



Camargue

Specialised Liability Management

Commercial General Liability

THE POWER OF KNOWLEDGE

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THE POWER OF KNOWLEDGE



CLAUSES AND EXTENSIONS

1. OPERATIVE CLAUSE

In consideration of, and conditional upon, the prior payment of the premium by or on behalf of the Insured and receipt thereof by or on behalf of the Underwriters and having agreed that any proposal or other information supplied by or on behalf of the Insured shall be the basis of this contract of insurance, the Underwriters will indemnify the Insured as hereinafter provided for in the Insuring Sections and elected Extensions against their liability to pay compensation (including claimants' costs, fees and expenses) for and arising out of Injury and/or Damage and in accordance with the law of any country but not in respect of any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).

The indemnity provided herein applies only to claims first made against the Insured during the Period of Insurance and arising out of the Business specified in the Schedule.

For the purpose of determining the indemnity granted:

- 1.1 "Injury" means death, bodily injury, illness or disease, mental injury of or to any person.
- 1.2 "Damage" means loss of possession or control of or actual damage to tangible property or interference with servitude or right of access or other infringement of real or personal rights to the use of property.
- 1.3 "Business" means the scope of the Insured's trading activities specified in the Schedule.
- 1.4 "Data" means any machine readable information, including ready for use programs or electronic data, irrespective of the way it is used and rendered including, but not limited to, text or digital media.
- 1.5 "Event" means any incident, act, error or omission giving rise to legal liability as insured by this Policy.
- 1.6 "Occurrence" means an Event or series of Events arising out of one original source.
- 1.7 "Pollution" means the emission, discharge, dispersal, disposal, seepage, release or escape of any liquid, solid, gaseous or thermal irritant, contaminant or pollutant into or upon land, the atmosphere or any water-course or body of water or the generation of smells, noises, vibrations, light, electricity, radiation, changes in temperature or any other sensory phenomena, but not fire or explosion.
- 1.8 "Product" means any tangible property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured, but shall not mean food and drink supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit.
- 1.9 "Professional Services" means advice given or work done or any actions taken by the Insured when functioning in any capacity involving special skill or knowledge related to the Insured's business activities.
- 1.10 "Policy" means this document together with the Schedule, the Certificate, the Important Information disclosure notice and any information provided to the Underwriters by or on behalf of the Insured. These form the basis of this agreement and shall be read together as one document referred to as the Policy.
- 1.11 "Inefficacy Claims" means claims made against the Insured for economic or financial loss sustained by reason of the claimant alleging that his property:
 - i. is rendered of less value, or
 - ii. has not achieved its anticipated value, or
 - iii. has not been capable of full beneficial usedue to the failure of any Product or part thereof to fulfil its intended function or to perform as specified warranted or guaranteed.
- 1.12 "Negligent Advice" means incorrect or inadequate advice or information of a technical nature given in the promotion of the Insured's Products or services but not where such advice or information:
 - i. is given in exchange for a fee or similar consideration, or



ii. is an essential part of a revenue earning activity of the Insured.

1.13 "Vehicle" means any land vehicle or trailer (including any machinery or apparatus attached thereto) whether or not subject to vehicle registration or whether or not self-propelled including locomotives and rolling stock.

2. CONTINUOUS EXPOSURE CLAUSE

Where the Insured and the Underwriters cannot agree on the timing of the Occurrence, then for the purposes of determining the indemnity granted:

2.1 Injury shall be deemed to have occurred when the claimant first consulted a qualified medical practitioner in respect of such Injury. If no such consultation took place, then the Injury shall be deemed to have occurred when the Insured became aware of the Injury.

2.2 Any other Occurrence shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown.

3. NOTIFICATION EXTENSION CLAUSE

Should the Insured notify the Underwriters during the Period of Insurance in accordance with General Condition 1 of any specific event or circumstances which the Underwriters accept may give rise to a claim or claims which form the subject of indemnity by this Policy, then acceptance of such notification means that Underwriters will deal with such claim or claims which may later arise as if they had first been made against the Insured during the Period of Insurance.

4. INDEMNITY TO OTHERS

The indemnity granted extends to:

4.1 Any party who enters into an agreement with the Insured for any purpose of the Business, but only to the extent required by such agreement to grant such indemnity and subject to clause 2.4 (iii) of Section A Public Liability and General Exclusion 5.

4.2 Officials of the Insured in their business capacity arising out of the performance of the Business or in their private capacity arising out of their temporary engagement of the Insured's employees.

4.3 The officers, committee and members of the Insured's canteen, social, sports, medical, fire-fighting and welfare organisation in their respective capacities as such.

4.4 The personal representatives of the estate of any person who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such person.

Provided always that all such persons or parties shall observe, fulfil and be subject to the terms, Conditions and Exclusions of this Policy as though they were the Insured.

