

BROADFORM PUBLIC LIABILITY

Defined events

Injury, damage or loss as hereinafter provided for in the elected insuring sub-sections and extensions for which the insured shall become legally liable in accordance with the law of any country but not in respect of any judgement, award, payment 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.

The indemnity provided herein applies only to claims first made against the insured during the period of insurance and arising out of the business specified in the schedule.

For the purpose of determining the indemnity granted:

1. "injury" means death, bodily injury, illness or disease, mental injury of or to any person
2. "damage" means loss of possession or control of or actual damage to tangible property or interference with servitude or right of access or other infringement of real or personal rights to the use of property
3. "pollution" means the emission, discharge, dispersal, disposal, seepage, release or escape of any liquid, solid, gaseous or thermal irritant, contaminant or pollutant into or upon land, the atmosphere or any watercourse or body of water or the generation of smells, noises, vibrations, light, electricity, radiation, changes in temperature or any other sensory phenomena, but not fire or explosion
4. "product" means any tangible property 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, but shall not mean food and drink supplied by or on behalf of the insured primarily to the insured's employees as a staff benefit.
5. "negligent advice" means incorrect or inadequate advice or information of a technical nature given in the promotion of the insured's products or services but not where such advice or information:
 - a) is given in exchange for a fee or similar consideration, or
 - b) is an essential part of a revenue earning activity of the insured.
6. "vehicle" means any land vehicle or trailer (including any machinery or apparatus attached thereto) whether or not subject to vehicle registration or whether or not self-propelled including locomotives and rolling stock.

Continuous exposure clause

In the event of any injury or damage arising from continuous or continual inhalation, ingestion or application of any substance where the insured and the company cannot agree when the injury or damage occurred then:

1. injury shall be deemed to have occurred when the claimant first consulted a qualified medical practitioner in respect of such injury
2. damage shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown.

Notification extension clause

Should the insured notify the company during the period of insurance in accordance with specific condition 1 of. any specific event or circumstances which the company accepts may give rise to a claim or claims which form the subject of indemnity by this policy, then acceptance of such notification means that company will deal with such claim or claims which may later arise as if they had first been made against the insured during the period of insurance.

Indemnity to others

The indemnity granted extends to:

1. any party who enters into an agreement with the insured for any purpose of the business, but only to the extent required by such agreement to grant such indemnity and subject to sub-section A - exclusion 4 (c) and specific exception 5
2. officials of the insured in their business capacity arising out of the performance of the business or in their private capacity arising out of their temporary engagement of the insured's employees

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3. the officers, committee and members of the insured's canteen, social, sports, medical, fire fighting and welfare organisation in their respective capacities as such
4. any visiting sports team or member thereof in respect of the activities of any sports club formed by the insured for the benefit of their employees
5. the personal representatives of the estate of any person who would otherwise be indemnified by this policy, but only in respect of liability incurred by such person.

provided always that all such persons or parties shall observe, fulfil and be subject to the terms, conditions and exceptions of this policy as though they were the insured.

Cross liabilities

Each person or party indemnified is separately indemnified in respect of claims made against any of them by any other, subject to company's total liability not exceeding the stated indemnity limits.

Defence costs

The company will pay all costs, fees and expenses incurred with its prior consent in the investigation defence or settlement of any claim made against the insured and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be made against the insured, provided such claim or claims are the subject to indemnity by this policy. Such costs, fees and expenses are called "defence costs".

The company will also pay for such emergency medical treatment as may appear necessary in respect of injury which may form the subject of indemnity by this policy.

Indemnity limits

The company's total liability to pay compensation, claimants' costs, fees and expenses and defence costs shall not exceed the indemnity limits stated in the schedule. The indemnity limit shall be the maximum amount of the company's liability in respect of all claims arising out of one original cause.

In the event of any one originating cause giving rise to a claim or series of claims which form the subject of indemnity by more than one sub-section of this policy, each sub-section shall apply separately and be subject to its own separate limit of liability provided always that the total amount of company's liability shall be limited to the greatest indemnity limit of availability under any one of the sub-sections affording indemnity for the claim or series of claims. All limits stated are payable in excess of the first amount payable applicable to the relevant claim.

