

## C - POLICY EXPLANATION

### SUMMARY OF THE CAMARGUE GENERAL LIABILITY POLICY

*Please note that this document is not a substitute for the policy wording and some technical accuracy has been forfeited for the sake of easy reading.*

#### What is the purpose of liability insurance?

In the ordinary course of business a company could cause damage to the property of others, or even injure people. As a result, the company may become legally liable for the negligence or wrongful acts of the company's employees, directors, subcontractors, customers, suppliers and shareholders – to name just a few. Even though the company should do everything it reasonably can to prevent liability, it is simply not practical for a business to anticipate and prevent every possibility.

If the company is at fault, then it might be sued for Damages. The Camargue General Liability policy has been designed to pay for these Damages – even if the matter is settled out of court. Legal costs incurred in defending the matter are also covered.

The policy provides worldwide cover; however, there are restrictions in terms of the USA and Canada.

#### Important concepts

The policy frequently refers to:

- Injury, which also includes death and illness
- Damage, which includes theft and other loss to tangible property

Because these words have been given a special meaning, they have been capitalised. The word 'Insured' is also capitalised because it includes not only the insured company but also the staff when they become personally liable in the course of their employment duties.

The policy is issued on a Claims Made basis and only covers events which arise on or after the Retroactive Date and of which the Insured and Insurer become aware while the policy is active (also referred to as the period of insurance). These important concepts have been explained at the end of this document.

#### Overview of the Camargue General Liability policy

The cover provided by the policy is found in four sections and a number of extensions.

SECTIONS	COVERS THE INSURED'S LIABILITY FOR:
Public Liability	Injury or Damage to others arising in the general course of business. Many claims, if not most, are paid in terms of this section. Some of the exclusions under this section of the policy are covered by the other sections and extensions of this policy.
Pollution Liability	The accidental release of pollutants into the environment
Products Liability and Defective Workmanship	Injury or Damage arising out of the harmful nature of the Insured's products or out of the Insured's negligence while working on a product
Negligent Advice	Injury or Damage arising out of free advice given in promotion of the Insured's products or services
EXTENSIONS	COVERS THE INSURED'S LIABILITY FOR:
Statutory Defence Costs	Legal expenses in defence of a criminal action
Wrongful Arrest	Wrongful arrest, false imprisonment and any related assault caused by the Insured
Defamation	Defamatory statements whether written or verbal
Employers Liability	Employees injured in the workplace

The policy also contains a number of important exclusions which have been included in this summary.

## SECTION A – Public Liability

The Public Liability section is also sometimes referred to as the ‘General and Tenants’ section. It covers the Insured’s liability for Injury or Damage arising in the general course of business. Many claims, if not most, are paid in terms of this section. Some examples include:

- A visitor to the Insured’s premises is injured when the Insured does not draw her attention to soap on the floor
- A fire at the Insured’s property spreads to a neighbour’s property
- While repairing a pipe, a plumber causes an electric fire by accidentally flooding an electricity distribution box

Some of these aspects of the cover are dealt with quite specifically by the policy, such as:

- Tenants Liability covers damage to premises that the Insured is occupying
- Employees and visitors clothing and personal effects are covered
- Government property whilst on the Insured’s premises is covered
- Any property temporarily in the Insured’s care for work thereon is covered - the actual part being worked on is not covered if the damage arises out of such work

It is important to remember that Public Liability excludes most liability arising out of the possession or use of a vehicle, aircraft, hovercraft or watercraft. It also excludes property belonging to the Insured or in the Insured’s care (but there are some exceptions).

## SECTION B – Pollution Liability

This section covers liability for Injury or Damage arising out of pollution. Pollution means the messing or releasing of any polluting gas, liquid or solid into water, land or air. The Camargue definition of pollution goes even further to include smells, vibrations, light and temperature changes, thermal irritants and contaminants.

There are two places where the policy covers pollution. Most Pollution claims are covered under the Pollution Liability section, but if the Insured’s Product causes pollution then that would be covered under the Products Liability section.

There are some exclusions that need to be remembered. Cover is always subject to the Insured taking reasonable precautions to prevent pollution. There is no cover for gradual pollution. In other words, the claim must arise out of a sudden and unforeseen event during the period of insurance.

## SECTION C - Products Liability and Defective Workmanship Liability

A Product is any physical item which the Insured has handed over to someone else. It could be an item which the Insured sold, or manufactured, or stored or even just worked on. If that item then causes harm to people or their property, that would be a Products Liability claim. The definition of Products Liability in Camargue’s policy is wide enough to include defective workmanship.

