured, the Insured's succession or legal representatives, and in the same manner and to the same extent as if named herein as the Insured, every other person who personally drives the automobile, or personally operates any part thereof, against the pecuniary consequences of civil liability the Insured or any such other person may incur for loss or damage arising from the ownership, use or operation of the automobile and resulting from bodily injury to or death of others or damage to their property, provided coverage does not apply to any person having stolen or assisted in stealing the automobile. However, where the loss exceeds the amounts of insurance, the indemnity shall be applied first to the pecuniary consequences of civil liability incurred by the Named Insured.

### EXCLUSIONS

The Insurer shall not be liable under this section:

- (1) except where the *Automobile Insurance Act* does not apply, for bodily injury or death covered under the said Act, the *Act respecting industrial accidents and occupational diseases* or the *Crime Victims Compensation Act*;
- (2) for any liability imposed by any workmen's compensation law upon any person insured by this section;
- (3) for loss or damage sustained by any person insured under this section, except as provided under a Direct Compensation Agreement established in accordance with the *Automobile Insurance Act*;
- (4) for loss or damage resulting from bodily injury to or death of any employee of any person insured by this section while engaged in the operation or repair of the automobile;
- (5) for any sum in excess of the amount stated in section A of Item 4 of the Declarations and expenditures provided for in the Additional Agreements of this section, irrespective of the number of persons or interests insured;
- (6) for any loss or damage resulting from bodily injury to or death of any person or damage to property arising out of a nuclear energy hazard and in excess of the compulsory amount of liability insurance prescribed by the *Automobile Insurance Act* or the *Act respecting off-highway vehicles*, depending on the type of vehicle involved.

**See also General Provisions, Definitions, Exclusions and Conditions.**

### ADDITIONAL AGREEMENTS

Where indemnity is provided by this section the Insurer further agrees:

- (1) immediately upon receipt of notice of loss, to serve any person insured by this section by such investigation thereof, or by such transactions with the claimant, or by such settlement of any resulting claims, as may be deemed expedient by the Insurer;
- (2) to take up the interest of any person entitled to the benefit of the insurance and assume his defense in any action which may be brought against him;

- (3) to bear, over and above the proceeds of the insurance, costs and expenses resulting from actions against the Insured, including those of the defense, and interest on the proceeds of the insurance;
- (4) to bear any fees the Insured is charged by a municipality under the *Act respecting municipal taxation* for the use of its fire protection service when the fire department is called to prevent or fight fire in the automobile;
- (5) if the injury is to a person, to reimburse any person insured by this section for expenses incurred for such medical aid as may be immediately necessary at the time of such injury;
- (6) to be liable up to the minimum amount(s) of liability insurance prescribed by any legislation respecting automobile insurance and applying in that province or territory of Canada or in that State of the United States of America in which the accident occurred, if that amount(s) is higher than the amount(s) stated in section A of Item 4 of the Declarations;
- (7) not to set up any defense to a claim that might not be set up if the policy were a motor vehicle liability policy issued in the province or territory of Canada or in the State of the United States of America in which the accident occurred.

### **AGREEMENTS OF INSURED**

Where indemnity is provided by this section, every person insured:

- (a) empowers the Insurer as their representative to appear and defend in any province or territory of Canada or in any State of the United States of America in which action is brought against the Insured arising out of the ownership, use or operation of the automobile;
- (b) renounces his right to unilaterally revoke such mandate;
- (c) shall reimburse the Insurer, upon demand, in the amount which the Insurer has paid by reason of the provisions of any statute relating to automobile insurance and which the Insurer would not otherwise be liable to pay under this section.

### **SECTION B – LOSS OF OR DAMAGE TO INSURED AUTOMOBILE**

The Insurer agrees to indemnify the Insured against direct and accidental loss of or damage to the automobile, including its equipment, as follows:

#### **Subsection 1 – ALL PERILS**

#### **Subsection 2 – COLLISION OR UPSET**

**Collision** includes collision with (a) a vehicle to which the automobile is attached and (b) the surface of the ground.  
**Upset** means the total or partial upset of the automobile.

