

# COMMERCIAL UMBRELLA LIABILITY SECTION

## DEFINED EVENTS

Damages which the Insured shall become legally liable to pay consequent upon Injury, Damage, Malice or Negligent Advice which occur in the course of or in connection with the Business within the Territorial Limits.

## DEFINITIONS

### Business

The Business of the Insured as stated in the schedule of this section as being included.

### Costs and expenses

Costs, charges, expenses and legal costs recoverable from the Insured by a claimant or any number of claimants or incurred by the Company or incurred by the Insured with the Company's prior consent:

1. in the defence or settlement of any claim under this section of the policy or any action or prosecution brought against the Insured in respect of Injury or Damage or other liability as insured in terms of this section of the policy.
2. in the representation at any inquest or accident inquiry in respect of Injury which may form the subject of indemnity under this section of the policy and/or in defending any proceedings in a Court of applicable jurisdiction in respect of matters which may form the subject of indemnity by this section of the policy.

### Damage

Loss of or damage to tangible property, conversion, trespass, nuisance or wrongful interference with the enjoyment of rights over tangible property.

### Injury

Death, injury, illness (mental or physical), disease, false imprisonment or arrest of or to any person.

### Malice

Malicious legal proceedings, malicious falsehood, defamation or infringement of copyright, title, slogan or idea.

### Negligent advice

Incorrect or inadequate advice given in the promotion of the Insured's products, but without expectation or receipt of any other reward.

### Product

Any article after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured.

### Underlying insurance

shall mean cover in force in terms of:

1. the Public Liability section of this policy or;
2. Motor third party liability as insured under the Motor, Motor Fleet or Motor Industry Risks section of this policy or;
3. the Employers' Liability section of this policy or;
4. any liability extension on any section of this policy providing cover to property, including the Building Combined section;

including any extensions to the Underlying Insurance in 1 to 4 above that are stated as included in the schedule of the Underlying Insurance. Where cover for the extension to the Underlying insurance has not been included, no cover is provided for that extended cover by any of the Bases of Indemnification of this Umbrella Liability section.

## LIMITS OF INDEMNITY

The amount payable, inclusive of any Costs and Expenses, for any claim or number of claims for any one event or series of events with one originating cause or source, shall not exceed the Limit of Indemnity stated in the schedule.

Where more than one period of insurance of this policy, following its renewal or replacement may apply to an originating cause or source, the Company's liability will be limited to the maximum Limit of Indemnity for any one such period of insurance. If the premium is paid monthly by debit order, the words "period of insurance" are amended to read "for any one period of 12 consecutive months from the inception or anniversary date".

Where the Insured is, in addition to this section, insured in his individual name under the Personal Legal Liability section and/or Personal Umbrella Liability section of this policy, the Company will indemnify the business and individual separately and not jointly, provided that the aggregate liability of the Company shall not exceed the sum of the Limit of Indemnity stated in the schedule for the Personal Legal Liability section and Personal Umbrella Liability or, alternatively the sum of the Limit of Indemnity of the Public Liability section and Commercial Umbrella section whichever is the higher.

## TERRITORIAL LIMITS

Anywhere in the world but not in respect of any judgement, award or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).

## BASIS OF INDEMNIFICATION

The Defined Events of this section provide indemnity as defined under Basis 1, 2 and 3 below:

### **Basis 1: Excess layer protection** (if stated as included in the schedule)

This basis provides indemnity within the Defined Events of this section where the claim is covered by the terms of the Underlying Insurance but only to the extent that the claim is not met by such Underlying Insurance solely because of the inadequacy of the underlying limit of indemnity

provided that:

1. the cover provided by the Excess Layer Protection is subject to the same terms, exclusions and conditions as the Underlying Insurance;
2. the Excess Layer Protection provides indemnity in excess of the limit of indemnity stated in the Schedule in respect of the Underlying Insurance, except where such limit of indemnity has been reduced or exhausted by reason of claims, in which case this insurance pays in excess of the First Amount Payable (if any) of the Underlying Insurance;
3. where the limit of indemnity of the Underlying Insurance is exhausted by previous claims, the Company will interpret this section as if the Underlying Insurance had still been in force;
4. where the Underlying Insurance states that generally or in respect of specified claims the limit of indemnity is the aggregate of all indemnifiable claims occurring or made during the period of insurance of the Underlying Insurance, then the limit of indemnity under this section is declared to be on an identical basis as the Underlying Insurance.