The following example illustrates the difference between Public Liability and Products Liability. If, while rewiring an old house, the Insured accidentally causes a fire then that would be a Public Liability claim. However, if that fire only started a few hours after the Insured handed over that faulty wiring job, then that would be a Products Liability claim.

There are some important exclusions under the Products Liability section. Some of these exclusions are covered by specialised types of products liability cover such as:

- Products Inefficacy – where the Product causes a purely monetary loss to a third party simply because it does not perform as reasonably expected, e.g. a fertilizer which has no effect.
- Products Recall – which pays the transport costs of recovering dangerous, defective Products
- Products Guarantee – pays for the cost of replacing or repairing the defective product. Suppose the Insured supplies faulty brake pads which cause a customer’s car to crash. Although the Products Liability section would pay for the accident damage, it would not pay the cost of replacing the faulty brake pads because that is a Products Guarantee claim.

## SECTION D - Negligent Advice

This section covers the Insured against liability for Injury or Damage arising out of inaccurate or inadequate advice or information of a technical nature when promoting its products or services. This advice must be given for free - if the customer was charged for the advice then this section provides no cover. This section also excludes financial services, cost estimates or claims arising from the Insured’s insolvency

The dispensing advice given by a pharmacist, for example, is covered, but a doctor’s advice is not. This is because the doctor charges for the advice, but a pharmacist’s advice is not specifically charged for.

## **Statutory Defence Costs Extension**

The policy generally excludes liability arising out of criminal action. However, this extension provides cover for the legal costs in defending a criminal action brought against the Insured.

The criminal action can arise out of any law except the Companies Act, labour laws and laws relating to vehicles, aircraft and watercraft.

The Insured would not normally need to repay those defence costs if found guilty, however the fine or penalty would not be covered. The Insurers are not obliged to pay for the cost of an appeal unless they believe it is likely to succeed.

The policy would, for example, cover the Insured's defence costs if it (or its staff) were criminally charged for breaching the Occupational Health & Safety Act when their labourers were injured because they were allowed to work without protective clothing. Camargue usually automatically include this cover with a limit of R250,000.

## **Wrongful Arrest Extension**

When the Insured causes a person to be wrongfully arrested this extension covers liability arising out of that imprisonment or out of any assault arising before being placed in police custody. It also covers any defamation arising out of the incident.

The extension only covers the claim made by the person who was arrested. It would not cover claims made by various other third parties, such as an employer who alleges lost productivity from the arrested employee.

The Wrongful Arrest extension is particularly appropriate where the Insured employs security guards, such as retail shops where suspected shoplifters are frequently apprehended. Camargue usually automatically include this cover with a limit of R250,000.

## **Defamation Extension**

Defamation is a false statement of fact made to someone other than the victim which harms the reputation of the victim. The extension provides cover for defamatory statements made by the Insured, whether written or verbal. Defamation can also include acts such as the exhibition of a misleading picture. This extension excludes defamation arising out of any publication, radio or television broadcast. Camargue usually automatically include this cover with a limit of R250,000.

## **Employer's Liability Extension**

This extension provides cover for injury to employees arising in the course of their employment. The extension excludes claims arising from prolonged exposure to hazardous substances. Mostly these claims are covered by the Compensation for Occupational Injuries and Diseases Act No 130 of 1993 (COID Act); however, if the Act fails to provide the necessary protection this extension would provide the cover.

The extension also covers claims where the Insured is held liable as a result of one employee intentionally injuring another. There are some exclusions to that, such as claims involving drunkenness, firearms or HIV/AIDS.

## **Products Inefficacy Extension**

This extension is similar to Products Liability in that it covers losses caused by the Insured's Products. The big difference is that Products Liability covers claims where people are harmed or their property is damaged. By contrast Products Inefficacy covers those claims where there was no such harm or damage.

This is best illustrated by example: Suppose the Insured manufactures chicken feed. Due to a manufacturing fault, the feed poisons the chickens. That would be Products Liability claim. But suppose the fault causes no harm to the chickens, they simply don't grow as fast as they should. As a result the farmer loses money and sues the Insured for his lost income. That would be a Products Inefficacy claim.

In other words, Products Inefficacy covers pure financial losses caused when the Insured's Product does not perform as well as promised.

## **Errors & Omissions Extension**

This extension offers professional indemnity cover. This extension applies when others suffer a purely financial loss (without physical harm to humans or their property) because of the Insured's bad advice or services.

Suppose, for example, that the Insured is a computer retailer who recommends a certain type of computer to their

customer. Later, it becomes apparent that the Insured negligently overlooked some important facts and as a result those computers are a waste of money. If the customer sued the Insured for that waste of money it would likely be an errors & omissions claim.