#### **Subsection 3 – COMPREHENSIVE – meaning any peril other than collision or upset**

For the purpose of subsection 3, loss or damage caused by missiles, falling or flying objects, fire, theft, explosion, earthquake, windstorm, hail, rising water, malicious mischief, riot or civil commotion shall be deemed loss or damage caused by perils for which insurance is provided under subsection 3. In addition, coverage under subsection 3 is extended to include loss or damage caused by collision with a person or with an animal.

**Subsection 4 – SPECIFIED PERILS** – meaning fire, lightning, theft or attempted theft, explosion, earthquake, windstorm, hail, rising water, riot or civil commotion, falling or forced landing of aircraft or of parts of aircraft, or the stranding, sinking, burning, derailment or collision of any conveyance in or upon which the automobile is being transported on land or water.

#### **DEDUCTIBLE CLAUSE**

The Insured shall be required to contribute the deductible amount stated in the Declarations with respect to loss or damage insured under section B, except for loss or damage by fire or lightning, in any one occurrence.

#### **EXCLUSIONS**

The Insurer shall not be liable:

- (1) under any subsection of section B for loss or damage:
  - (a) to tires or consisting of or caused by mechanical fracture or breakdown of any part of the automobile or by rusting, corrosion, wear and tear, freezing, or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage covered by such subsection or is caused by fire, theft or malicious mischief covered by such subsection;
  - (b) caused by the conversion, embezzlement, theft or secretion by any person in lawful possession of the automobile under a hypothec, conditional sale, lease or other similar written agreement;
  - (c) caused by the voluntary parting with title or ownership, whether or not induced to do so by any fraudulent scheme, trick, device or false pretense;
  - (d) to contents of trailers;
  - (e) to tapes and equipment for use with a tape player or recorder, or to compact discs, unless such tapes, equipment or discs are in the tape player, recorder or disc player;
  - (f) caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operation of armed forces while engaged in hostilities, whether war be declared or not;
- (2) under subsections 3 and 4 for loss or damage caused by theft by anyone whose domicile is the same as the Insured's or by any employee of the Insured engaged in operating, selling, equipping, repairing, maintaining, servicing, storing, parking or moving the automobile whether the theft occurs in the course of such service or employment or not.

**See also General Provisions, Definitions, Exclusions and Conditions.**

#### **ADDITIONAL AGREEMENTS**

- (A) Where loss or damage arises from a peril insured under section B, the Insurer further agrees:
  - (1) to pay general average and salvage charges, and customs duties of Canada or of the United States of America, for which the Insured is civilly liable;
  - (2) to bear any fees the Insured is charged by a municipality under the *Act respecting municipal taxation* for the use of its fire protection service when the fire department is called to prevent or fight fire in the automobile;
  - (3) to waive subrogation against every person who, with the Insured's consent, has care, custody or control of the automobile, provided always that this waiver shall not apply to any person having such care, custody or control in the course of the business of selling, equipping, repairing, maintaining, servicing, storing, parking or moving automobiles, or who has committed a breach of any condition of this contract;

(4) to indemnify the Insured and any other person who personally drives a Temporary Substitute Automobile as defined in General Provision 3(c) against the contractual or extracontractual liability of the Insured or such other person for direct and accidental loss or damage to such automobile and arising from the care, custody and control thereof, provided always that:

- (a) such indemnity is subject to the deductible clause and exclusions of the applicable subsection;
- (b) if the owner of such automobile has insurance against any peril insured by this section, the indemnity provided herein shall be limited to the sum by which the deductible amount, if any, of such other insurance exceeds the deductible amount stated in the applicable subsection of this policy;
- (c) the Additional Agreements under section A shall, insofar as they are applicable, extend to the indemnity provided herein.

(B) Loss of Use by Theft

Where indemnity is provided under subsections 1, 3 or 4 of section B, the Insurer further agrees, following a theft of the entire automobile covered thereby, to pay for the loss of use of such automobile up to \$40 a day, subject to a maximum of \$1,200 in any one occurrence.

Regardless of the expiration of the contract, payment is limited to expenses incurred during the period commencing seventy-two hours after such theft has been reported to the Insurer or the police and terminating upon the date of the completion of repairs to or the replacement of the automobile lost or damaged, or upon such earlier date as a settlement agreement is reached for the loss or damage caused by such theft. This coverage applies only if receipts are provided for the rental of a substitute automobile or for taxicab or public transportation fares.