Special memorandum

Acquisitions and new business

The indemnity granted by this policy extends to any company formed and/or acquired by the insured during the period of insurance for a period of 30 days of such information or acquisition

Provided always that:-

1. the retroactive date in respect of such new company shall be deemed to be the date of formation or the date when a newly acquired company first purchased liability insurance of the type hereby insured on a "claims made" basis subject to a declaration from the newly acquired company's previous management of no known or reported claims or circumstances likely to give rise to a claim at date of acquisition. In the event of no such declaration the retroactive date shall be the date of acquisition
2. the insured's business activity remains unchanged to that declared
3. the annual turnover of all newly formed and/or acquired companies does not exceed 5% (five percent) of the estimated annual turnover of the insured as advised to company at inception hereof
4. the insured shall advise the company of such formations and/or acquisitions before the expiry of 30 days thereof and the company reserve the right to amend the terms of this insurance accordingly.

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

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Sub-section A - Public liability

Sub-section A - Indemnity

The insured is indemnified by this sub-section in respect of injury or damage but not against claims for and/or arising out of:

- (a) Pollution
- (b) Any product
- (c) Negligent advice.

Sub-section A - Exclusions

This sub-section does not cover liability for claims arising out of:

1. the ownership possession or use by or on behalf of the insured of any vehicle, other than claims:
 - (a) caused by the use of:
 - (i) any tool or plant forming part of or attached to or used in connection with any vehicle
 - (ii) any vehicle as a tool of trade
 - (iii) a trailer which is not attached to nor has accidentally become detached from a motor vehicle
 - (b) arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any Vehicle
 - (c) for damage to any bridge, weighbridge, road or anything beneath caused by the weight of any vehicle or of the load carried thereon
 - (d) arising out of any vehicle temporarily in the insured's custody or control for the purpose of parking
 - (e) arising out of the possession or use by the insured of any vehicle belonging to any rail service provider or any government or quasi-government department, provincial administration, municipality or similar body whilst on any premises permanently occupied by the insured
 - (f) which form the subject of extensions covering employers liability
 - (g) arising out of damage to premises occupied (but not owned) by the insured
2. liability which is the subject of statutory or similar legislation controlling the possession or use of motor vehicles or trailers and in respect of which liability:-
 - (a) the insured is compelled to effect insurance or otherwise furnish security, or
 - (b) the state or other governmental authority has accepted responsibility
3. the ownership possession or use by or on behalf of the insured of any aircraft watercraft or hovercraft (other than watercraft not exceeding five meters in length and then only whilst on inland waterways)
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:
 - (a) 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 part of the property on which the insured is working and which arises out of such work)
 - (b) employees' and visitors' clothing and personal effects
 - (c) premises tenanted by the insured to the extent that the insured would be held liable in the absence of any specific agreement
 - (d) property belonging to any rail service provider or any government or quasi-government department, provincial administration, municipality or similar body whilst on any premises permanently occupied by the insured
5. the ownership, hire, leasing or operation of any airport, airstrip or helicopter pad by or on behalf of the insured other than airstrips and helicopter pads which are not equipped with control tower operation.

Sub-section B - Pollution liability

Sub-section B - Indemnity

The insured is indemnified by this sub-section against claims for injury or damage arising out of pollution but only to the extent that it can be proved that such pollution

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1. was the direct result of a sudden specific and indemnifiable event occurring during the period of insurance
2. was not the direct result of the insured failing to take reasonable precautions to prevent such pollution.

Sub-section B - Exclusions

This sub-section is subject to the exclusions to sub-section A insofar as they can apply, and also does not cover liability for claims arising out of or in connection with any product.

Sub-section C - Products liability/Defective workmanship

Sub-section C - Indemnity

The insured is indemnified by this sub-section against claims for injury or damage arising out of or in connection with any product or pollution resulting therefrom subject always to the provisions of sub-section B - indemnity.

The amount payable under this sub-section, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants, and all other costs and expenses incurred with the company's consent, for any one event or series of events with one original cause or source or during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this sub-section stated in the schedule.

