

# PUBLIC LIABILITY (CLAIMS MADE BASIS) SECTION

## DEFINED EVENTS

Damages which the Insured shall become legally liable to pay consequent upon Injury or Damage which occurred in the course of or in connection with the Business within the Territorial Limits and on or after the Retroactive date shown in the schedule, and which results in a claim or claims first being made against the Insured in writing during the Period of Insurance.

## DEFINITIONS

**Business** shall mean the business of the Insured as stated in the schedule of this policy.

**Costs and Expenses** shall mean 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** shall mean loss of or physical damage to tangible property or wrongful interference with the enjoyment of rights over tangible property.

**Employee** shall mean Person/s employed under a contract of service or apprenticeship with the Insured.

**General liability** as reflected in the schedule shall relate to the limits of indemnity and first amounts payable applicable to any claim covered under this section that does not have its own more specific limits of indemnity or first amounts payable.

**Injury** shall mean death, bodily injury, mental injury, illness (mental or physical) or disease of or to any person.

**Pollution** shall mean the emission, discharge, release, dispersal, disposal, seepage or escape of solid, liquid, gaseous or thermal contaminants or irritants, including vapours, smell, odours, humidity, fumes, smoke, soot or other airborne particulates, acids, alkalis, chemicals and waste, electromagnetic waves, noise, vibrations, other emission of effluent or noxious substances into or upon the soil, the atmosphere or any watercourse or body of water.

**Product** shall mean any tangible property (including containers and labels) 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.

**Territorial Limits** shall mean the Territorial Limits as stated in the schedule of this policy.

## LIMITS OF INDEMNITY

The amount payable, inclusive of any Costs and Expenses, for

1. 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 against "Limit of indemnity (per event)";
2. all claims during any one (annual) Period of Insurance shall not exceed the Limit of Indemnity stated in the schedule against "Limit of indemnity (per period of insurance)".

If the premium is paid monthly by debit order, the words "per period of insurance" are amended to read "for any one period of 12 consecutive months from the inception or anniversary date".

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 extension of this Section, each extension shall apply separately and be subject to its own separate Limit of Indemnity provided always that the total amount of the Company's liability shall be limited to the highest Limit of Indemnity available under any one of the Extensions affording indemnity for the claim or series of claims.

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 "for any one such Period of Insurance" are amended to read "for any one period of 12 consecutive months from the inception or anniversary date".

## SPECIFIC EXCLUSIONS

The Company will not indemnify the Insured in respect of:

1. liability consequent upon Injury to any Employee arising from and in the course of employment by the Insured.
2. Damage to:
  - 2.1 property belonging to the Insured;
  - 2.2 property in the custody or control of the Insured or any employee of the Insured but this exclusion shall not apply to premises (or the contents thereof) temporarily occupied by the Insured for work therein;
  - 2.3 that part of any property on which the Insured is or has been working if such Damage results directly from such work.
3. liability consequent upon Injury or Damage:
  - 3.1 caused by or through or in connection with any advice or treatment of a professional nature (other than first aid treatment) given or administered by or at the direction of the Insured;
  - 3.2 caused by or through or in connection with the ownership, possession or use by or on behalf of the Insured of any mechanically propelled vehicle (other than a pedal cycle or lawnmower or any pedestrian controlled garden equipment) or trailer or of any watercraft (other than non-motorized watercraft not exceeding 6 meters in length and used only on inland waterways), locomotive or rolling stock, provided that this exclusion shall not relieve the Company of liability to indemnify the Insured in respect of liability consequent upon Injury or Damage caused or arising beyond the limits of any carriage-way or thoroughfare in connection with the loading or unloading of any vehicle, insofar as such Injury or Damage is not insured by any other insurance policy;
  - 3.3 caused by or through or in connection with:
    - 3.3.1 the refuelling or defueling of aircraft;
    - 3.3.2 the ownership, possession, maintenance, operation or use of aircraft or an airline;
    - 3.3.3 the ownership, hire or leasing of any airport, airstrip or helicopter pad.
  - 3.4 caused by or through or in connection with any Product other than food and drink provided for consumption on the premises of the Insured.
4. Damage caused by vibration or by the removal or weakening of or interference with support to any land, building or other structure.
5.
  - 5.1 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.
  - 5.2 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.