<b>GENERAL PROVISIONS, DEFINITIONS AND EXCLUSIONS</b>
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**1. TERRITORY**

Unless extended by endorsement and subject to the limitations stated in sub-paragraphs (d) (iv) and (e) (iv) of the definition of **the automobile**, insurance provided by this contract applies only within Canada, the United States of America and upon a vessel or aircraft serving ports or airports of those countries.

**2. PERSONNEL OF OTHER GARAGES EXCLUDED**

No person who is engaged in a garage business, shall be entitled to indemnity or payment under this contract for any loss, damage, injury or death sustained while using, operating or working upon the automobile in the course of that business or while so engaged, is an occupant of or enters or gets onto or alights from the Described Automobile or a Newly Acquired Automobile as defined in this policy, unless the person is the Insured or the Insured's employee, shareholder, member or partner or is actually driving the automobile in Quebec.

### 3. DEFINITIONS

In this policy, unless otherwise indicated by the context:

the words **garage business** includes any business involving the custody, selling, equipping, repairing, maintaining, storing, parking, moving or servicing of automobiles;

the words **nuclear energy hazard** mean the radioactive, toxic, explosive or other hazardous properties of prescribed substances under the *Atomic Energy Control Act* (Canada);

**spouse** means a person who at the time of the accident:

- (a) is married to and is living with another person;
- (b) has been living in a de facto union with another person of the opposite or the same sex and has been publicly represented as spouse for at least three years or, in the following cases, for at least one year:
  - a child has been born or is to be born of their union;
  - they have adopted a child together;
  - one of them has adopted a child of the other;

the words **the automobile** mean:

- (a) the Described Automobile – an automobile, trailer or semi-trailer specifically described in the Declarations or within the description of insured automobiles set forth in the Declarations;
- (b) a Newly Acquired Automobile - an automobile that is acquired by the Insured as owner or as lessee for at least one year or as lessee under a contract of leasing and, within fourteen days following the date of its delivery to the Insured, is notified to the Insurer, if:
  - such automobile replaces an automobile described in the Declarations, or
  - such automobile is an additional automobile.

Such additional automobile shall then be insured to the extent of the least of existing coverages on all automobiles under the various contracts issued by the Insurer, provided however that the Insurer insures all automobiles owned by the Insured or leased by the Insured for at least one year or leased by him or her under a contract of leasing on such delivery date and that the Insured has no specific insurance in respect of such additional automobile on the date of loss.

In addition, the Insured agrees to pay any additional premium required.

Insurance hereunder shall not apply if the Insured is engaged in the business of selling automobiles.

**and under section A only,**

- (c) a Temporary Substitute Automobile - an automobile not owned by the Insured, nor by anyone whose domicile is the same as the Insured's, and temporarily used as the substitute for the Described Automobile where such Described Automobile cannot be used because of its breakdown, repair, maintenance, loss, servicing, destruction or sale;
- (d) any automobile other than the Described Automobile, while personally driven by the Insured or by his or her spouse, provided that the Insured is an individual and:
  - (i) neither the Insured nor his or her spouse is driving the other automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
  - (ii) such other automobile is not owned by the Insured or by anyone whose domicile is the same as the Insured's;

- (iii) such other automobile is not provided by an employer of the Insured or by an employer of anyone whose domicile is the same as the Insured's;
- (iv) such other automobile is not used outside the Province of Quebec as a taxicab or bus or for commercial delivery;

In respect of the exceptions stated in sub-paragraphs (i), (ii), (iii) and (iv) above, coverage shall nevertheless be afforded to the owner of the Described Automobile while driving a third party's vehicle up to the compulsory minimum amount required under the *Automobile Insurance Act* or the *Act respecting off-highway vehicles*, depending on the type of vehicle involved;

