

## PUBLIC LIABILITY (CLAIMS MADE BASIS)

### Operative clause

Damages which You 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 You in writing during the period of insurance.

### The limits of indemnity

The amount payable, inclusive of any legal costs recoverable from You by a claimant or any number of claimants and all other costs and expenses incurred with Our consent for anyone event or series of events that gave rise to the claim or claims, shall not exceed the limit of indemnity stated in the schedule.

### Territorial limits

Anywhere in the world but not in connection with

- a. any business carried on by You at or from premises outside of or
- b. any contract for the performance of work outside of the Republic of South Africa, Namibia, Botswana, Lesotho, Swaziland, Zimbabwe and Malawi.

### Cross liabilities

Where more than one insured is named in the schedule, We will indemnify each insured separately and not jointly, and any liability arising between such insured shall be treated as though separate policies had been issued to each, provided that Our aggregate liability shall not exceed the limit of indemnity stated in the schedule.

### Definitions

**1. Injury**

Means bodily injury, illness inclusive of mental, disease or death to any person.

**2. Damage**

Means the physical damage or loss of control to tangible property.

**3. Employee**

Means any person currently (or who at the time of the claim event was) employed under a contract of service with You including partners, executive and non-executive directors, consultants and temporary employees employed by You.

**4. Product**

Means any tangible property (inclusive of containers and labels) after it has left Your custody or control which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired inclusive of any gratuitous or technical advice given by You in the promotion of such product. **This shall exclude food and drink provided as a staff benefit to employees by You.**

**5. Pollution**

Means the emission, discharge, release, dispersal, disposal, seepage or escape of any liquid, solid, gaseous or thermal irritant, contaminant inclusive of the generation of smell, noises, vibrations, light, electricity, radiation, changes in temperature or any other sensory effects upon land, water or the atmosphere.

**6. Proposal**

Means the application for the insurance cover provided by this policy including the proposal form identified in the schedule together with any other documentation or information submitted to Us for consideration of the risk.

**7. Schedule**

Means the schedule attaching to this Policy, incorporating all Endorsements.

**8. North America**

Means The United States of America and Canada and or any other territory that may be operating under the laws of these two respective countries.

**9. Policy**

Means the contents of this document together with the schedule, incorporating all Extensions and Endorsements, issued from time to time by Us and the proposal which shall all be read together as evidencing the contract of insurance.

**10. Insured**

Means any person or persons, company, or other entity as listed as Insured in the schedule acting as a director, member, partner or principal of the business:

- a. including their predecessors in that specific business as director, member, partner or principal and
- b. any person who becomes a director, member, partner or principal during the period of insurance, but limited to the extent that liability only attach to You.

**11. Takeover or merger**

Means any transaction whereby another company acquires control over the assets or management of the named Insured or whereby Your assets become vested in or under the control of another company including a transfer of whole or any part of a business, trade or undertaking that is transferred as a going concern.

**Specific exceptions**

We will not indemnify You in respect of:

1. liability consequent upon injury to any person employed by You under a contract of service or apprenticeship and arising from and in the course of such employment with You
2. damage to:
  - a. property:
    - i. belonging to You
    - ii. property in Your custody or control or any employee of Yours but this exception shall not be applicable to the premises (or contents thereof) temporarily occupied by You for work therein.
  - b. that part of any property on which You are or have been working if such damage results directly from such work.
3. liability consequent upon injury or damage caused by or through or in connection with:
  - a. any advice or treatment of a professional nature (other than first aid treatment) given or administered by or at Your direction.
  - b. the ownership, possession or use by or on Your behalf of any mechanically propelled vehicle (other than a pedal cycle or lawnmower) or trailer or of any watercraft exceeding 5 meters in length or of any watercraft 5 meters and less but that is not used on inland waterways only, locomotive or rolling stock. This exception shall not relieve Us of liability to indemnify You in respect of liability consequent upon injury or damage caused or arising 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.
    - i. the refuelling of aircraft
    - ii. the ownership, possession, maintenance, operation or use of aircraft or an airline
    - iii. the ownership, hiring or leasing of any airport, airstrip or helicopter pad.
  - d. goods or products (including containers and labels) sold or supplied and happening elsewhere than on premises occupied by You other than food and drink supplied incidentally for consumption on the premises.
4. damage caused by vibration or by the removal or weakening of or interference with support to any and, building or other structure.
  5. assumed by You by agreement unless such liability would have attached in the absence of such agreement.
  6. fines, penalties, punitive, exemplary or vindictive damages.
  7. damages in respect of judgements delivered awarded or settlement made within North America or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part.
  8. Damages which shall include costs and expenses of litigation recovered by any claimant from You ,in respect of any claim arising from an event known to You which is not reported to Us in terms of General Condition 6 Claims.
  9. the first amount payable as per schedule.
  10. liability consequent upon injury or damage arising out of deliberate disregard by You 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 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 liability arose.
  12. any liability arising from pollution inclusive of the cost of nullifying or cleaning up of the pollution provided that it will not apply for any claims arising from a sudden, unintended and unexpected occurrence.

## Memorandum

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

“This section does not cover injury, damage to property 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 You as a result of a defined event reported in terms of General condition 6 shall be treated as if it had first been made against You on the same day that You reported the event to Us.  
In the event of cancellation or non-renewal of the policy, You may report an event in terms of General condition 6 to Us for up to 30 days after cancellation or non-renewal, provided such event occurred during the period of insurance.
2. Any series of claims made against You by one or more than one claimant during any period of insurance consequent upon one event or series of events with one original cause or source shall be treated as if they all had first been made against You
  - a. on the date that the event was reported by in terms of General condition 6
  - or
  - b. if You were 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 You.