6. fines, penalties, punitive, exemplary or vindictive damages.
7.
  - 7.1 Damages in respect of judgements, awards or settlements made in the first instance otherwise than by a court of competent jurisdiction within the territories stated in the schedule against "Jurisdiction" (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).
  - 7.2 costs and expenses of litigation recovered by any claimant from the Insured which are not incurred in and recoverable in the territories stated in the schedule against "Jurisdiction".
8. any claim arising from an event known to the Insured:
  - 8.1 which is not reported to the Company in terms of General Condition 6;
  - 8.2 prior to inception of this section or inception of any extension under this section.
9. the first amount payable. The Insured shall be responsible for the first amount payable as stated in the schedule in respect of any one claim or number of claims arising from all events of a series consequent upon or attributable to any one source or originating cause or source. The provisions of this clause shall apply to claims arising from Damage or Injury and shall apply to Costs and Expenses.
10. liability consequent upon Injury or Damage arising out of the deliberate, conscious or intentional disregard by the Insured's management of the need to take reasonable precautions to prevent any event or circumstance which may give rise to a claim.
11. 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 similar provision, act or regulation as may be in force in any jurisdiction or country in which the Insured's liability arose.

## MEMORANDUM

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

This section does not cover Injury, Damage or liability directly or indirectly caused by, related to, or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power.

## SPECIFIC CONDITIONS

1. Any claim first made in writing against the Insured as a result of a Defined Event reported in terms of General Condition 6 (hereinafter termed "Reported Event") shall be treated as if it had first been made against the Insured on the same day that the Insured reported the event to the Company.
2. 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 within 30 days after expiry of the Period of Insurance provided such event occurred during the Period of Insurance.
3. Any series of claims made against the Insured by one or more than one claimant during any Period of Insurance consequent upon one event or series of events with one originating cause or source shall be treated as if they all had first been made against the Insured:
  - 3.1 on the date that the event was reported by the Insured in terms of General Condition 6;
  - or
  - 3.2 if the Insured was not aware of any event which could have given rise to a claim, on the date that the first claim of the series was first made in writing against the Insured.
4. When the facts do not speak for themselves and the Company and the Insured cannot mutually agree when the Injury or Damage occurred, then for the purposes of determining the indemnity granted:
  - 4.1 the Injury shall be deemed to have occurred when the claimant first consulted a qualified practitioner regarding such Injury, whether or not it was correctly diagnosed at the time. If no such consultation took place, then the Injury shall be deemed to have occurred when the Insured was first advised of the Injury;

4.2 the Damage shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown.

## CLAUSES AND EXTENSIONS

Subject otherwise to the terms, exclusions and conditions of this section and the General section (all of which shall remain valid and applicable unless specifically deleted or amended below), the cover under this section is amended or extended as set out below under each extension and clause (but where applicable as indicated below, only if such extensions and clauses are stated as included in the schedule) subject to any limits of indemnity or first amounts payable stated in the schedule under each extension.

### **Acquisitions and new businesses** (if stated as included in the schedule)

The indemnity granted by this section of the Policy extends to any company formed and/or acquired by the Insured during the Period of Insurance for a period of 90 days of such formation and/or acquisition.

Provided always that

1. the Retroactive Date in respect of such new company shall be deemed to be the date when a newly formed and/or 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 the date of acquisition. In the event of no such declaration, the Retroactive Date shall be the date of such acquisition;
2. the Insured's business activities remain unchanged;
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 the Company at inception hereof;
4. the Insured shall advise the Company of such formations and/or acquisitions before the expiry of 90 days thereof and the Company may amend the terms of this section of the Policy accordingly.

### **Additional Insured**

The Company will also, as though a separate policy has 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

- (i) the aggregate liability of the Company is not increased beyond the Limits of Indemnity stated in the schedule;
- (ii) any person or organisation to which this extension applies is not entitled to indemnity under any other policy;
- (iii) 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.

For the purposes of this extension, the Company waives all rights of subrogation or action which they may have or acquire against any of the above, and each party to whom the indemnity hereunder 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.

### **Car parks** (if stated as included in the schedule)

Notwithstanding the provisions of specific exclusion 2.2, the Company will indemnify the Insured in respect of

liability as herein provided arising from loss of or damage to vehicles and their contents and accessories, the property of tenants, customers, visitors or employees of the Insured using parking facilities provided by the Insured.

### **Cross liabilities**

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.

### **Emergency medical expenses** (if stated as included in the schedule)

The Company will indemnify the Insured for all reasonable expenses incurred by the Insured for such immediate medical treatment as may be necessary at the time of an accident causing Injury to any person who may be the subject of a claim for indemnity by the Insured in terms of this section.

### **Employees' and visitors' property** (if stated as included in the schedule)

Specific exclusion 2.2 shall not apply to property belonging to any partner, director or employee of the Insured or any visitor to the Insured's premises.