- (e) if the Insured is a legal person, partnership or association, any automobile other than the Described Automobile, while personally driven by the employee, shareholder, member or partner for whose regular use the Described Automobile is furnished, or by his or her spouse, provided that:
  - (i) neither such employee, shareholder, member or partner nor his or her spouse is the owner of an automobile;
  - (ii) neither such employee, shareholder, member or partner nor his or her spouse is driving the other automobile in connection with the business of selling, repairing, maintaining, servicing, storing or parking automobiles;
  - (iii) neither the Insured nor such employee or any shareholder, member or partner nor anyone whose domicile is the same as any of these persons' is the owner or is in possession of such other automobile under a hypothec, conditional sale, lease or other similar written agreement, except where rented for other than regular or frequent use;
  - (iv) such other automobile is not used outside the Province of Quebec as a taxicab or bus or for commercial delivery;
- (f) Owned Trailer - a trailer owned by the Insured, not described in the Declarations, other than a trailer designed or used to carry passengers or for demonstration, sales, office or dwelling purposes, while:
  - (i) attached to an automobile of the private passenger type insured under this contract;
  - (ii) not attached to any other vehicle, provided such trailer is generally attached to an automobile of the private passenger type insured under this contract;

**Automobile of the private passenger type:** commercial vehicles of 4,500 kgs (10,000 lbs) gross vehicle weight or less while used for private or pleasure purpose shall be deemed to be of the private passenger type;

- (g) Non-owned Trailer - a trailer not owned by the Insured used in connection with the automobile.

#### 4. TWO OR MORE AUTOMOBILES

- (a) Subject to paragraph (c), when two or more automobiles are described hereunder (i) with respect to the use or operation of such Described Automobiles, each automobile shall be deemed to be insured under a separate policy; (ii) with respect to the use or operation of an automobile not owned by the Insured, the limit of the Insurer's liability shall not exceed the highest limit applicable to any one Described Automobile.
- (b) When the Insured owns, leases for at least one year or under a contract of leasing two or more automobiles which are insured as Described Automobiles under two or more automobile insurance contracts issued by the same insurer, the amount payable under all such contracts with respect to the use or operation of an automobile not owned by the Insured shall not exceed the highest amount.

In no event shall the Insurer pay more under this contract than the amount stated herein.

- (c) A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be one automobile under section A. Where two or more automobiles are insured under one or more contracts issued by the same insurer, only one amount of insurance, the highest, shall apply in the event of loss under section A.

A motor vehicle and one or more trailers or semi-trailers attached thereto shall be held to be separate automobiles with respect to the amount(s) of insurance, including any deductible provisions, under section B.

- (d) Section A shall apply to the Insured's liability for damage caused to a Non-owned Trailer, other than a trailer designed or used to carry passengers or for demonstration, sale, office or dwelling purposes, while:
- (i) attached to an automobile of the private passenger type insured under said section;
  - (ii) not attached to any other vehicle, provided such trailer is generally attached to an automobile of the private passenger type insured under said section.

**Automobile of the private passenger type:** as stated in General Provision 3 (f).

## 5. CROSS LIABILITY

Every Named Insured sustaining loss or damage because of another Named Insured shall, in respect of such loss or damage, be deemed to be a third party under this contract; provided that this provision shall not operate to increase the limit of the Insurer's liability.

## 6. EXCLUDED USES

Unless coverage is indicated in the Declarations or expressly given by an endorsement, the Insurer shall not be liable under this contract while:

- (a) the automobile is rented or leased to another;
- (b) the automobile is used to carry explosives, or to carry radioactive material for research, education, development or industrial purposes, or for purposes incidental thereto;
- (c) the automobile is used as a taxicab, bus, livery or sightseeing conveyance.

## CONDITIONS

This contract is subject to the *Civil Code of Quebec*, the *Code of Civil Procedure of Quebec*, the *Automobile Insurance Act* and its regulations and the *Act respecting off-highway vehicles* if applicable.

### 1. REPRESENTATION OF RISK

The client, and the Insured if the Insurer requires it, is bound to represent all the facts known to him which are likely to materially influence an insurer in the setting of the premium, the appraisal of the risk or the decision to cover it, but he is not bound to represent facts known to the Insurer or which from their notoriety he is presumed to know, except in answer to inquiries.

The client means the person submitting an insurance application.