5. CROSS LIABILITIES

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

6. DEFENCE COSTS

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

Underwriters will also pay for such emergency medical treatment as may appear necessary in respect of Injury which may form the subject of indemnity by this Policy.



7. INDEMNITY LIMITS

Underwriters' total liability to pay compensation, claimants' costs, fees and expenses and Defence Costs shall not exceed the Indemnity Limits stated in the Schedule. The Indemnity Limit shall be the maximum amount of the Underwriters' liability in respect of all claims arising out of one original cause. Where the Indemnity Limit is stated to be "in the annual aggregate" the Underwriters' liability for all claims arising in any one Period of Insurance shall be limited to the stated amount irrespective of the number of events giving rise to such claims.

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 Section or Extension of this Policy, each Section and Extension shall apply separately and be subject to its own separate Indemnity Limits provided always that the total amount of Underwriters' liability shall be limited to the greatest Indemnity Limit of availability under any one of the Sections/Extensions affording indemnity for the claim or series of claims. All limits stated are payable in excess of the Excess applicable to the relevant claim.

To the extent that the Insured is accountable to the tax authorities for Value Added Tax in respect of any payment in terms of this Policy the Underwriters will include the amount of such tax in the final settlement of any claim under this Policy in addition to the Indemnity Limits. The Excess is not subject to Value Added Tax unless the applicable legislation specifically provides otherwise.

SPECIAL MEMORANDUM

Acquisitions and new business

The Indemnity granted by this Policy of Insurance extends to any company formed and/or acquired by the Insured during the Period of Insurance for a period of 30 days of such information or acquisition.

Provided always that:

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

Subject otherwise to the terms, Exclusions, Conditions and Limitations of the Policy.



SECTION A PUBLIC LIABILITY

1. INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause but not against claims for and/or arising out of:

- 1.1 Pollution
- 1.2 any Product
- 1.3 Negligent Advice.

2. EXCLUSIONS

This Section does not cover liability for claims arising out of:

- 2.1 the ownership possession or use by or on behalf of the Insured of any Vehicle, other than claims:
 - i. caused by the use of:
 - a. any tool or plant forming part of or attached to or used in connection with any Vehicle
 - b. any Vehicle as a tool of trade whilst not being used for transport purposes on a public road
 - c. a trailer which is not attached to or has accidentally become detached from a Vehicle
 - ii. arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any Vehicle.
 - iii. for damage to any bridge, weighbridge, road or anything beneath caused by the weight of any Vehicle or of the load carried thereon.
 - iv. arising out of any Vehicle temporarily in the Insured's custody or control for the purpose of parking.
 - v. arising out of the possession or use by the Insured of any Vehicle belonging to any rail service provider or any government or quasi government department, provincial administration, municipality or similar body whilst on any premises permanently occupied by the Insured.
 - vi. which forms the subject of indemnity in terms of Optional Extension 4 Employer's Liability.
- 2.2 liability which is the subject of statutory or similar legislation controlling the possession or use of Vehicles and in respect of which liability:
 - i. the Insured is compelled to effect insurance or otherwise furnish security, or
 - ii. the State or other governmental authority has accepted responsibility
- 2.3 the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft or hovercraft (other than watercraft not exceeding fifteen metres in length and then only whilst on inland waterways or within three nautical miles of the shoreline).
- 2.4 damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than:
 - i. premises (or the contents thereof) temporarily occupied by the Insured for work therein or other property temporarily in the Insured's possession for work thereon (but no indemnity is granted for damage to the part of the property on which the Insured is working and which arises out of such work)
 - ii. directors', employees' and visitors' clothing and personal effects.
 - iii. premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement.
 - iv. property belonging to any rail service provider or any government or quasi government department, provincial administration, municipality or similar body whilst on any premises permanently occupied by the Insured.
- 2.5 the ownership, hire, leasing or operation of any airport, airstrip or helicopter pad by or on behalf of the Insured other than airstrips and helicopter pads which are not equipped with control tower operation.



SECTION B POLLUTION LIABILITY

1. INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause against claims arising out of Pollution but only to the extent that it can be proved that such Pollution

1.1 was the direct result of a sudden, specific and identifiable event occurring during the Period of Insurance.

1.2 was not the direct result of the Insured failing to take reasonable precautions to prevent such Pollution.

2. EXCLUSIONS

This Section is subject to the Exclusions to Section A insofar as they can apply, and also does not cover liability for claims arising out of or in connection with any Product.



SECTION C PRODUCTS LIABILITY/DEFECTIVE WORKMANSHIP

1. INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause but only against claims arising out of or in connection with any Product or Pollution resulting therefrom subject always to the provisions of Clause 1 of Section B.