Exclusions under this extension include:

- Harm to people or their tangible property. The intention is to cover pure financial losses that the Insured may cause to others.
- Losses arising out of defective Products (see the Product's Inefficacy extension). The intention is to cover bad advice and similar services.
- Losses arising out of the ownership or hiring out of property or vehicles. This would not be suitable cover for an estate agent who manages property rentals.
- Fines, penalties taxes or other performance guarantees (e.g. no cover for not meeting a deadline).
- Financial advice, insurance, incorrect cost estimates and dishonesty.

Cover under this extension is usually limited to small companies who require small indemnity limits (around R1m). Purchasing a separate professional indemnity policy for these companies would be an over-kill.

### **Warehousemen's Liability Extension**

This extension covers Damage to other people's (or companies') property while it is temporarily at the Insured's storage facilities. This includes damage while the property is being loaded and unloaded at the storage facility.

It is very important to note that the owner of the property is required to have their own insurance on the property. The policy insists that there must be a disclaimer where the owner agrees not to hold the Insured liable for damage to their property in the Insured's care. In other words, this extension is intended as contingency cover, just in case the disclaimer fails (as it typically would if the Insured has been grossly negligent).

The other exclusions under this extension include:

- Mechanical or electrical derangement unless accompanied by other physical damage. In other words, there is no cover if the thing just stops working and it doesn't look broken.
- Theft of the property by the Insured's staff or contractors or similar acts of dishonesty.
- Delay in the return of the stored property
- The Insured's activities as clearing and forwarding agents
- Money, jewellery or other high value items
- Perishables and refrigerated goods

There is a similar extension which does not cover the damage to the customer's property but, instead, only covers the consequences of the damage to that property. That is called the Warehousemen's Liability - Consequential Loss Only extension.

### **Carrier's Liability Extension**

This cover is similar to the Warehousemen's Liability extension. However, instead of covering the property while in the Insured's storage facilities, it covers the property while it is being transported by the Insured.

### **Custody & Control Extension**

This provides wider cover than is found under the Warehouseman's and Carrier's Liability extensions. It is intended to cover third party property temporarily in the Insured's possession for any reason, including storage.

This extension excludes vehicles. It would, for example, not be ideal for panel beaters. It also excludes property which has been insured under another policy.

### **Breach of Copyright Extension**

This extension covers the legal costs defending the Insured against allegations of breach of copyright or patent. This extension only pays the defence costs. Should the Insured lose the court case then there is no cover for the damages that the Insured will have to pay.

The cover is limited to accidents made in good faith. There are other exclusions to this extension which make it unsuitable for professionals who offer services related to giving advice on copyright related matters.

### **Data Protection Extension**

When you are entrusted with other people's property, there is usually an automatic legal obligation to take good care of that property. Looking after information that has been given to you is no exception. Many organisations

believe that their firewalls and anti-virus programs provide them with sufficient protection against cyber-risks, such as viruses and hacking. The shocking reality is very different and most businesses will, at some point, be exposed to the devastating effect of a cyber-attack.

This extension covers the Insured's liability as a result of not taking adequate care of third party confidential data on their network. In this case a third party could be almost anyone including customers, suppliers and staff.

## SIGNIFICANT POLICY EXCLUSIONS

The following are key exclusions of the policy:

- Fines and Penalties – for example, liability arising from a fine which the court imposed on a company for maintaining poor safety standards
- Deliberate acts – where the Insured made a decision knowing that this would result in a claim against the policy
- Performance Warranties – failure to meet contractual obligations; e.g. the Insured incurs a liability to their customer for failing to deliver goods on time
- Admission of Liability – if the Insurer's liability increases because the Insured admitted to being at fault, then the policy would not pay for the increased liability
- Defamation – saying or writing untrue and harmful statements is not covered (cover for negligent defamation is available)
- Insurance covered by other policies or by extensions to this policy that were not selected
- Claims arising out of a nature of business which is not specified in the policy schedule
  - o The correct nature of the Insured's business must be detailed on the policy schedule
  - o For example, if the Insured's policy-stated business is "painting buildings", then there would be no cover for the Insured's work as a manufacturer of chemicals
- A material change to the Insured's risk of which the Insurers were not advised
- Claims arising out of war, terrorism, nuclear materials or asbestos
- Employment – no cover for injury arising out of employment unless the relevant extension has been selected
- Claims brought against people in their personal capacity because they mismanaged the company (this cover is provided in terms of a Directors and Officers' Liability policy).
- Possible claims of which the Insured was aware of before the policy started
- Events giving rise to a claim which occurred prior to the Retroactive Date
- Claims that were not made against the Insurer during the period of insurance
- Excess – that portion of the claim falling within the Excess is paid by the Insured
- Damage arising out of the confiscation of property by government
- Liability arising out of advice of a professional nature given for a fee
- Damage arising out of electrical or magnetic fields
- Aircraft – claims arising out of working on or operating aircraft
- Claims brought against the Insured in the courts of the USA and Canada
- Claims arising out of the disposal or transport of dangerous goods