### 2. MATERIAL CHANGE IN RISK

The Insured shall promptly notify the Insurer of any change that increases the risks stipulated in the policy and that results from events within his control if it is likely to materially influence an insurer in setting the rate of the premium, appraising the risk or deciding to continue to insure it.

On being notified of any material change in the risk, the Insurer may, under Condition 21, cancel the contract or propose, in writing, a new rate of premium. Unless the new premium is accepted and paid by the Insured within thirty days of the proposal, the policy ceases to be in force.

If the Insurer continues to accept the premiums or if he pays an indemnity after a loss, he is deemed to have acquiesced in the change notified to him.

### 3. MISREPRESENTATIONS OR CONCEALMENT

Section A of the policy may be nullified at the instance of the Insurer where the Insured or the client has misrepresented or concealed relevant facts mentioned in Condition 1 and in the first paragraph of Condition 2 which are likely to materially influence a reasonable insurer in the decision to cover the risk. Unless such misrepresentation or concealment is established, the Insurer remains liable towards the Insured for such proportion of the indemnity as the premium he collected bears to the premium he should have collected.

Section B of the policy may be nullified at the instance of the Insurer where the Insured or the client has misrepresented or concealed relevant facts mentioned in Condition 1 and in the first paragraph of Condition 2 which are likely to materially influence a reasonable insurer, even in respect of losses not connected with the risk so misrepresented or concealed. Unless the bad faith of the Insured or the client is established or unless it is established that the Insurer would not have covered the risk if he had known the true facts, the Insurer remains liable towards the Insured for such proportion of the indemnity as the premium he collected bears to the premium he should have collected.

### 4. BREACH OF WARRANTY

A breach of warranty aggravating the risk suspends the coverage. The suspension ceases upon the acquiescence of the Insurer or the remedy of the breach.

## **5. PROHIBITED USE**

The Insured shall not drive or operate the automobile nor permit the use of the automobile by others:

- (a) unless the driver is for the time being authorized by law or qualified to drive or operate the automobile, or while he is under the age of 16 years or under such other age as is prescribed by law to drive an automobile;
- (b) for any illicit trade or transportation;
- (c) in any race or speed test.

## **6. INSPECTION OF AUTOMOBILE**

The Insurer shall be permitted at all reasonable times to inspect the automobile and its equipment.

## **7. NOTICE OF LOSS**

The Insured shall notify the Insurer of any loss which may give rise to an indemnity, as soon as he becomes aware of it. Any interested person may give such notice.

The failure to fulfil the obligation set out in the preceding paragraph entails forfeiture of the right to indemnity where such failure has caused prejudice to the Insurer.

## **8. INFORMATION TO BE PROVIDED**

At request of the Insurer, the Insured shall inform the Insurer as soon as possible of all the circumstances surrounding the loss, including its probable cause, the nature and extent of the damage, the location of the insured property, the rights of third parties, and any concurrent insurance; he shall also furnish him with vouchers and swear or warrant to the truth of the information.

Where, for a serious reason, the Insured is unable to fulfil such obligation, he is entitled to a reasonable time in which to do so. If the Insured fails to fulfil his obligation, any interested person may do so on his behalf.

In addition, the Insured shall forthwith send to the Insurer a copy of any notice, letter, summons or proceeding received in connection with a claim.

## **9. DECEITFUL REPRESENTATION**

Any deceitful representation relating to a loss entails the loss of the right of the person making it to any indemnity in respect of the risk to which the representation relates.

However, if the occurrence of the event insured against entails the loss of both property for occupational use and personal property, forfeiture is incurred only with respect to the class of property to which the representation relates.

## **10. ABANDONMENT, SAFEGUARDING AND EXAMINATION OF PROPERTY**

The Insured may not abandon the damaged property if there is no agreement to that effect with the Insurer.

The Insured shall facilitate the salvage and inspection of the insured property by the Insurer. He shall, in particular, permit the Insurer and his representatives to visit the premises and examine the insured automobile and its equipment.

In addition, the Insured shall at the expense of the Insurer, and as far as reasonably possible, protect the automobile from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable hereunder. No repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the Insurer, except such repairs as are immediately necessary for the protection of the automobile from further loss or damage, or until the Insurer has had a reasonable time to make the examination provided for in Condition 6.