2. EXCLUSIONS

This Section does not cover liability for claims:

- 2.1 for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof which is or is alleged to be defective.
- 2.2 for costs arising out of the recall of any Product of any part thereof.
- 2.3 arising out of the failure of any Product or part thereof to fulfil its intended function or to perform as specified, warranted or guaranteed unless such failure shall result in Injury and/or Damage
- 2.4 arising out of any Product which, with the Insured's knowledge, is intended for incorporation into the structure, machinery or controls of any aircraft.
- 2.5 arising out of Negligent Advice in respect of any Product.
- 2.6 arising from any work on any aircraft or part thereof.



SECTION D - NEGLIGENT ADVICE

1. INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause but only in respect of claims arising out of Negligent Advice.

2. EXCLUSIONS

This Section does not cover liability for claims arising out of:

- 2.1 Negligent Advice given in respect of any Product unless the Insured shall have effected cover under Section C of this Policy.
- 2.2 financial services and/or cost estimates given by or on behalf of the Insured.
- 2.3 the insolvency of the Insured.
- 2.4 defamation or injuria.



GENERAL EXCLUSIONS

APPLICABLE TO ALL SECTIONS AND EXTENSIONS OF THE POLICY

This Policy does not cover liability:

1. for any claims where the Insured was aware, before inception of this Policy, of the circumstances or event which gave rise to the claim.
2. occurring prior to the applicable Retroactive Date stated in the Schedule.
3. arising out of the deliberate, conscious or intentional disregard by the Insured's management of the need to:
 - i. take all reasonable steps to prevent claims,
 - ii. comply with Statute governing the conduct of business.
4. arising out of Injury to any persons under a contract of employment or apprenticeship with the Insured where such Injury arises out of the execution of such contract, except to the extent and where the Insured has elected to purchase Optional Extension 4 Employer's Liability.
5. arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that it can be proved that liability would have attached in the absence of such clauses or warranties.
6. arising out of punitive or exemplary damages of whatever nature whether in the form of fines, penalties or the multiplication of compensatory awards,
7. directly or indirectly occasioned by, happening through or in consequence of nationalisation of, requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority,
8. directly or indirectly caused by, or contributed to, or arising from ionising radiations, or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

For the purposes of this General Exclusion only, combustion shall include any self-sustaining process of nuclear fission.

This General Exclusion will not apply to liability arising from the ownership, possession or use by or on behalf of the Insured, of radio-active isotopes.

9. for the applicable Excess in respect of the first amount of each claim or series of claims arising out of one originating cause.
10. which forms the subject of insurance by any other policy or policies and this Policy shall not be drawn into contribution with such other insurance if such other insurance more specifically described the Events which gave rise to the claim or the subject of the claim.

Save for the aforementioned, if at the time a valid claim is notified in terms of this Policy, it is also covered by other insurance, the underwriters will only pay a rateable proportion of the claim. Such proportion being the ratio that the Indemnity Limit of this Policy bears to the combined indemnity limits of all insurance covering the claim. The Indemnity Limit and the Excess will not be reduced by this limitation.

11. arising out of, caused by or aggravated by organisms because they have been genetically modified.
12. for any claims arising out of any design, formula (other than design or formula of a Product), specification or advice of a professional nature given by or on behalf of the Insured in exchange for a fee.
13. for claims arising out of or which may arise out of or in connection with electric and/or magnetic and/or electrical fields.
14. Attaching to any director or employee of the Insured due to their actual or alleged mismanagement of the Insured's interests or out of placing their interests ahead of the Insured's interests.



15. for loss, damage, cost or expenses of whatsoever nature, notwithstanding any provision to the contrary within this Policy or any endorsement, directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
- i. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
 - ii. any act of terrorism,

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

This General Exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to i and/or ii above.

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

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

16. directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by or arising from the existence of or exposure to asbestos and/or any asbestos containing materials. This exclusion also applies to any obligation to defend any claim or suit against the Insured alleging liability resulting from the existence of or exposure to asbestos and/or any asbestos containing materials and to Underwriter's liabilities for any costs fees or expenses arising therefrom provided always that this entire exclusion shall not apply to liability which is specifically unrelated to the known or suspected harmful injurious or damaging effects of asbestos products, fibres or dust.
17. for claims arising out of dishonesty of the directors, principals or employees of the Insured or theft or fraud by any other person to whom property in the custody and control of the Insured is entrusted,
18. arising out of the activities of operations domiciled in the United States of America or Canada.
19. arising when a Vehicle is used to transport Dangerous Goods. Dangerous Goods are items whose transport is regulated by law, including but not limited to those products listed in the South African National Standard SANS 10231.
20. arising out of the disposal of Dangerous Goods.
21. arising out of the loss, damage, disclosure, duplication or detrimental change to any Data or of any consequence therefrom, unless as a direct consequence of damage to tangible property.



GENERAL CONDITIONS

Conditions General Conditions 1 to 5 are precedent to Underwriters' liability to provide indemnity under this Policy.