Sub-section C – Exclusions

This sub-section does not cover liability for claims;

1. for costs incurred in the repair, reconditioning, modification or replacement of any product or part thereof which is or is alleged to be defective
2. for costs arising out of the recall of any product of any part thereof
3. arising out of the failure of any product or part thereof to fulfil its intended function or to perform as specified, warranted or guaranteed unless such failure shall result in injury and/or damage
4. arising out of any product which with the insured's knowledge is intended for incorporation into the structure, machinery or controls of any aircraft
5. arising out of negligent advice in respect of defective workmanship
6. for the cost of rectifying or recalling defective work
7. arising from inefficacy of such work or because the work did not produce the result anticipated or claimed
8. arising prior to the handing over of such work
9. arising from any work on any aircraft or part thereof.

Sub-section D - Negligent advice

Sub-section D - Indemnity

The insured is indemnified by this sub-section in respect of claims arising out of negligent advice.

The amount payable under this sub-section, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants, and all other costs and expenses incurred with the company's consent, for any one event or series of events with one original cause or source or during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this sub-section stated in the schedule.

Sub-section D - Exclusions

This sub-section does not cover liability for claims arising out of:

1. negligent advice given in respect of any product unless the insured shall have effected cover under sub- section C of this policy
2. financial services and/or cost estimates given by or on behalf of the insured
3. the insolvency of the insured

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4. defamation or injuria.

Specific exceptions (applicable to all sub-sections and extensions of this section)

This section does not cover liability:

1. for any claims where the insured was aware, before inception of this policy, of the circumstances or event which gave rise to the claim
2. occurring prior to the applicable retroactive date stated in the schedule
3. arising out of the deliberate, conscious or intentional disregard by the insured's technical or administrative management of the need to take all reasonable steps to prevent claims
4. arising out of injury to any persons under a contract of employment or apprenticeship with the insured where such injury arises out of the execution of such contract except to the extent and where the insured has elected to purchase employers liability
5. arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that it can be proved that liability would have attached in the absence of such clauses or warranties
6. for the applicable first amount payable in respect of each claim or series of claims arising out of one originating cause. The provisions of this clause shall apply to claims arising from damage only and shall also apply to defence costs incurred by the insured.
7. which forms the subject of insurance by any other policy or policies and this policy shall not be drawn into contribution with such other insurance
8. for any claims arising out of any design, formula (other than design or formula of a product), specification or advice of a professional nature given by or on behalf of the Insured in exchange for a fee.
9. for claims arising out of or which may arise out of or in connection with magnetic and/or electrical fields.
10. arising out of any wrongful act committed by any director and/or officer of the insured

For the purposes of this insurance "wrongful act" shall mean any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, mistreatment, breach of fiduciary obligation, libel, slander, wrongful trading, breach of warranty of authority or other legal liability on the part of any director or officer, jointly or severally, which arises solely by reason of the conduct of their duties or their capacity as directors and officers.

War and terrorism exclusion

In respect of this section only, general exception 1 is deleted and replaced by the following:

Notwithstanding any provision to the contrary within this policy or any endorsement thereto it is agreed that this policy excludes loss, damage, cost or expenses of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism,

For the purpose of this exclusion an act of terrorism means – an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization (or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This specific exception also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the company alleges that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the insured.

In the event of any portion of this exception is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

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Specific insurances exclusion

The indemnity provided by this policy does not cover liability for claims arising out of dishonesty of the directors, principals or employees of the insured or theft or fraud by any other person, nor does this policy provide indemnity for any liability arising out of the activities of operations domiciled in the United States of America or Canada.

