

 <p><b>FDM ENGINEERING</b> UNDERWRITERS [PTY] LTD 2004/009147/007</p> <p><i>Authorised Financial Services Provider – FSP NO.: 20816</i></p>	<p>Tel: +27 11 823-6368/90 Fax: +27 11 823-6295 Fax to email: 086-511-6607 Cell: 082-493-4090 Email: <a href="mailto:Fergus@oaktreesa.co.za">Fergus@oaktreesa.co.za</a></p>
	<p>P.O. Box 10522 Fonteinriet 1464</p> <p>38 Turton Road, Boksburg West 1459</p>

## CONTRACTORS SITE LIABILITY INSURANCE POLICY WORDING

### PREAMBLE

Whereas an application has been made to *THE RENASA INSURANCE CO. LTD* or Co-Insurers and the Insured have paid the premium for the Insurance described herein.

*THE RENASA INSURANCE CO. LTD* (hereinafter referred to as *THE COMPANY*), agrees, subject to the Terms, Exceptions, Definitions and Conditions and/or Endorsements and/or otherwise expressed hereon, to indemnify the Insured. So hereinafter specified during the Period of Insurance cover by this Policy, provided always that due observance and fulfillment of the conditions contained herein shall so far as the nature of them will permit, be deemed to be the conditions precedent to the right of the Insured to recover hereunder.

Signed at   BOKSBURG   on this the        AS PER SCHEDULE

For and on behalf of

      F.F. McNAMARA      

**FDM Engineering Underwriters (Pty) Ltd**

For and on behalf of THE RENASA INSURANCE CO. LTD

**FDM Engineering Underwriters (Pty) Ltd**  
2004/009147/07

**P.O. Box 10522**

**Fonteinriet**

**1464**

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## **GENERAL EXCEPTIONS**

### **1. WAR**

- A. This Policy does not cover loss of or damage to property related to or caused by:-
- i) Civil commotion, labour disturbances, riot, strike, lockout or public disorder or any act or activity which is calculated or directed to bring about any of the above;
  - ii) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) or civil war;
  - iii) (a) Mutiny, military rising, military or usurped power, martial law or state of siege, or any other event or cause which determines the proclamation or maintenance of martial law or state of siege;  
(b) Insurrection, rebellion or revolution.
  - iv) Any act (whether on behalf of any organisation, body or person, or group of persons) calculated or directed to overthrow or influence any State or Government, or any provincial, local or tribal authority with force, or by means of fear, terrorism or violence;
  - v) Any act which is calculated or directed to bring about loss or damage in order to further any political aim objective or cause, or to bring about any social or economic change, or in protest against any State or Government, or any provincial, local or tribal authority, or for the purpose of inspiring fear in the public, or any section thereof;
  - vi) Any attempt to reform any act referred to in clause (iv) or (v) above;
  - vii) The act of lawfully established authority in controlling preventing, suppressing or in any other way dealing with any occurrence referred to in clause (i) (ii) (iii) (iv) (v) or (vi) above.

If the Company alleges that by reason of Clause (i), (ii), (iii), (iv), (v), (vi) or (vii) of this exception, loss or damage is not covered by the Policy, the burden of proving the contrary shall rest on the insured.

- B. This policy does not cover loss or damage caused directly or indirectly by or through or in consequence of any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act, 1976 (No. 85 of 1976) or any similar Act operative in any of the territories to which this Policy applies.

### **2. NUCLEAR**

- A. This policy does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss directly or indirectly caused by or contributed to by or arising from:
- i) Ionizing, radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
  - ii) Nuclear material, nuclear fission or fusion, nuclear radiation;
  - iii) Nuclear explosives or any nuclear weapon;
  - iv) Nuclear waste in whatever form.

For the purpose of this exception only combustion shall include self sustaining process of nuclear fission.

- B. The indemnity provided by this Policy shall not apply to nor include any loss destruction damage or legal liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.