1. The Insured shall give written notice to the Underwriters as soon as reasonably practicable, but in any event no later than the last day of the Period of Insurance, of any claim made against the Insured (or any specific event or circumstance that may give rise to a claim being made against the Insured) and which forms the subject of indemnity under this Policy and shall give all such additional information as the Underwriters may require. Every claim, writ, summons or process and all documents relating to the claim event or circumstance shall be forwarded to the Underwriters immediately they are received by the Insured.
2. No admission, offer, promise or payment shall be made or given by or on behalf of the Insured without the written consent of the Underwriters who shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Underwriters may reasonably require.
3. The Insured shall give notice as soon as reasonably practicable of any fact, event or circumstance which materially changes the information supplied to the Underwriters at the time when this Policy was effected, and Underwriters may amend the terms of this Policy according to the materiality of such change.
4. The Underwriters may at any time pay to the Insured in connection with any claim or series of claims under this Policy to which an Indemnity Limit applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claims.
5. The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or Schedule shall bear such specific meaning wherever it may appear.
6. The interpretation of the terms and Exclusions of this Policy (and any phrase or word contained therein) shall be interpreted in accordance with the law of the Republic of South Africa.
7. Where the Premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as Underwriters require. The premium shall then be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any Minimum Premium that may apply.
8. This Policy may be cancelled by the Insured at any time by giving immediate notice, or by the Underwriters by the giving thirty days notice in writing of such cancellation to last known address of the other party.
9. If any claim under this Policy is in any respect fraudulent all benefit in respect of such claim shall be forfeited.



OPTIONAL EXTENSIONS

APPLICABLE ONLY TO THE EXTENT INDICATED IN THE SCHEDULE

Only to the extent that the Policy Schedule specifically reflects that an Extension has been selected, does this Policy extend to include the following, subject to the limits and excesses specified in the Schedule and subject to the terms, Conditions and Exclusions of the Policy.

1. **Statutory Defence Costs**

Underwriters will indemnify the Insured against legal costs, fees and expenses incurred with the consent of the Underwriters in the defence of any criminal action brought against the Insured as a result of the alleged contravention of any Statute governing the conduct of the Business [other than any Statutes governing the ownership, possession, use or licensing of motor Vehicles, aircraft or watercraft, the relevant Labour Laws as promulgated in the Republic of South Africa from time to time, or the Companies Act No. 71 of 2008 (as amended from time to time)] and as read in conjunction with the Criminal Procedure Act No. 56 of 1955 (as amended from time to time).

Provided always that:

- i. no indemnity shall be granted for fines or penalties.
- ii. in the case of an Appeal, the Underwriters shall not indemnify the Insured unless a Senior Counsel (to be agreed to by the Underwriters) shall advise that such Appeal should be likely to succeed.
- iii. the total liability of the Underwriters under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured during the Period of Insurance.

2. **Wrongful Arrest**

Underwriters will indemnify the Insured in respect of claims arising out of Wrongful Arrest (as hereinafter defined) committed or alleged (other than by the Insured) to have been committed by the Insured in the course of the Business.

Provided always that:

- i. for the purposes of this Extension, the terms "Wrongful Arrest" shall mean:
 - a. assault and battery committed or alleged to have been committed at the time of making or attempting to make an arrest or in resisting an overt attempt to escape by a person under arrest before such person has been or could be placed in the custody of the police or a law enforcement officer.
 - b. defamation, injuria, false imprisonment or malicious prosecution either committed or alleged to have been committed directly in connection with an arrest or arising out of the investigation of acts of shoplifting or theft.
- ii. no indemnity shall be granted in respect of claims made against the Insured by any person or persons other than those being or having been or alleged to have been arrested or under arrest, or their personal representatives.
- iii. the total liability of the Underwriters under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured during the Period of Insurance.

3. **Defamation**

Underwriters will indemnify the Insured in respect of claims arising out of defamatory statements, whether written or verbal, made by the Insured.

Provided always that:

- i. no indemnity shall be granted in respect of claims:
 - a. which form the subject of Optional Extension 2 Wrongful Arrest.
 - b. arising out of any publication in any journal, magazine or newspaper or on radio or television.
- ii. the total liability of the Underwriters under this extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured during the Period of Insurance.



4. **Employers Liability**

Notwithstanding anything to the contrary contained in General Exclusion 4, this Policy extends to include claims arising out of Injury to any person employed under a contract of service or apprenticeship with the Insured where such Injury arises out of and in the course of the execution of such contract.

Host Employer's Liability

Underwriters will indemnify the Host Employer for its liability to indemnify the Contractor for Employment Injury sustained as a result of the Host Employer's negligence.

For the purposes of this extension:

- i. "Host Employer" means an organisation to which the Insured has contracted the services of the Insured's staff
- ii. "Contractor" means any person employed under a contract of service or apprenticeship with the Insured who is rendering a service to the Host Employer
- iii. "Employment Injury" means Injury sustained by the Contractor whilst rendering services to the Host Employer on behalf of the Insured.