Specific conditions

(Conditions 1 to 5 are precedent to the company's liability to provide indemnity under this policy)

1. The insured shall give written notice to the company as set out in general condition 6, but in any event no later than the last day of the period of insurance, of any claim made against the insured (or any specific event or circumstance that may give rise to a claim being made against the insured) and which forms the subject of indemnity under this policy and shall give all such additional information as the company may require. Every claim, writ, summons or process and all documents relating to the claim event or circumstance shall be forwarded to the company immediately they are received by the insured.
2. Notwithstanding specific condition 1, in the event of cancellation or non-renewal of the policy, the insured may report an event in terms of general condition 6 to the company for up to 15 days after cancellation or nonrenewal, provided
 - (a) such event occurred subsequent to the retroactive date and prior to the termination of the period of insurance
 - (b) any subsequent claim first made in writing against the insured as a result of such event shall be treated as if it has first been made on the last day preceding cancellation or non-renewal
 - (c) no insurance in substitution hereof has been purchased by or on behalf of the insured.
3. No admission offer promise or payment shall be made or given by or on behalf of the insured without the written consent of the company which shall be entitled to take over and conduct in the name of the insured the defence 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 and in the settlement of any claim and the insured shall give all such information and assistance as the company may reasonably require.
4. The insured shall give notice as soon as reasonably practicable of any fact, event or circumstance which materially changes the information supplied to the company at the time when this policy was effected, and company may amend the terms of this policy according to the materiality of such change.
5. The company may at any time pay to the insured in connection with any claim or series of claims under this policy to which an indemnity limit applies the amount of such limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the company shall relinquish the conduct and control of and be under no further liability in connection with such claims.
6. The interpretation of the terms and exceptions of this policy (and any phrase or word contained therein) shall be interpreted in accordance with the law of the Republic of South Africa.
7. Where the premium is provisionally based on the insured's estimates, the insured shall keep accurate records and after expiry of the period of insurance declare as soon as possible such details as company require. The premium shall then be adjusted and any difference paid by or allowed to the insured as the case may be subject to any minimum premium that may apply.

Extensions (Applicable only to the extent indicated in the schedule)

It is understood and agreed that this policy extends to include the following, subject to the limits and first amounts payable specified in the schedule and subject to the terms, conditions and exceptions of the policy insofar as they can apply and provided that the total liability of the company is not increased beyond that which would have applied in the absence of such extensions.

Statutory defence costs

The company will indemnify the insured against legal costs, fees and expenses incurred with the consent of the company in the defence of any criminal action brought against the insured as a result of the alleged contravention of any statute governing the

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conduct of the business [other than any statutes governing the ownership, possession, use or licensing of motor vehicles, aircraft or watercraft, the relevant Labour Laws as promulgated in the Republic of South Africa from time to time, or the Companies Act No. 71 of 2008 (as amended from time to time)] and as read in conjunction with the Criminal Procedure Act No. 56 of 1955 (as amended from time to time)

Provided always that:-

1. no indemnity shall be granted for fines or penalties
2. in the case of an appeal, the company shall not indemnify the insured unless a senior counsel (to be agreed to by the company) shall advise that such appeal should be likely to succeed.
3. the amount payable under this extension, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants, and all other costs and expenses incurred with the company's consent, for any one event or series of events with one original cause or source or during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

Wrongful arrest

The company will indemnify the insured in respect of claims arising out of wrongful arrest (as hereinafter defined) committed or alleged (other than by the insured) to have been committed by the insured in the course of the business Provided always that:-

1. for the purposes of this extension, the terms "wrongful arrest" shall mean:-
 - (a) assault and battery committed or alleged to have been committed at the time of making or attempting to make an arrest or in resisting an overt attempt to escape by a person under arrest before such person has been or could be placed in the custody of the police or a law enforcement officer
 - (b) defamation, injuria, false imprisonment or malicious prosecution either committed or alleged to have been committed directly in connection with an arrest or arising out of the investigation of acts of shoplifting or theft
2. no indemnity shall be granted in respect of claims:-
 - (a) made against the insured by any person or persons other than those being or having been or alleged to have been arrested or under arrest, or their personal representatives
 - (b) arising out of unfair labour practice as contemplated within the meaning of the relevant Labour Laws as promulgated in the Republic of South Africa from time to time.
3. the amount payable under this extension, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants, and all other costs and expenses incurred with the company's consent, for any one event or series of events with one original cause or source or during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

Defamation

The company will indemnify the insured in respect of claims arising out of defamatory statements, whether written or verbal, made by the insured Provided always that:-

1. no indemnity shall be granted in respect of claims:-
 - (a) which form the subject of the wrongful arrest extension
 - (b) arising out of any publication in any journal, magazine or newspaper or on radio or television
2. the amount payable under this extension, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants, and all other costs and expenses incurred with the company's consent, for any one event or series of events with one original cause or source or during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

Employers liability

Notwithstanding anything to the contrary contained in specific exception 4, this policy extends to include the insured's legal liability for claims arising out of injury to any person employed under a contract of service or apprenticeship with the insured where such injury arises out of and in the course of the execution of such contract.