### **3. OTHER GENERAL EXCEPTIONS**

3. The Company shall not be liable for any claim in respect of loss damage or liability directly or indirectly caused by or arising out of:-
- 3.1 Confiscation nationalization or requisition or destruction of or damage to property by or under the order of any Government de jure or de facto or of any Public or Local Authority;
- 3.2 Willful act or willful negligence of the Insured or his representative.

### **4. ASBESTOS EXCLUSION**

Notwithstanding any provision of this policy including any exclusion, exception or extension or other provision which would otherwise override a general exception, this policy does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss directly or indirectly caused by, arising out of, resulting from, in consequence of, in any way involving, or to the extent contributed to by, the hazardous nature of asbestos in whatever form or quantity.

#### **Riot and strike extension (if stated in the schedule to be included)**

Subject otherwise to the terms, conditions, exclusions, exceptions and warranties contained therein, this section is extended to cover loss or damage directly occasioned by or through or in consequence of: (i) civil commotion, labour disturbances, riot, strike or lockout;

(ii) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in (i) above; provided that this extension does not cover:

(a) Loss or damage occurring in the Republic of South Africa and Namibia;

(b) Consequential or indirect loss or damage of any kind or description whatsoever, other than loss of rent if specifically insured;

(c) Loss or damage resulting from total or partial cessation of work, or the retarding or interruption or cessation of any process or operation;

(d) Loss or damage occasioned by permanent or temporary dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority;

(e) Loss or damage related to or caused by any occurrence referred to in General Exception 1(A)(ii), (iii),

(iv), (v) or (vi) of this policy or the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any such occurrence.

If the company alleges that, by reason of provisos (a), (b), (c) (d) or (e), loss or damage is not covered by this section, the burden of proving the contrary shall rest on the insured.

## **SCHEDULE**

### **THE INSURED**

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### **PERIOD OF INSURANCE** (as specified in the policy schedule)

In the event that the insured contract is not completed by the end of this period the policy shall in consideration of terms to be agreed remain in full force and effect for an additional period necessary to achieve completion, always subject to written confirmation.

### **THE INSURED CONTRACT/S**

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The cover offered under this policy is strictly limited to site.

### **TERRITORIAL LIMITS**

The Republic of South Africa and to the extent permitted by the relevant Insurance Acts, Namibia, Lesotho, Swaziland, Botswana and Malawi.

### **THIRD PARTY SITE LIABILITY**

The Insurers will indemnify the Insured up to but not exceeding the amounts specified in the Schedule against such sums which the Insured shall become legally liable to pay as damages consequent upon:

- a) accidental bodily injury to or illness of third parties (whether fatal or not);
- b) accidental loss of or damage to property belonging to third parties,

occurring in direct connection with the contractors work/plant operators work and happening on or in the immediate vicinity of the site during the period of cover.

In respect of a claim for compensation to which the indemnity provided herein applies, the Insurers will in addition indemnify the Insured against:

- a) all costs and expenses of litigation recovered by any claimant from the Insured; and
- b) all cost and expenses incurred with the written consent of the Insurers.

provided always that the liability of the Insurers under this Section shall not exceed the limits of indemnity stated in the Schedule.

### **SPECIAL EXCLUSIONS**

The Insurers will not indemnify the Insured in respect of:

- 1) the deductible stated in the Schedule to be borne by the Insured in any one occurrence;
- 2) the expenditure incurred in doing or redoing or making good or repairing or replacing anything covered or coverable under a Material Damage Policy.
- 3) damage to any property or land or building caused by vibration or by the removal or weakening of support or injury or damage to any person or property occasioned by or resulting from any such damage (unless especially agreed upon by endorsement);

4) ***liability consequent upon:***

- a) bodily injury to or illness of employees or workmen of the Contractor(s) or the Principal(s) or any other firm connected with the project.
- b) loss of or damage to property belonging to or held in care, custody or control of the Contractor(s), the Principal(s) or any other firm connected with the project which or part of which is insured under a Material Damage Policy, or an employee or workman of one of the aforesaid;
- c) any accident caused by vehicles licensed for general road use or by waterborne vessels or aircraft unless the vehicles are construction vehicles & used for the purpose of construction.
- d) any agreement by the Insured to pay any sum by way of indemnity or otherwise unless such liability would have attached also in the absence of such agreement.