Employee to Employee Liability

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

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

Provided always that, in terms of this Optional Extension 4:

- i. There is no cover for liability for claims arising from illness or disease or contributed to by prolonged exposure to substances, factors or circumstances peculiar to any particular employment or occupation.
- ii. There is no cover for amounts recoverable under any Act in terms of which any employee may claim compensation for work related injuries regardless of whether or not the Insured has complied with their obligations in accordance with the Act.
- iii. The total liability of the Underwriters shall not exceed the amount stated in the Schedule in respect of all claims made during the Period of Insurance.

5. **Errors and Omissions**

Notwithstanding General Exclusion 12 and that the Operative Clause only provides for liability arising out of Injury and Damage, but subject otherwise to the terms, Conditions and Exclusions of the Policy, the Underwriters will indemnify the Insured for all sums which the Insured becomes legally liable to pay arising from any claims made against the Insured during the Period of Insurance as a direct result of any negligent act, error or omission in the conduct of the Insured's Professional Services.

This Extension does not cover liability for and / or arising out of:

- i. claims which are indemnified by any other Section or Extension of this Policy.
- ii. the ownership, possession, leasing or use of any property (mobile or immobile) which term shall include any vehicle, aircraft or watercraft.
- iii. Pollution.
- iv. Injury.



- v. any Product or the recall of any Product or part thereof.
- vi. insurance activities and/or failure to arrange insurances (other than by Travel Agents), financial advice or cost estimates or financing of any projects and contract guarantees and/or suppliers guarantees of whatsoever nature.
- vii. claims made by one Insured against another unless emanating from an independent third party.
- viii. liquidated damage clauses, penalty clauses or performance warranties.
- ix. any negligent act, error or omission which occurred before the retroactive date applicable to this Extension.
- x. any claims where the Insured were aware of the circumstance which gave rise to the claim before the inception of this Policy.
- xi. claims arising out of the dishonesty of directors, principals or employees of the Insured or the activities of operations formed or acquired by the Insured subsequent to the inception of this insurance unless agreed to in writing and endorsed hereon by the Underwriters.
- xii. errors and omissions in the provision of professional services provided by medical practitioners.
- xiii. taxes, fines or penalties or any liability deemed uninsurable by law.
- xiv. trading losses or trading liabilities incurred by any organisation managed by the insured.

Provided always that the total liability of the Underwriters under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured in the Period of Insurance as reflected in the Schedule.

6. **Breach of Copyright**

Notwithstanding that the Operative Clause only provides for liability arising out of Injury and Damage but subject otherwise to the terms, Conditions and Exclusions of the Policy, the Underwriters will indemnify the Insured for legal costs incurred with the prior consent of Underwriters in the defence of any claim brought against the Insured during the Period of Insurance for any infringement and/or breach of copyright or patent committed or alleged to have been committed during the Period of Insurance.

This Extension does not cover liability:

- i. arising out of any act, error, or omission amounting to a breach of professional duty in terms of the Business named in the Schedule.
- ii. arising out of any breach of implied warranty of authority or of trust unless committed in good faith.
- iii. arising out of defamatory statements whether written or verbal made by the Insured.

Provided always that the total liability of the Underwriters under this Extension shall not exceed the Limit of Liability in respect of all claims made against the Insured in the Period of Insurance as reflected in the Schedule.

7. **Advertising Liability**

Notwithstanding that the Operative Clause only provides for liability arising out of Injury and Damage but subject otherwise to the terms, Conditions and Exclusions of the Policy, the Underwriters will indemnify the Insured for all claims which may be made against the Insured during the Period of Insurance arising out of Advertising Liability.

“Advertising Liability” shall mean:

- i. unintentional defamation
- ii. piracy, plagiarism, passing off, idea misappropriation, infringement of design, patent,
- iii. copyright, title or slogan
- iv. infringement of trademark, service mark, trade name.

committed or alleged to have been committed in any advertisement, publicity, articles, broadcast or telecast and arising out of the Insured’s advertising or merchandising activities



Provided always that

- i. this Extension does not cover liability for claims:
 - a. arising out of any advertising agency owned by the Insured
 - b. for the cost of replacing the advertisement giving rise to a claim.
 - c. arising out of the failure of contract performance, except unauthorised appropriation of ideas based upon alleged breach of an implied contract.
 - d. arising out of incorrect description or mistake in the advertised price of goods, products or services sold, offered for sale or advertised.
 - e. arising out of any act committed with malice.
 - f. in respect of fines or penalties imposed on the Insured.
- ii. the Insured shall at all times retain all rights of recourse against any person or party supplying any product or otherwise providing any service to the Insured.
- iii. the total liability of the Underwriters under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured during the Period of Insurance.