## **Basis 2: Difference in conditions protection** (if stated as included in the schedule)

This Basis provides indemnity within the Defined Events of this Section where the claim is within the Defined Events of the Underlying Insurance but where such claim is rejected because of a policy term, condition or exclusion of the Underlying Insurance

provided that:

1. where a claim under the Underlying Insurance is not covered by an exclusion in the Underlying Insurance but could have been covered by an optional extension in the Underlying Insurance (as listed in the Schedule), then this Basis 2: Difference in Conditions Protection will not respond;
2. if a claim is covered in terms of the Defined Events of the Underlying Insurance, but such Underlying Insurance is exhausted by reason of other claims and where, in the opinion of the Company, such claim would have been excluded by the Underlying Insurance by reason of a term, exclusion or condition, then the provisions of this Difference In Conditions protection will apply (other than where an optional extension was available to include the cover under the Underlying Insurance as described under 1 above);
3. the Company will follow the provisions of the Defined Events of the Underlying Insurance in determining the basis on which the Insured is indemnified by this clause of this section, being either:
  - 3.1 in respect of Injury, Damage or Malice occurring or Negligent Advice given during the period of this section (Losses Occurring), or
  - 3.2 in respect of claims made against the Insured during the period of this section following Injury, Damage, Malice or Negligent Advice (Claims Made);
4. if a claim is rejected by the Company on the Underlying Insurance on the basis of an exclusion relating to the failure of a product to perform as specified, warranted or guaranteed, or to fulfill its intended purpose and such Underlying Insurance is on a losses occurring basis and the circumstances of the claim is such that the Insured or the Company cannot mutually agree when the loss occurred, then the Company will deal with the claim on the basis that the loss occurred when the claimant first notified the Insured of a circumstance or an event which subsequently gave rise to an indemnifiable claim;
5. the Difference In Conditions protection does not provide indemnity where a claim is excluded by the wording of the Defined Events of the Underlying Insurance, except where a claim is excluded by the Underlying Insurance:
  - 5.1 solely on the grounds that the Injury or Damage was not accidental by nature, or did not arise out of an accident;
  - 5.2 solely on the grounds that temporary loss of use of property or reduction in value of property did not constitute damage within the Defined Events of the Underlying Insurance.

## **Basis 3: Additional risks protection** (if stated as included in the schedule)

This basis provides indemnity where the claim is outside the scope of the Defined Events of any Underlying Insurance but within the scope of Defined Events of this section

provided that:

1. a claim is not the subject of indemnity by any other policy of insurance, is not covered or coverable (either in whole or in part) by the Excess Layer Protection or the Difference In Conditions Protection and falls within the Defined Events of this section;
2. the indemnity granted by the Additional Risks Protection is limited to claims made against the Insured during the period of insurance of this section, or events or circumstances notified by the Insured to the Company during such period of insurance which subsequently give rise to claims being made;
3. the indemnity limit of this section in respect of cover granted by the Additional Risks Protection is limited to the aggregate of all claims made during the period of insurance of this section, or event or circumstances notified by the Insured to the Company during such period which subsequently give rise to claims being made (if the premium is paid monthly by debit order, the words "period of insurance" are amended to read "for any one period of 12 consecutive months from the inception or anniversary date");
4. no indemnity is provided by the Additional Risks Protection where the Company declined to grant indemnity in terms of the Underlying Insurance in respect of a claim on the grounds that the Injury, Damage, Malice, Negligent Advice or event did not occur or the claim was not made during the period of insurance (as the case may be).