### **Extended reporting option** (if stated as included in the schedule)

At the option of the Insured and subject to payment of an additional premium to be determined and subject to all the terms, exclusions and conditions of this section, the Company agrees to extend the period during which the Insured may report an event in terms of General Condition 6 for a period to be agreed, but in no circumstances exceeding 36 months (hereinafter referred to as "extended reporting period") provided that:

1. this option may only be exercised in the event of the Company cancelling or refusing to renew this section;
2. this option must be exercised by the Insured in writing within 30 days of cancellation or non-renewal;
3. once exercised, the option cannot be cancelled by either the Insured or the Company;
4. the Insured has not obtained insurance equal in scope and cover to this section as expiring;
5. the Company shall only be liable for a Defined Event which occurred after the retroactive date but prior to date of cancellation or non-renewal;
6. claims first made against the Insured or any Reported Event by the Insured during the extended reporting period shall be treated as if they were first made or reported on the last day preceding the cancellation or non-renewal;
7. 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 Limit of Indemnity applicable as on the last day preceding the cancellation or non-renewal.

### **Fire extinguishing charges** (if stated as included in the schedule)

Subject to the limit of indemnity in the schedule, the Company will indemnify the Insured for all reasonable fire extinguishing costs and expenses which the Insured shall become legally liable to pay as a result of the extinguishing or fighting of fire (including water-bombing by air) to prevent the spreading of such fire beyond the borders of the Insured's own premises.

The Company will also, subject to the separate limit of indemnity against "Spotter plane charges", indemnify the Insured for the reasonable costs and expenses for which the Insured shall become legally liable to pay as a result of the call out and assistance of a Spotter Plane belonging to Working on Fire (WOF) which has been requested by the Fire Protection Officer of a registered Fire Protection Association for the purposes of spotting the fire or guiding the helicopter or other aircraft required for water-bombing to the site of the fire.

If at the time of any event giving rise to a claim under this extension, indemnity is also provided under any other insurance, this extension shall not be drawn into contribution with such other insurance except in respect of any excess over and above the amount payable by such other insurance.

### **Gratuitous advice** (if stated as included in the schedule)

Notwithstanding anything to the contrary contained in specific exclusion 3.1, the Company will indemnify the Insured in respect of Defined Events caused by the unintentional failure of the Insured to perform the legal duty

to exercise due care owed to another person or party in providing technical information or advice to such person or party provided that this section does not cover liability:

1. arising out of the insolvency of the Insured;
2. arising out of financial services and/or cost estimates provided by or on behalf of the Insured;
3. arising out of defamation;
4. arising out of design, formula, supervision, treatment or advice given by or on behalf of the Insured in exchange for a fee;
5. arising out of technical information or advice given in connection with a Product unless the extension for Products Liability is included in the schedule.

If at the time of any event giving rise to a claim under this extension, indemnity is also provided under any other insurance, this extension shall not be drawn into contribution with such other insurance except in respect of any excess over and above the amount payable by such other insurance.

### **Products liability (including defective workmanship)** (if stated as included in the schedule)

Notwithstanding anything to the contrary contained in specific exclusion 2.3 and 3.4, the Company will indemnify the Insured in respect of Defined Events happening anywhere in the world elsewhere than at premises occupied by the Insured, and caused by any Product in connection with the Business (including wrongful delivery and delivery of incorrect Products). The Retroactive date referred to in the Defined Events is the Retroactive date stated against this extension in the schedule.

The amount payable under this extension, inclusive of any Costs and Expenses, shall not exceed the Limit of Indemnity (per event) and/or Limit of Indemnity (per Period of Insurance) for this extension stated in the schedule.

### **Additional specific exclusions [applicable to Products Liability extension (including defective workmanship)]**

This extension does not cover liability:

1. for the cost of repair, alteration, recall, reconditioning or replacement of the Product or part thereof (including containers and labels) causing Injury or Damage and/or the loss of use of any Product or part thereof;  
For the purposes of this additional specific exclusion the term "replacement" shall be deemed to include any credit or refund granted or alternative Product provided by or on behalf of the Insured in lieu of replacement of the defective Product.
2. for the cost of demolition, breaking out, dismantling, delivery, rebuilding, supply and installation of the Product and any other property essential to such repair, alteration or replacement unless physically damaged by the Product;
3. arising from the failure of any Product or any part thereof to fulfil its intended function or to perform as specified, warranted or guaranteed but this exclusion shall not apply to consequent Injury or Damage;
4. arising from Products intended to be installed and installed in, or intended to form part of and forming part of, an aircraft;
5. in respect of Injury or Damage happening in the United States of America or Canada caused by or through or in connection with any Products sold or supplied by or to the order of the Insured, if such Products have, to the Insured's knowledge, been exported to the United States of America or Canada by or on behalf of the Insured;
6. for any defect in any Product or any part thereof of which the Insured was aware prior to the inception of this extension;
7. caused by any Product listed in the schedule against "Excluded products".