8. African Territories (DIC/DIL)

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

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

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

If no insurance of the class insured in terms of this Policy is purchased locally, this Policy shall act as primary insurance subject to the Excess stipulated in the Schedule provided that such cover will only apply:

- i. to claims made against the Insured during the Period of Insurance; and
- ii. in respect of liability arising from any Injury, Damage or Event giving rise to pure financial loss (as provided for in coverages providing for loss not related to physical damage to property) occurring or alleged to have occurred on or after the applicable Retroactive Date stated in the Schedule.

9. Warehousemen's Liability

Underwriters will indemnify the Insured in accordance with the Operative Clause in respect of claims for and/or arising out of Damage to property in the Insured's custody and control while:

- i. contained in any premises occupied by the Insured as a warehouse or storage facility
- ii. whilst being loaded into any storage facility or being off-loaded therefrom within the Territorial Limits.

Specific Condition

It is a condition precedent to liability hereunder that the Insured obtain agreement from their customers to the Insured's standard trading conditions insofar as they can apply in respect of property in the Insured's care, custody and control while contained in any premises occupied by the Insured as a warehouse or storage facility or being offloaded therefrom, it being understood and agreed that the Insured's customers retain full responsibility for their own property whether insured or not.

Specific Exclusions

This Extension does not cover liability for claims:

- i. for Damage to property belonging to, under hire purchase to, leased by or hired by the Insured;



- ii. for and/or arising out of mechanical or electrical derangement unless accompanied by other physical damage.
- iii. caused by or contributed to by the dishonesty of any employee of the Insured or of persons to whom the property has been entrusted by the Insured.
- iv. arising out of the wilful illegal sale of the property, wilful conversion or wilful or wrongful secretion.
- v. arising out of any delay in the return or delivery of the property as required, unless such delay is the direct result of Damage indemnifiable under this extension.
- vi. arising out of any activity of the Insured as Stevedores and/or Customs, Clearing and Forwarding Agents.
- vii. arising out of the acceptance by the Insured of:
 - a. money, securities for money, jewellery, furs, precious metals or stones or works of art.
 - b. perishables or goods which require storage under refrigerated or controlled temperature conditions.

For the purposes of (a) above "precious metals" shall mean silver, gold and platinum.

Provided always that the total liability of the Underwriters under this extension shall not exceed the extension's Indemnity Limit in respect of all claims made during the Period of Insurance.

10. **Warehousemen's Liability – Consequential Loss only**

Underwriters will indemnify the Insured in accordance with the Operative Clause in respect of claims for consequential losses arising out of the warehousing of goods and/or merchandise by or on behalf of the Insured but excluding any liability for the actual cost of repair or replacement of such goods.

This extension shall only apply where the Insured's customer contractually agrees that the Insured shall not be held liable for loss arising out of Damage to its property placed in the Insured's care.

Specific Exclusions

Underwriters shall not be liable in terms of this extension for claims arising out of:

- i. loss of or damage to property leased, let, rented, hired or lent to the Insured;
- ii. the wilful illegal sale of property, wilful conversion or wrongful secretion of property in the custody and control of the Insured;
- iii. the dishonesty of the Insured's Employees or persons to whom property in the custody and control of the Insured is entrusted;
- iv. the ownership or possession of or use by or on behalf of the Insured of any motor vehicle;
- v. Damage to account bills, currency, deeds, evidences of debts, money, notes or securities all of which is/are in the custody or control of the Insured;
- vi. Damage to property in the custody or control of the Insured caused by change in temperature resulting from the total or partial failure of any refrigerating or cooling apparatus from any cause;

Provided always that the total liability of the Underwriters under this extension shall not exceed the extension's Indemnity Limit in respect of all claims made during the Period of Insurance.

11. **Carriers' Liability**

Underwriters will indemnify the Insured in respect of all claims against the Insured for which the Insured is legally liable to pay compensation arising out of or in connection with Damage arising in the course of the carriage, loading, off loading and/or discharge of goods or merchandise (whether containerised or otherwise) carried by the Insured within the Territorial Limits specified in the Schedule.

This extension shall only apply where legal liability arises following failure of the Insured's conditions of carriage (or any other similar contract conditions) to prevent such legal liability attaching to the Insured.

Underwriters will not indemnify the Insured if conditions of carriage, (or other similar contract conditions) are not duly signed and in force.



Specific Exclusions

Underwriters shall not be liable under this Extension for claims:

- i. for Damage to property belonging to, under hire purchase to, leased by or hired by the Insured;
- ii. which are the subject of indemnity of any other Section or Extension of the Policy, especially such cover for consequential loss as is provided for in terms of Optional Extension 12, irrespective of whether such cover has been purchased or not;
- iii. arising out of the ownership, possession or use by or on behalf of the Insured of any motor vehicle;
- iv. arising out of damage to or destruction of account bills, currency, deeds, evidences of debt, money, notes or securities all of which is/are in the custody and control of the Insured;
- v. arising out of the dishonesty of the Insured's Employees or persons to whom property in the custody and control of the Insured is entrusted;
- vi. arising out of the wilful illegal sale of property in the custody and control of the Insured;
- vii. arising out of wilful conversion and/or wilful or wrongful secretion of property in the custody and control of the Insured;
- viii. for Damage to property in the custody and control of the Insured caused by change in temperature resulting from the total or partial failure of any refrigerating or cooling apparatus from any cause.
- ix. for damage to property of Transnet other than to the extent of any requirement of statute or statutory regulation.