## Manifestation Clause

Where the facts do not speak for themselves and We and You cannot mutually agree when the injury or damage occurred, then for the purpose of determining the indemnity granted:

- a. injury shall be deemed to have occurred when the claimant first consulted a qualified Medical Practitioner in respect of such Injury, whether or not it was correctly diagnosed at the time, If no such consultation took place, then Injury shall be deemed to have occurred when You were first advised of the Injury
- b. damage shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown.

## Extensions

### Extended reporting option

At Your option and subject to payment of an additional premium to be determined and subject to all the terms, exceptions and conditions of this section, We agree to extend the period during which You 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 the “extended reporting period”),

provided that:

- a. this option may only be exercised in the event of We cancel or refuse to renew this section
- b. this option must be exercised by You in writing within 30 days of cancellation or non-renewal
- c. once exercised, the option cannot be cancelled by either You or Us
- d. You have not obtained insurance equal in scope and cover to this section as expiring
- e. We 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 You for any reported event by You 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 Us 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.

### Additional insured

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

- a. in the event of Your death, any personal representative of Yours in respect of liability incurred by You;
- b. any partner or director or employee of Yours (if You so request) against any claim for which You are entitled to indemnity under this insurance;
- c. to the extent required by the conditions of any contract (and notwithstanding Specific exception 5), and in connection with any liability arising from the performance of the contract, any employer named in any contract entered into by You 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 You for the benefit of their employees:
  - i. any officer or member thereof;
  - ii. any visiting sports team or member thereof,

provided that:

1. **Our aggregate liability 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 You would have been entitled to indemnity if the claim had been made against You.

For the purposes of this extension, We waive 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.

**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 We 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 We be liable where any other form of motor insurance has been effected by You covering the same liability.**

**Employees' and visitors' property**

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

**Unattached trailers**

Specific exception 3 b shall, as far as it relates to trailers, not apply in respect of any trailer that was attached to any mechanically propelled vehicle that became unintentionally detached from that vehicle, **provided that We shall not be liable hereunder in respect of so much of any liability:**

- a. **which is insured by or would, but for the existence of this section, be insured by any other policy or policies effected by You**
- b. **as falls within the scope of any compulsory third party insurance legislation, notwithstanding that no such insurance is in force or has been effected.**

**Emergency medical expenses**

We will indemnify You for all reasonable expenses incurred by You 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.

**Car parks**

Notwithstanding the provisions of specific exception 2, a (ii), We will indemnify You 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 Yours using parking facilities provided by You.

**Tenant's liability**

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

**Gratuitous advice**

Notwithstanding anything to the contrary contained in specific exception 3 a We will indemnify You in respect of Defined Events caused by the unintentional failure of Yours 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:**

- a. **arising out of Your insolvency**
- b. **arising out of financial services and/or cost estimates provided by or on Your behalf**
- c. **arising out of defamation**
- d. **arising out of design, formula, supervision, treatment or advice given by or on Your behalf in exchange for a fee or benefit of some kind**
- e. **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 amount for which You are liable over and above the cover provided by such other insurance subject at all times to the limit of indemnity.

**Acquisitions and new businesses**

The indemnity granted by this section of the policy extends to any company formed or acquired by You during the period of insurance for a period of 90 days of such formation or acquisition, provided always that:

- a. the retroactive date in respect of such new company shall be deemed to be the date when a newly formed 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 absence of such a declaration, the retroactive date shall be the date of such acquisition
- b. Your business activities remain unchanged;
- c. the annual turnover of all newly formed or acquired companies does not exceed 5% (five percent) of Your estimated annual turnover as advised to the insurance company at inception hereof
- d. You shall advise the insurance company of such formations or acquisitions before the expiry of 90 days thereof and the insurance company may amend the terms of this section of the policy accordingly.

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

The defined events are extended to include damages:

- a. resulting from wrongful arrest (including assault in connection with such wrongful arrest);
- b. in respect of defamation, provided always that the limits of indemnity as stated shall not exceed R250 000 under each of a and b in anyone (annual) period of insurance.

**Products liability (if stated in the schedule to be included)**

Notwithstanding anything to the contrary contained in specific exception 3(d), We will indemnify You in respect of defined events

happening anywhere in the territories stated in the schedule elsewhere than at premises occupied by You, and caused by any Product sold or supplied (including wrongful delivery and delivery of incorrect goods) by You in connection with the nature of business.

The amount payable under this extension, inclusive of any Legal Costs recoverable from You by a claimant or any number of claimants, and all other costs and expenses incurred with Our consent, for anyone event or series of events with one original cause or source or during anyone (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:

1. for the cost of repair, alteration, recall, reconditioning or replacement of the Product or part thereof causing injury or damage. 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 Your behalf in lieu of replacement of the defective Product
2. for the cost of demolition, breaking out, dismantling, delivery, rebuilding, supply and installation of the Products 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 exception 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 of Yours sold or supplied by You or to Your order, if such Products have, to Your knowledge, been exported to the United States of America or Canada by or on Your behalf.

6. for any defect in any Product or any part thereof of which You were aware prior to the inception of this extension.