### **State railway authority and other government departments** (if stated as included in the schedule)

Notwithstanding the provisions of specific exclusions 2.2 and 3.2, this section extends to indemnify the Insured:

1. against liability assumed by the Insured under any contract entered into with or indemnity given to Transnet, government or quasi-government departments, provincial administrations, municipalities and/or similar bodies covering the use of railway sidings or in respect of cartage (hazardous premises) agreements and/or

- agreements of a similar nature;
2. against liability arising from loss of or damage to property belonging to Transnet while in the Insured's custody or control;
  3. in respect of liability caused by or through or in connection with any vehicle, trailer, locomotive or rolling stock belonging to Transnet while being used by or on behalf of the Insured at any railway siding.

**Statutory legal defence costs** (if stated as included in the schedule)

If the Insured so requests, the Company will indemnify the Insured or any employee, partner or director of the Insured against costs and expenses not exceeding the amount stated in the schedule incurred by or on behalf of the Insured or any employee, partner or director of the Insured with the consent of the Company in the defence of any prosecution of such person in the course of his occupation with the Insured arising from an alleged contravention of any statute in the course of the Business during the Period of Insurance.

Provided that

1. in the case of an appeal, the Company shall not indemnify such person unless a senior counsel approved by the Company shall advise that such appeal should, in his opinion, succeed;
2. the Company shall not indemnify such person in respect of any fine or penalty imposed by any magistrate or judge or any loss consequent thereon;
3. such person shall, as though he were the Insured, observe, fulfil and be subject to the terms, exclusions and conditions of this policy and this section thereof in so far as they can apply;
4. if the prosecution arises from or in connection with any Product, the Company will only indemnify the Insured or any employee, partner or director of the Insured if the extension for Products Liability is stated in the schedule to be included.

**Tenant's liability** (if stated as included in the schedule)

Specific exclusions 2.2 and 3.2 of this section shall not apply to premises occupied by the Insured as tenant (but not as the owner) thereof.

**Tool of trade** (if stated as included in the schedule)

Specific exclusion 3.2 shall not apply to the operation as a tool of any vehicle or plant forming part of such vehicle or attached thereto, provided that the Company shall not be liable hereunder in respect of so much of any liability as falls within the scope of any form of Motor insurance or compulsory third party insurance legislation, notwithstanding that no such insurance is in force or has been effected, nor shall the Company be liable where any other form of Motor insurance has been effected by the Insured covering the same liability.

**Tool of trade – extended cover** (if stated as included in the schedule)

The above tool of trade extension is extended to include any vehicle being operated as a tool of trade of the Business of the Insured whether or not such vehicle falls within the scope of any form of Motor insurance.

The amount payable under this extension shall not exceed the Limit of Indemnity (per event) and/or Limit of Indemnity (per Period of Insurance) for this extension stated in the schedule.

Provided that the Company shall not be liable hereunder:

1. in respect of so much of any liability as falls within the scope of any compulsory third party insurance legislation;
2. where any other form of motor insurance has been effected by the Insured covering the same liability;
3. if the Injury or Damage occurs on a public road.

For the purposes of this extension, a public road shall mean any road used by the public other than a road situated on private property.

**Unattached trailers** (if stated as included in the schedule)

Specific exclusion 3.2 shall, as far as it relates to trailers, not apply in respect of any trailer not attached to and not having become unintentionally detached from any mechanically propelled vehicle, provided that the Company shall not be liable hereunder in respect of so much of any liability:

1. which is insured by or would, but for the existence of this section, be insured by any other policy or policies

effected by the Insured;

2. as falls within the scope of any compulsory third party insurance legislation, notwithstanding that no such insurance is in force or has been effected.

**Vibration and removal of support** (if stated as included in the schedule)

Specific exclusion 4 is deleted provided always that the amount payable shall not exceed the Limit of Indemnity (per event) and Limit of Indemnity (per Period of Insurance) stated in the schedule.

**Wrongful arrest and defamation** (if stated as included in the schedule)

The Defined Events are extended to include damages:

1. resulting from wrongful arrest (including assault in connection with such wrongful arrest);
2. in respect of defamatory statements whether written or verbal;

provided always that the Limits of Indemnity shall not exceed the amount stated in the schedule.

For internal broker use only - subject to minor changes from time to time