**SPECIAL CONDITIONS**

- 1. 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 Insurers who shall be entitled, if they so desire, to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute for their own benefit in the name of the Insured 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 Insurers may require.
- 2. The Insurers may so far as any accident is concerned pay to the Insured the limit of indemnity for any one accident (but deducting therefrom in such case any sum or sums already paid as compensation in respect thereof) or any lesser sum for which the claim or claims arising from such accident can be settled and the Insurers shall thereafter be under no further liability in respect of such accident under this Section.

## **PUBLIC LIABILITY (Continued)**

### **CLAUSES**

#### **1. LEGAL DEFENCE COSTS (if included in the schedule)**

It is hereby agreed that notwithstanding the Exceptions or anything else contained herein to the contrary, the Insurers shall indemnify the Insured against costs and expenses incurred with the written consent of the Insurers in the defence of any legal action brought against the Insured, arising from an alleged contravention of any statute or duty at common law.

Provided that:

- a) in the case of an appeal, the Insurers will not indemnify the Insured unless a Senior Counsel, approved by the Insurer, advised that such an appeal should in his opinion succeed.
- b) the Insurers will not indemnify the Insured in respect of any fine or penalty imposed by any Magistrate or Judge nor any loss consequent thereto;
- c) the liability of the Insurers in respect of any one occurrence shall not exceed Fifty Thousand Rand (R50,000).

#### **2. EMERGENCY MEDICAL EXPENSES (if included in the schedule)**

It is hereby agreed that the Insurers shall indemnify the Insured in respect of costs and expenses incurred by the Insured for such medical treatment as may be reasonable at the time of any occurrence causing injury to any person who may be connected with a claim for indemnity in terms of this insurance. The liability of the insurers in respect of any one occurrence shall not exceed Twenty Thousand Rand (R20,000).

#### **3. ARREST ASSAULT DISCHARGE AND DEFAMATION (if included in the schedule)**

It is hereby agreed that notwithstanding the Exceptions or anything else herein contained to the contrary this Policy is extended to include any legal liability of the Insured (not necessarily consequent upon death or injury to any person or loss or damage to any property):

- a) arising from malicious or wrongful arrest or alleged malicious wrongful arrest of any person;
- b) arising from malicious or wrongful assault or alleged malicious or wrongful assault of any person;
- c) arising from malicious or wrongful discharge or alleged malicious or wrongful discharge of any employee;
- d) in respect of defamation or alleged defamation whether negligence is imputed or not.

The liability of the Insurers in respect of any one occurrence shall not exceed Fifty Thousand Rand (R50,000).

## **GENERAL CONDITIONS**

### **1. DUE OBSERVANCE**

The due observance and fulfillment of the terms 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 statement and answers to any questions and or proposal made by the Insured shall be a condition precedent to any liability of the Insurer(s).

### **2. RIGHT TO INSPECT**

Representatives of the Insurers shall at any reasonable time have the right to inspect and examine the risk and the Insured shall provide the representatives of the Insurers with all details and information necessary for the assessment of the risk.

### **3. BREACH**

A breach of or other non compliance with anything to be done or not done under this Insurance (whether expressed or implied) shall not invalidate the Insurance or prejudice an insured person / insured Company other than the insured person / Company guilty of such breach or non-compliance and then only to the extent that such breach or non-compliance was to the prejudice of the Insurers.

### **4. MATERIAL CHANGE IN RISK**

The Insured shall immediately notify the Insurers in writing of any material change in the risk and cause at his own expense such additional precautions to be taken as circumstances may require, and the scope of cover and / or premium shall, if necessary, be adjusted accordingly. No material alteration shall be made or admitted by the Insured whereby the risk is increased, unless the continuance of the insurance is confirmed in writing by the Insurers.