Provided always that total liability of the Underwriters under this extension shall not exceed the extension's Indemnity Limit in respect of all claims made during the Period of Insurance.

12. Carriers' Liability – Consequential loss

Underwriters will indemnify the Insured in respect of claims for consequential loss following Damage to goods or merchandise in the course of carriage or whilst being loaded, off-loaded and/or discharged. It being expressly understood that no cover is provided in terms of this extension for the cost of repair or replacement of goods lost, damaged or destroyed.

This extension shall only apply where legal liability arises following failure of the Insured's conditions of carriage (or any other similar contract conditions) to prevent such legal liability attaching to the Insured.

Underwriters will not indemnify the Insured if conditions of carriage, (or other similar contract conditions) are not duly signed and in force.

Specific Exclusions

Underwriters shall not be liable under this Extension for claims:

- i. for damage to property belonging to, under hire purchase to, leased by or hired by the Insured;
- ii. which are the subject of indemnity of any other Section or Extension of the Policy;
- iii. arising out of the ownership, possession or use by or on behalf of the Insured of any motor vehicle;
- iv. arising out of damage to or destruction of account bills, currency, deeds, evidences of debt, money, notes or securities all of which is/are in the custody and control of the Insured;
- v. arising out of the dishonesty of the Insured's Employees or persons to whom property in the custody and control of the Insured is entrusted;
- vi. arising out of the wilful illegal sale of property in the custody and control of the Insured;
- vii. arising out of wilful conversion and/or wilful or wrongful secretion of property in the custody and control of the Insured;
- viii. for damage to property in the custody and control of the Insured caused by change in temperature resulting from the total or partial failure of any refrigerating or cooling apparatus from any cause.;
- ix. for damage to property of Transnet other than to the extent of any requirement of statute or statutory regulation.

Provided always that total liability of the Underwriters under this extension shall not exceed the extension's Indemnity Limit in respect of all claims made during the Period of Insurance.



13. **Custody and Control**

Notwithstanding exclusion 2.4 of Section A the Underwriters will indemnify the Insured against liability for and/or arising out of Damage to property temporarily in the Insured's possession for storage or any other purpose (other than Vehicles in the Insured's possession for the purpose of maintenance or repair) insofar as such property is not the subject of any material damage policy available to the Insured, provided that the liability of the Underwriters shall not exceed the Indemnity Limit stated in the Schedule in respect of all claims made during the Period of Insurance.

14. **Pure Economic Loss**

Notwithstanding that the Operative Clause only provides for liability arising out of Injury and Damage but subject otherwise to the terms, Conditions and Exclusions of the Policy, the Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims arising out of negligence (other than in the provision of Professional Services) in the course of the Business. For purposes of this Extension "Professional Services" shall include advice given or work done or any actions taken by the Insured when functioning in any capacity involving special skill or knowledge.

Specific Exclusions

This Extension does not cover liability:

- i. arising from:
 - a. Injury or Damage caused to the claimants person or property;
 - b. any act or omission involving an element of dishonesty;
 - c. contract or breach of contract;
 - d. breach of copyright, patent, licence, trademark or tradename;
 - e. breach of any anti-trust or monopoly legislation;
 - f. defamation;
 - g. misuse or misappropriation of funds
 - h. any Product or the supply, the short supply or late supply of or failure to supply any Product;
 - i. the bankruptcy, insolvency or liquidation of the Insured;
 - j. any negligent misrepresentation made by the Insured or the Insured's agent or servant where such misrepresentation was made in the course of contractual negotiations or where such misrepresentation induced a contract;
- ii. to any employee, agent or servant of the Insured who was, such an employee, agent or servant of the Insured at the time the liability was incurred.
- iii. to any shareholder, partner, director or other person having a financial interest in the Insured, who was such a shareholder partner, director or other person at the time when the liability was incurred.
- iv. to any legal persona who is associated, affiliated or related to the Insured and who sustains a loss by virtue of or arising out of such association, affiliation or relationship.
- v. for which the Insured is indemnified in terms of any other policy of insurance and this Policy shall not be drawn into contribution with such other policy.
- vi. for any Product or part thereof or the costs incurred in the repair, reconditioning, modification or replacement or the recall of any Product or part thereof.
- vii. for any fine or penalty or for any payment due in terms of any statute, bylaw, statutory regulation or the like.
- viii. assumed by agreement if such liability would not have attached in the absence of such agreement.
- ix. for any trading loss or business risk.
- x. arising out of strikes, protests or disturbances by the Insured's employees.