## **11. ADMISSION OF LIABILITY AND COOPERATION**

No transaction made without the consent of the Insurer may be set up against him.

The Insured shall not admit any liability nor settle or attempt to settle any claim, except at his own cost.

The Insured shall cooperate with the Insurer in the processing of all claims.

## **12. VALUATION AND MANNER OF PAYMENT**

The Insurer shall not be liable beyond the actual cash value of the automobile at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated with proper deduction for depreciation, however caused, and shall in no event exceed what it would cost to repair or replace the automobile or any part thereof with material of like kind and quality provided that in the event of any part of the automobile being obsolete and out of stock, the liability of the Insurer in respect thereof shall be limited to the value of original equipment manufacturer parts at the time of loss or damage not exceeding the manufacturer's latest list price.

For the purposes of the above coverage, the value of damages caused to the described automobile shall be based on original equipment manufacturer parts where the age of the automobile and mileage are less than two (2) years and forty thousand kilometres (40,000 km), or less than one (1) year in the case of an automobile used for commercial purposes. Where the age and mileage are greater, such value may be based on similar automobile parts. However, the Insured may opt for original equipment manufacturer parts, if available, by communicating such option to the Insurer at the time of the notice of loss. The Insurer shall then specify the applicable conditions and additional costs that the Insured shall assume as a result of such option.

In the event of a total or constructive total loss, the Insurer agrees, at the option of the Insured and subject to supporting evidence, to cover reasonable expenses incurred to restore the automobile to the same condition as it was before the loss.

Except where an arbitration has been made and subject to the rights of preferred and hypothecary creditors, the Insurer, instead to making payment may, within a reasonable time, repair, rebuild or replace the property damaged or lost with other of like kind and quality, giving written notice of its intention so to do within seven days after the receipt of the proofs of loss.

In all cases, the salvage, if any, shall revert to the Insurer.

## **13. ARBITRATION**

Arbitration may take place in the event of a disagreement as to the nature, extent or amount of the loss or damage, or the adequacy of the repairs or the replacement, and independently of all other questions respecting the validity of the contract.

The party seeking arbitration must notify the other party of his intention in writing, specifying the matter in dispute. The insured's request for arbitration must be granted. The insurer's request for arbitration may be granted subject to the insured's consent.

If the insured requests arbitration, the insurer must send the insured an acknowledgement of receipt no later than 15 clear days after receipt of this notice. If the insurer so requests, the insured must confirm acceptance or refusal within the same amount of time.

Each party shall name an expert and the two experts shall work jointly to estimate the damage (establishing the actual cash value and the damage separately) or to assess the adequacy of the repairs or the replacement. Failing to agree they shall submit their differences to a disinterested arbitrator they have appointed.

If either party fails to appoint an expert within 30 clear days of the date of the notice or if the experts fail to agree upon an arbitrator within 15 days of their appointment, or if an expert or the arbitrator refuses to act or is unavailable, the vacancy thus created must be filled, on the request of one of the parties, by a court with jurisdiction in the place of the arbitration.

Notwithstanding the arbitration procedure and if the validity or application of the contract is not being contested, the insurer shall pay the uncontested portion of the damage amount. This payment must be made no later than 60 days after receipt of notice of loss or receipt of the information or supporting documents required by the insurer.

Subject to this clause, the arbitration shall follow the procedure in sections 940 to 951.2 of the *Code of Civil Procedure of Quebec*, taking into account any required modifications. In accordance with section 944.1 of this Code, the arbitration may proceed according to a procedure determined by the arbitrator, insofar as this procedure does not contravene the above sections. The arbitration proceedings shall be held at a place in accordance with the domicile of the insured.

The arbitrator shall settle the dispute in accordance with the applicable laws in the province of Quebec. The arbitrator and the parties may use the language of their choice during the arbitration proceedings. Measures must be taken to ensure that all the participants understand the language used.

The arbitration award shall be made in writing by the arbitrator. It must indicate the date and place where it has been made. It must state the reasons on which it is based and be signed by the arbitrator, then sent to the parties within 30 days of the date on which it has been made.