### **5. INSURED'S OBLIGATIONS FOLLOWING AN INSURED EVENT AND CLAIMS NOTIFICATION PROCEDURE**

- a) Should an insured event or possible insured event occur which will or may give rise to a claim under this Policy of Insurance, the Insured shall:
  - i) immediately notify Insurers in writing of the event, provide any additional information required as well as to the nature and extent of loss or damage;
  - ii) Take all redeemable steps to minimize the extent of the loss or damage;
- b) The Insurers shall not be liable for damage, loss or liabilities unless notice is received within 60 (sixty) days of the occurrence. All summons or notice of other proceedings which may be brought against the Insured should be notified to the Insurers as soon as possible.



## **6. MISREPRESENTATION AND MISDESCRIPTION**

This Policy of Insurance shall be void if and in the event of:-

- a) misrepresentation;
- b) misdescription;
- c) non disclosure of any material fact;
- d) any breach of any condition or warranty applicable thereto;
- e) fraud.

## **7. REASONABLE PRECAUTIONS FOR THE PREVENTION OF LOSS**

The Insured shall always, in all circumstances and under all conditions, take all reasonable precautions to prevent loss or damage, maintain all Insured Property in proper working order, employ competent employees that are correctly trained to perform their designated work, comply with all Acts of Parliament and all By-Laws and ensure that Statutory or Local Authority Laws are observed and complied with.

Fraudulent claims or exaggerated or false declarations / statements that are made in respect to any claim, the Policy will be void and the Company shall not be liable to make any payments in respect of this Policy. The Company may suspend cover by written notice, if in the opinion of the Company, the Insured Property or contract site is discovered to be in a condition which is unsafe or worsens the Risk.

## **8. CONTRIBUTION**

If at the time of any damage or loss covered by this Policy and agreed with the Company, there shall be any other Insurance Policy, covering damage, effected by or on behalf of the Insured, the Company shall not be liable for more than its ratable proportion of such damage. If any other Insurance, covering this loss or damage, shall be subject to any conditions of average, this Policy shall be subject to average in like manner. If such other Insurance is subject to any condition of advantage to the other Insurer, this Policy shall be subject to such condition in similar manner.

## **9. ARBITRATION**

If The Company or the Insured so require and should any difference arise between the two as to the amount of any claim settlement under this Policy, the same shall be referred to arbitration in accordance with statutory provision in force with the Law in the Republic of South Africa and the obtaining of any award shall be a condition precedent to any Right of Action against The Company.

## **10. PRESCRIPTION**

The Company shall only be liable for any loss or damage to the Insured's property for a period of 12 (twelve) months, after which time indemnity expires. The Company may, on request in writing, extend the prescription period. The above prescription period does not apply when the loss or damage is the subject of a pending Court action or arbitration.

Should The Company reject a claim and the Insured has not commenced with an action or suit against the Company within 6 (six) months after such rejection, all benefits in respect of this Policy of Insurance and in respect of the relevant claim shall be forfeited.

## **11. THE COMPANY'S RIGHTS AFTER DAMAGE GIVING RISE TO A CLAIM**

On the happening of any event that may give rise to a claim, the Company shall be entitled to, in the name of the Insured:-

- i) enter, take or keep possession of or collect, have delivered to the Company, any of the Insured's property which it may retain and with which it may deal for all reasonable purposes and manner;
- ii) have the absolute conduct and control of any proceedings that the Company, from time to time, may consider necessary for the purpose of locating or recovering or securing reimbursements in respect of the Insured's property whether lost or damaged.

The Insured may not abandon any property that is the subject matter of this particular claim.

If the Insured or the representative of the Insured will not comply with or hinder or obstruct with the reasonable requests and requirements of the Company, then all benefits in terms of this Policy shall be forfeited.

## **12. CANCELLATION**

This Policy of Insurance may be cancelled by either The Company or the Insured, by giving 30 (Thirty) days' notice in writing from the company & immediate notice for the insured.

If any amount due, in terms of the debit order facility in respect of this Policy of Insurance, is not paid by later than 15 (fifteen) days after the "due date" of payment, the Policy of Insurance shall be cancelled without further notice.