## FURTHER EXPLANATIONS

### Retroactive Date

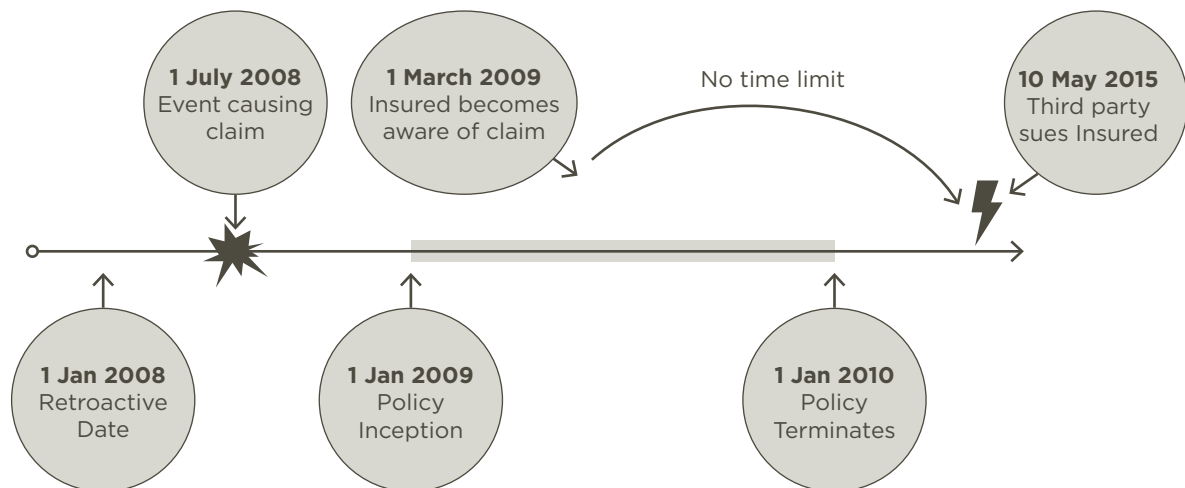
There are three very important dates that are used to decide whether a claim is covered or not. The first is the date when the loss was caused. The second is when the Insured found out that they had done something wrong and the third: when they tell the insurers.

DATE	WHAT HAPPENED	WHAT HAPPENED	WHAT HAPPENED
First date	The date when the Insured caused the loss	On 1 July 2008 the Insured's employee drives the bulldozer into a visitor's car, but tells no-one.	Must have happened on or after the retroactive date.
Second date	When the Insured found out that they did something wrong	On 1 March 2009 he 'comes clean' and tells the Insured that he was responsible for the mysterious dent in that brand new Rolls Royce.	Must be during the period of insurance.



Third date	When the Insured tells the insurers	On 2 March 2009 the Insured notifies the Insurers.	Must be during the period of insurance.
Fourth date	The visitor finds out and starts legal action.	At 3:17 pm on 10 May 2015 the visitor goes nuclear.	Not as important as the first three dates.
Fifth date	The court rules in favour of the visitor	The policy pays.	Date not important.

The following diagram illustrates the example visually.



Retroactive cover provides the Insured with cover for claims arising from events that occurred before the start date of the policy (provided that the Insured did not already suspect there would be a claim).

An event giving rise to a claim must occur on or after the Retroactive Date. This means that there is no cover for events which occurred before the Retroactive Date. Often the Retroactive Date coincides with the date the policy started. Subject to an additional premium an earlier date can sometimes be arranged with the insurers.

**IN SUMMARY:** Camargue liability policies are issued on a claims-made basis which means that the Insured must become aware of the possibility of a claim during the period of insurance. The Insured must immediately notify the Insurers when they become aware of a possible claim.

The event causing the claim could occur before the policy started provided that it is on or after the Retroactive Date.

## CONCLUSION

A liability policy wording can be a daunting document. Fortunately, a list of frequently asked questions can be accessed at [www.camargueum.co.za/academy](http://www.camargueum.co.za/academy). These questions address every aspect of the policy and provide simple explanations. This document has been compiled out of their answers.