# CLAUSES AND EXTENSIONS

## Additional Insured

The Company will also, as though a separate policy had been issued to each, indemnify:

1. in the event of the death of the Insured, any personal representative of the Insured in respect of liability incurred by the Insured;
2. any partner or director or employee of the Insured (if the Insured so requests) against any claim for which the Insured is entitled to indemnity under this insurance;
3. to the extent required by the conditions of any contract and in connection with any liability arising from the performance of the contract, any employer named in any contract entered into by the Insured for the purposes of the Business;
4. in respect of the activities of any social or sports club, welfare organisation, first aid, fire or ambulance service, canteen or the like, belonging to or formed by the Insured for the benefit of their employees,
  - 4.1 any officer or member thereof;
  - 4.2 any visiting sports team or member thereof

provided that:

1. the aggregate liability of the Company is not increased beyond the Limits of Indemnity stated in the schedule;
2. any person or organisation to which this extension applies is not entitled to indemnity under any other policy
3. the indemnity under 1, 2 and 3 above applies only in respect of liability for which the Insured would have been entitled to indemnity if the claim had been made against the Insured;
4. each party to whom the indemnity under this extension applies shall observe, fulfil and be subject to the terms, exclusions and conditions (both general and specific) of this insurance in so far as they can apply.

## Cross liability

Where more than one Insured is named in the Schedule, the Company will indemnify each Insured separately and not jointly, and any liability arising between such Insureds shall be treated as though separate policies had been issued to each, provided that the aggregate liability of the Company shall not exceed the Limit of Indemnity stated in the schedule.

## SPECIFIC EXCLUSIONS (applicable to all Bases of Indemnification)

The Company will not indemnify the Insured in respect of:

1. fines, penalties, punitive, exemplary or vindictive damages;
2.
  - 2.1 liability in respect of Injury, Damage or loss of use of property directly or indirectly caused by Pollution, provided always that this exclusion shall not apply where such Pollution is caused by a sudden, unintended and unforeseen occurrence;
  - 2.2 the cost of removing, nullifying or cleaning up substances resulting from Pollution unless the Pollution is caused by a sudden, unintended and unforeseen occurrence.

This exclusion shall not extend the policy to cover any liability which would not have been insured under this policy in the absence of this exclusion;

3. any Injury, Damage, Malice or Negligent Advice which occurs prior to the Retroactive Date which is applicable to the Underlying Insurance;
4. liability arising out of any circumstance or event known to the Insured:
  - 4.1 which is not reported to the Company in terms of General condition 6; and/or
  - 4.2 prior to inception of this section;
5. liability consequent upon Injury, Damage, Malice or Negligent Advice arising out of any deliberate, conscious or intentional disregard by the Insured or the Insured's management of the need to take reasonable precautions to prevent any event or circumstance which may give rise to a claim;
6. any fine imposed or penalty incurred as a consequence of the commission of a criminal offence;