## **13. POLICY OF INSURANCE AND SCHEDULE**

This Policy of Insurance and Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached, shall bear such meaning, wherever it may appear. The limit of indemnity payable under this Policy of Insurance in respect of any one Item is the "sum insured" as stated in the Schedule against such Item.

#### **14. SUBROGATION**

The Insured shall at the expense of the Insurers do or permit to be done all such acts and things as may be necessary and required by the Insurer(s) for the purpose of enforcing any rights of remedies against or obtaining relief on Indemnity from other parties to which the Insurers shall be entitled to subrogate against under this Policy.

#### **15. PREMIUM ADJUSTMENT**

The premium is based on estimates provided by the Insured. It is agreed that the Insured shall, after completion of the Insured Contract, declare the actual applicable contracting expenditure to the Insurer, who will then adjust the premium accordingly. A minimum deposit premium of 80% (eighty percent) will apply to all contracts.

#### **16. ENTIRE AGREEMENT**

This Policy of Insurance shall form the entire agreement between the insurance and the insuring party and any party claiming as an Insured and supercedes and replaces all prior communications, representations, undertakings and agreements between the parties whether oral or written.

#### **17. UNDERGROUND SERVICES**

Special condition concerning underground cables, pipes and other facilities.

It is agreed and understood that otherwise subject to the terms, exclusions, provisions And conditions contained in the Policy or endorsed thereon, the Insurers shall only Indemnify the Insured in respect of loss of or damage to existing underground cables And / or pipes or other underground facilities if, prior to the commencement of works, The Insured has enquired with the relevant authorities about the exact position of such Cables, pipes or other underground facilities (wayleave) and takes all necessary steps to avoid Damage to same or a Double excess will apply if no Wayleave has been applied for.

Claims in respect of loss or damage to such underground facilities which are in the same position as shown on the underground maps (drawings indicating the position of the Underground facilities) shall be payable after applying the deductible in the Schedule.

Claims in respect of loss of or damage to underground facilities incorrectly shown on the underground map shall be payable after applying the deductible of 20% of the loss Amount with a minimum of R7 500.

The Indemnity shall in any case be restricted to the repair costs of such cables, pipes or Other

Underground facilities.

Any consequential damage and penalties being excluded from the cover.

## **MEMORANDA**

It is hereby declared and agreed that the following memoranda are incorporated in this policy:

### **Memo 1 – Claims Preparation Costs**

It is hereby agreed that this Policy of Insurance, when appearing on the Schedule, is extended to cover costs reasonably incurred by the Insured in producing or certifying any particulars required by the Insurer. Amount is to be specified in the Policy Schedule of Insurance.

### **Memo 2 – The Deductibles**

Unless otherwise agreed and so endorsed on the schedule of the Policy of Insurance, the Deductibles shall be applicable in respect of each and every occurrence or series of occurrences arising out of or in connection with any one event at any one site, giving rise loss or damage or liability insured by this Policy. Where more than one of the Deductibles could reasonably be applied to a claim in terms of this Policy of Insurance, then only the largest applicable Deductible shall be applied.

### **Memo 3 – Insured Contracts (Annual Renewable Policies only)**

Insurance in respect of this Policy shall apply separately to each liability contract as declared after each period of insurance, as if a separate Policy had been insured for each such contract.

### **Memo 4 – Non Contribution**

This Policy of Insurance is only to pay any claim as specifically stated in the Schedule to the extent of liability against which the Insured is not indemnified by a more specific insurance, if any, effected for the benefit of the Insured.

### **Memo 5 – Own Surrounding Property Liability (if included in the Schedule)**

Property (other than contract works or construction plant and equipment used or intended for use on the insured contract) being worked or in the care, custody or control of the contractor and arising from or in connection with the Insured Contract, provided that this indemnity shall only operate to the extent that indemnity is not obtained under any other Policy of Insurance effected for the benefit of the Insured. In order for indemnity to apply, it must be expressed in the Schedule and be agreed in writing with the Insurer(s).