

PUBLIC LIABILITY (CLAIMS MADE BASIS)

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

For the purposes of determining the indemnity granted by this Section the following terms shall mean:

1. Damage

Loss of or physical damage to tangible property or wrongful interference with the enjoyment of rights over tangible property.

2. Employee

Person/s employed under a contract of service or apprenticeship with the Insured.

3. Injury

Death, bodily injury, mental injury, illness (mental or physical) or disease of or to any person.

4. Product

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.

5. Pollution

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.

6. 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:

- (i) 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.

- (ii) 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 Summary Jurisdiction in respect of matters which may form the subject of indemnity by this Section of the Policy.

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.

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 Insurers' liability will be limited to the maximum Limit of Indemnity for any one such Period of Insurance.

TERRITORIAL LIMITS

Anywhere in the world but not in connection with

- (i) any business carried on by the Insured at or from premises outside

or

- (ii) any contract for the performance of work outside

the Republic of South Africa, Namibia, Botswana, Lesotho, Swaziland, Zimbabwe and Malawi.

SPECIFIC EXCEPTIONS

The Company will not indemnify the Insured in respect of:

1. Employees

liability consequent upon Injury to any Employee arising from and in the course of employment by the Insured.

2. Property

Damage to:

- (a) (i) property belonging to the Insured;
- (ii) property in the custody or control of the Insured or any employee of the Insured but this exception shall not apply to premises (or the contents thereof) temporarily occupied by the Insured for work therein;
- (b) that part of any property on which the Insured is or has been working if such Damage results directly from such work.

3. Professional advice, vehicles, aircraft, products etc.

liability consequent upon Injury or Damage

(a) Professional advice or treatment

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.

(b) Vehicles, watercraft, locomotives

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 metres in length and used only on inland waterways), locomotive or rolling stock, provided that this exception 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.

(c) Aircraft

caused by or through or in connection with

- (i) the refueling or defueling of aircraft;
- (ii) the ownership, possession, maintenance, operation or use of aircraft or an airline;
- (iii) the ownership, hire or leasing of any airport, airstrip or helicopter pad.

(d) Products

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. Vibration and removal of support

Damage caused by vibration or by the removal or weakening of or interference with support to any land, building or other structure.

5. Pollution

- (a) liability in respect of Injury, Damage or loss of use of property directly or indirectly caused by Pollution, provided always that this exception shall not apply where such Pollution is caused by a sudden, unintended and unforeseen occurrence;
- (b) 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 exception shall not extend the policy to cover any liability which would not have been insured under this policy in the absence of this exception.

6. Fines, penalties etc.

fines, penalties, punitive, exemplary or vindictive damages.

7. USA and Canada judgements, awards or settlements

damages in respect of judgements, award or settlement made within 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). For the purpose of this specific exception "Damages" shall be deemed to include costs and expenses of litigation recovered by any claimant from the Insured.

8. Events known to the Insured

any claim arising from an event known to the Insured

- (a) which is not reported to the Insurer in terms of General Condition 6
- (b) prior to inception of this section or inception of any extension under this section.

9. First amount payable

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. Deliberate or intentional acts

liability consequent upon Injury or Damage arising out of the deliberate, conscious and 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. Unlawful competition

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 exception 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. Claims first made in writing against the insured

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. Reporting of events after cancellation or non-renewal of policy

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. Series of claims from one originating clause

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

- (a) on the date that the event was reported by the Insured in terms of General condition 6
- or
- (b) 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. Manifestation clause

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:

- (a) 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.
- (b) the Damage shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown.

EXTENSIONS

1. Extended reporting option

At the option of the Insured and subject to payment of an additional premium to be determined and subject to all the terms, exceptions 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:

- (a) this option may only be exercised in the event of the Company cancelling or refusing to renew this section;
- (b) this option must be exercised by the Insured in writing within 30 days of cancellation or non-renewal;
- (c) once exercised, the option cannot be cancelled by either the Insured or the Company;
- (d) the Insured has not obtained insurance equal in scope and cover to this section as expiring;
- (e) 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;
- (f) 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;

- (g) 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.

2. Additional Insured

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

- (a) in the event of the death of the Insured, any personal representative of the Insured in respect of liability incurred by the Insured;
- (b) 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;
- (c) 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;
- (d) 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,
 - (i) any officer or member thereof;
 - (ii) 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 (a), (b) and (c) 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, exceptions and conditions (both general and specific) of this insurance in so far as they can apply.

3. 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.

4. Tool of trade

Specific exception 3(b) 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.

5. Employees' and visitors' property

Specific exception 2(a)(ii) shall not apply to property belonging to any partner, director or employee of the Insured or any visitor to the Insured's premises.

6. Transnet and other government departments

Notwithstanding the provisions of Specific exceptions 2(a)(ii) and 3(b), this section extends to indemnify the Insured:

- (a) 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;
- (b) against liability arising from loss of or damage to property belonging to Transnet while in the Insured's custody or control;
- (c) 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.

7. Unattached trailers

Specific exception 3(b) 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:

- (i) 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;
- (ii) as falls within the scope of any compulsory third party insurance legislation, notwithstanding that no such insurance is in force or has been effected.

8. Emergency medical expenses

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.

9. Car parks

Notwithstanding the provisions of Specific exception 2(a)(ii), 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.

10. Tenant's liability

Specific exceptions 2(a)(ii) and 3(b) of this section shall not apply to premises occupied by the Insured as tenant (but not as the owner) thereof.

11. Products liability (if stated in the Schedule to be included)

Notwithstanding anything to the contrary contained in Specific exception 3(d), the Company will indemnify the Insured in respect of Defined Events happening anywhere in the territories stated in the Schedule elsewhere than at premises occupied by the Insured, and caused by any Product (including wrongful delivery and delivery of incorrect Products).

The amount payable under this extension, 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 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.

Additional specific exceptions (applicable to Products Liability extension)

This extension does not cover liability:

- (i) 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 exception 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.
- (ii) 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;
- (iii) 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 exception shall not apply to consequent Injury or Damage;
- (iv) arising from Products intended to be installed and installed in, or intended to form part of and forming part of, an aircraft;
- (v) 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;
- (vi) for any defect in any Product or any part thereof of which the Insured was aware prior to the inception of this extension.

12. Statutory legal defence costs (if stated in the Schedule to be included)

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 the Insured or any employee, partner or director of the Insured arising from an alleged contravention of any statute in the course of the Business during the period of insurance.

Provided that:

- (i) 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;
- (ii) the Company shall not indemnify such person in respect of any fine or penalty imposed or any loss consequent thereon;
- (iii) such person shall, as though he were the Insured, observe, fulfil and be subject to the terms, exceptions and conditions of this policy and this section thereof in so far as they can apply.
- (iv) 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.

13. Wrongful arrest and defamation (if stated in the Schedule to be included)

The Defined Events are extended to include damages:

- (i) resulting from wrongful arrest (including assault in connection with such wrongful arrest);
- (ii) 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.

14. Gratuitous advice

Notwithstanding anything to the contrary contained in specific exception 3(a) 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:

- (i) arising out of the insolvency of the Insured;
- (ii) arising out of financial services and/or cost estimates provided by or on behalf of the Insured;
- (iii) arising out of defamation;
- (iv) arising out of design, formula, supervision, treatment or advice given by or on behalf of the Insured in exchange for a fee
- (v) 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.

15. Acquisitions and new businesses

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.