Provided always that there is no cover provided in respect of:-

1. liability for claims arising from illness or disease or contributed to by prolonged exposure to substances, factors or circumstances peculiar to any particular employment or occupation;

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2. amounts recoverable under any Act in terms of which any employee may claim compensation for work related injuries;
3. liability assumed by the insured by agreement unless such liability would have attached to the Insured in the absence of such agreement.

The company will also at the request of the insured indemnify any employee of the insured subject to the agreement of the company (which agreement shall not be unreasonably withheld) in respect of claims made by one employee against another provided always that:

1. such injury arises solely during and in the course of his/her employment
2. no indemnity shall be provided hereunder where such injury is caused whilst the employee is under the influence of intoxicating drugs or alcohol
3. no indemnity shall be provided hereunder for injury resulting from use of firearms
4. no indemnity shall be provided for liability arising out of any condition directly or indirectly caused by or associated with Human Immune Virus (HIV) or the mutant derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome or any Syndrome or condition of a similar kind howsoever it shall be named.

Provided always that the amount payable under this extension, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants, and all other costs and expenses incurred with the company's consent, for any one event or series of events with one original cause or source or during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

Extended Reporting Option (May be exercised by the insured in the event of non-renewal)

In the event of non renewal of this section of this policy, at the option of the insured, any claim first made against the insured arising from any claim or circumstance of which notice is required to be given in terms of specific condition 1, the company agrees that notice given within 36 months (hereinafter referred to as the extended reporting period) immediately following the expiry of this insurance shall be deemed to have been made on the last day preceding the expiry.

Provided that:

1. this option may only be exercised in the event of the company cancelling or refusing to renew this policy;
2. the insured has not obtained insurance equal in scope and cover to this policy as expiring providing indemnity in respect of such claim;
3. the company shall only be liable for an insured event which occurred after the retroactive date but prior to the expiry of the period of insurance;
4. if the claimant is a minor this extended reporting period will continue until the expiry of 12 months after the attainment of majority by the claimant;
5. the total amount payable by the company for claims made or reported events during the extended reporting period shall not have the effect of increasing the indemnity limit applicable on the last day preceding the non renewal;
6. this option must be exercised by the insured in writing within 15 days of cancellation or non-renewal and the required premium paid within 30 days of demand;
7. once exercised, the option cannot be cancelled by either the insured or the company.

African Territories

In respect the insured's operations in Africa outside of the Republic of South Africa, the indemnity provided by this section is limited to the difference between the scope of cover or the difference between the limit of indemnity provided by any insurer in the territory in which the operation is situated and the indemnity available in terms of this section.

Where this section responds in excess of indemnity provided in terms of such locally purchased liability insurance:-

1. the indemnity payable hereunder shall be only up to but not exceeding such further amount as would provide the maximum indemnity in terms of this section;
2. any decision of the underlying insurer to accept a claim "ex gratia" or "without prejudice" shall not be binding on the company;
3. no action or decision of the underlying insurer which prejudices the company in the conduct or settlement of any claim under this section shall be binding on the company.

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If no insurance of the class insured in terms of this section is purchased locally, this section shall act as primary insurance subject to the first amount payable stipulated in the schedule provided that such cover will only apply:

1. to claims made against the insured during the period of Insurance; and
2. in respect of liability arising from any Injury, damage or event giving rise to pure financial loss (as provided for in coverage's providing for loss not related to physical damage to property) occurring or alleged to have occurred on or after the applicable retroactive date stated in the schedule.

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