Each party shall pay the expenses and fees of its expert and half the fees and expenses of the arbitration proceedings. The arbitrator is authorized to award the fees and expenses of the arbitration if he deems that the sharing method established by this clause is not justified or fair for each of the parties in the circumstances.

#### **14. NON-WAIVER**

Neither the Insurer nor the Insured shall be deemed to have waived any term or condition of this contract by any act relating to arbitration or to the delivery and completion of proofs of loss, or to the investigation or adjustment of the claim.

#### **15. TIME OF PAYMENT**

Claims under section B shall be paid within sixty days after receipt of notice of loss or of information or proof of loss required by the Insurer or, where an arbitration is held, within fifteen days after award is accepted by the Insured.

#### **16. CONTINUATION OF COVERAGE**

Coverage is maintained after a loss.

#### **17. PRESCRIPTION**

Every action against the Insurer under this contract is prescribed by three years from the date the right of action has arisen.

## **18. SUBROGATION**

Subject to Additional Agreement A (3) of section B, the Insurer shall be subrogated to the extent of the amount paid under this contract to the rights of the Insured against persons responsible for the loss except when they are members of the Insured's household.

The Insurer may be fully or partly released from his obligation towards the Insured where, owing to any act of the Insured, he cannot be so subrogated.

## **19. OTHER LIABILITY INSURANCE**

Insurance under a contract evidenced by a valid owner's policy is, in respect of liability arising from or occurring in connection with the ownership, use or operation of an automobile owned by the Insured named in the policy and within the description or definition thereof in the policy, a first loss insurance, and insurance attaching under any other valid motor vehicle liability policy is excess insurance only.

However, insurance evidenced by a valid garage policy, not describing the specific automobile(s) insured, shall in respect to non-owned or customers' automobiles while being used, operated or worked upon in the course of the policyholder's business as a garage be a first loss insurance and insurance attaching under any other valid motor vehicle policy shall be excess insurance only.

## **20. RENEWAL OF CONTRACT**

This contract shall be renewed of right, for the same premium and for the same period, at expiry, unless notice to the contrary is given by the Insurer or the Insured; if given by the Insurer, the notice of non-renewal or of a change in the premium must be sent to the Insured, at his last known address, not later than the thirtieth day preceding the date of expiry, counting that date.

Where the Insured deals through a broker, the notice provided for in the first paragraph is sent by the Insurer to the broker, the latter being entrusted to remit it to the Insured.

## **21. CANCELLATION**

This contract may be cancelled at any time:

- (a) by each of the Named Insureds giving mere written notice to the Insurer. Cancellation takes effect upon receipt of the notice by the Insurer and the Insured shall therefore be entitled to a refund of the excess of the premium actually paid over the premium earned for the time the contract has been in force, on the basis of the Cancellation Table herein;
- (b) within sixty days after its coming into force, by the Insurer giving written notice to each Named Insured. Cancellation takes effect fifteen days following receipt of such notice by the Named Insured at his last known address.

At the expiry of such period of sixty days, the contract shall not be cancelled by the Insurer except in the case of an aggravation of risk which is likely to materially influence a reasonable insurer in the decision to continue to insure, or when the premium has not been paid. The Insurer so wishing to cancel the contract shall notify each Named Insured in writing; cancellation takes effect thirty days following receipt of such notice by the Named Insured at his last known address or, if the Described Automobile, with the exception of a school bus, is an automobile contemplated in Title VIII.1 of the Highway Safety Code, fifteen days after receipt of the notice.

The Insurer shall refund the excess of the premium actually paid over the earned premium computed on a day to day basis.

Where one or more of the Named Insureds have been mandated to receive or send the notices provided for under paragraph (a) or (b) above, notices sent or received by them shall be deemed to have been sent or received by all Named Insureds.

In this Condition, the words **premium actually paid** mean the premium actually paid by the Insured to the Insurer or its agent, but do not include any premium or part thereof paid to the Insurer by an agent unless actually paid to the agent by the Insured.

## **22. NOTICE**

Any notice to the Insurer may be sent by any recognized means of communication to the Insurer or its authorized representative. Notice may be given to the Named Insured by letter personally delivered to him or by mail addressed to him at his last known address.

## **CANCELLATION TABLE**