7. any benefits for which the Insured is liable under any relevant workmen's compensation, unemployment compensation or disability benefits law and/or similar law and/or scheme;
8. so much of any compensation or claim as falls within the scope of any compulsory motor vehicle insurance enactment. This exclusion shall apply notwithstanding that no insurance under such enactment is in force or has been effected;
9. any costs necessary to repair, replace, recondition or modify any Product or part thereof and/or for the loss of use of any Product or part thereof;
10. any liability arising out of the recall of any Product or part thereof;
11. any liability arising out of performance warranties or guarantees or clauses stipulating liquidating damages or penalties, except to the extent that it is proved that such liability would have existed in the absence of such contractual provision;
12. any liability for personal Injury caused or contributed to by prolonged exposure to substances, factors or circumstance peculiar to any particular employment or occupation;
13. any liability for motor third party liability unless such liability is in excess of the Underlying Insurance and is indemnifiable there under;
14. any liability arising out of the carriage of passengers for hire or reward or the carriage of fare paying passengers;
15. liability for loss or damage including detrimental change and any consequence therefrom to any electronic data;
16. liability for any unfair labour practice including but not limited to unfair dismissal within the meaning of the Labour Relations Act No. 66 of 1995 as amended, or any Act passed in substitution thereof;
17. Injury or Damage happening in the United States of America or Canada caused by or through or in connection with any goods or Products sold or supplied by or to the order of the Insured, if such goods or Products have, to the Insured's knowledge, been exported to the United States of America or Canada by or on behalf of the Insured or such sale or resale should reasonably be contemplated by the Insured;
18. any liability if the transport of hazardous substances was not in compliance with chapter VIII of the National Road Traffic Act 1996 (Act No 93 of 1996) as amended, or any Act passed in substitution thereof;
19. liability arising out of any deliberate or intentional act of the Insured, any employee of the Insured or any person for whom the Insured would be vicariously liable;
20. acts, errors or omissions of the directors or officers of the Insured when acting in their capacity as such or in the provision by the Insured of professional services which shall include giving advice, any action taken or work done by the Insured when carrying on their functions in any capacity involving special skill or knowledge in their calling or the failure to discharge any obligations pursuant thereto. This exclusion does not apply to Negligent Advice;
21. any liability arising from fire spreading to any veld or forest from any premises owned, used, hired or leased by the Insured, unless at the time of the fire the Insured complies with the regulations of the National Veld and Forest Fire Act No 101 of 1998 (as amended or any Act passed in substitution thereof) in respect of the premises from which the fire spread;
22. any liability arising from fire spreading to any sugar cane or timber plantation from any premises owned, used, hired or leased by the Insured;
23. any liability arising from the bursting or overflowing of any dam with a safety risk as defined in the National Water Act 36 of 1998 (as amended or any Act passed in substitution thereof);
24. any liability arising from Products intended to be installed and installed in, or intended to form part of and forming part of, an aircraft;
25. any liability arising from any defect in any Product or any part thereof of which the Insured was aware prior to the inception of this section;
26. any claim or claims whether actual or alleged howsoever arising in connection with or based upon or arising from or in any way involving actual or alleged unlawful competition, unfair practices, abuse of monopoly power, cartel activities or as may otherwise arise from or be based upon or relate to any breach of a provision of the Competition Act no. 89 of 1998 (as amended or any Act passed in substitution thereof) or any similar provision, act or regulation as may be in force in any jurisdiction or country in which the Insured's liability arose;

27. any liability arising from Damage to property in the Insured's care, custody or control where the Insured or any employee of the Insured receives payment for the storage of such property as part of the Business of the Insured;
28. any liability that has been specifically excluded in the schedule of the Underlying Insurance.

## **ADDITIONAL SPECIFIC EXCLUSIONS** (only applicable to 2. Difference In Conditions Protection and 3. Additional Risks Protection).

The Company will not indemnify the Insured in respect of:

1. any liability for or arising out of the ownership, hire purchase or leasing of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15,25 metres in length and then only whilst on inland waterways) by or on behalf of the Insured;
2. any liability for or arising out of the repair, maintenance, refuelling or defuelling of any aircraft, watercraft or hovercraft undertaken by or on behalf of the Insured as a revenue producing activity;

Additional Specific Exclusions 1 and 2 do not apply to liability for death, injury, illness or disease of or to employees of the Insured arising out of such employment;

3. seepage, pollution or contamination being the natural consequence of the operation or existence of the Business;
4. Damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than premises (or the contents thereof) temporarily occupied by the Insured for work therein or other property temporarily in the Insured's possession for work thereon (but no indemnity is granted for Damage to the property on which the insured is working and which arises out of such work);
5. any liability where the indemnity is available under the Underlying Insurance by means of an optional extension and where in the Underlying Insurance it shows the optional extension as "not included" in the schedule of such Underlying Insurance.

## **SPECIFIC CONDITIONS**

1. Any dispute between the Insured and the Company in connection with or arising out of this section shall be decided exclusively in accordance with the law of the Republic of South Africa and exclusively by a competent court of the High Court of South Africa.  
The Insured undertakes that they will not institute action against the Company nor bring joint proceeding against the Company in the Court of any country other than the Republic of South Africa.
2. The insurance under this section shall cease if the Business is wound up, put in business rescue or carried on by a liquidator or judicial manager or is permanently discontinued, except with the written agreement of the Company.
3. The indemnity granted by this section is conditional upon the Underlying Insurance (as defined) remaining in force throughout the period of insurance of this section.
4. If, at the time of any event giving rise to a claim under this section, indemnity is also provided under any other insurance, other than a policy to specifically provide indemnity in excess of this policy, this section shall not be drawn into contribution with such other insurance. The provisions of this condition shall apply notwithstanding that the aforesaid policy be voidable or that the Company be entitled to avoid liability for an occurrence which has given rise to a claim under such other policy.