Provided always that total liability of the Underwriters under this extension shall not exceed the extension's Indemnity Limit in respect of all claims made during the Period of Insurance.



15. **Products Inefficacy**

Notwithstanding that the Operative Clause only provides for liability arising out of Injury and Damage but subject otherwise to the terms, Conditions and Exclusions of the Policy, in the event of any claimant alleging that he has suffered financial loss by reason of tangible property (other than the Insured's Products) being:

- i. rendered of less value; or
- ii. rendered incapable of full commercial benefit

due or alleged (other than by the Insured) to be due to the failure of the Insured's Products to perform as specified, warranted or guaranteed and/or to fulfil their intended function, the Underwriters hereby agree that they will not raise as a defence to granting indemnity by this Policy that no Damage (as envisaged by the Operative Clause of this Policy) has occurred.

The Underwriters will also indemnify the Insured in respect of all costs incurred with the consent of the Underwriters (which consent shall not be unreasonably withheld) in avoiding or mitigating the effects of such failure of the Insured's Products to perform as specified, warranted or guaranteed and/or to fulfil their intended function provided that the Insured shall be liable for any additional Excess stated in the Schedule.

Provided always that total liability of the Underwriters under this extension shall not exceed the extension's Indemnity Limit in respect of all claims made during the Period of Insurance.

16. **North America Jurisdiction**

Subject otherwise to the provisions of the Policy, the Policy's jurisdiction is extended to include claims arising out of any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part).

Such cover is subject to the following:

- i. The indemnity does not apply to claims for or arising out of Pollution.
- ii. The indemnity does not apply to claims which form the subject of any cover in terms of the Optional Extensions.
- iii. The indemnity does not apply to claims arising out of Injury and/or Damage occurring prior to the Retroactive Date stated in the Schedule under the heading "North American Jurisdiction".

Subject in all other respects to the terms and Exclusions of the Policy which shall not be deemed in any way whatsoever to over ride, modify or alter any of the specific terms and Exclusions applicable to this Extension Clause.

17. **Contractor's Liability**

The Underwriters will indemnify the Insured in respect of all sums for which the Insured shall become legally liable to pay in connection with any claim or claims arising from Injury or Damage arising out of or in connection with any construction works undertaken by or on behalf of the Insured named in the Schedule at the construction site.

Specific Exclusions

This extension excludes liability for:

- i. Damage to property for which indemnity is provided in terms of a Contract Works policy whether insured or not;
- ii. caused by the intentional removal of support of any property;
- iii. Damage to property on which an insured is working to the extent that such Damage results directly from the work, provided that this exclusion is limited to that work which is defective in workmanship, materials or design and which is the cause of Damage to property,

provided that the liability of Underwriters shall not exceed the Indemnity Limit stated in the Schedule in respect of any one event



18. **Lateral Support**

The indemnity granted by this Policy is extended to include liability for loss of or damage to property caused by the accidental removal or weakening of or interference with support to such property provided that the indemnity granted in terms of this Extension shall apply only in respect of such claims caused by the negligence of any contractor or sub-contractor or the Insured in the carrying out of any construction works.

19. **Claims Preparation Costs**

The indemnity in terms of this Policy is extended to include costs incurred by the Insured in producing and certifying any particulars or details required by Underwriters in order to investigate any claim, provided that the liability of Underwriters for such costs shall not exceed the Indemnity Limit stated in the Schedule in respect of any one claim.

20. **Incidental Medical Malpractice**

The Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims arising from Injury caused by medical malpractice which shall mean any negligent act, error or omission in the professional services rendered or which should have been rendered by any medical practitioner, nurse or other medical official in the full or part time service of the Insured.

Specific Exclusions

This Extension does not cover liability arising out of

- i. any criminal act wilfully committed.
- ii. services rendered by any person who to the Insured's knowledge is under the influence of intoxicants or narcotics.
- iii. the use of drugs for weight reduction.
- iv. services rendered in exchange for a fee payable by the patient.
- v. clinical tests or trials of drugs.

Provided always that total liability of the Underwriters under this extension shall not exceed the extension's Indemnity Limit in respect of all claims made during the Period of Insurance.

21. **Exhibitor's Liability**

The Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims arising from Injury or Damage arising out of or in connection with the erection or dismantling and operation of a stand at exhibition venue including during the transportation of materials and Product for incorporation therein and subsequent return, provided that the liability of Underwriters shall not exceed the Indemnity Limit stated in the Schedule in respect of any one event.

22. **Professional Fees**

The indemnity in terms of this Policy is extended to include professional fees incurred by the Insured in producing and certifying any particulars or details required by Underwriters in order to investigate any claim, provided that the liability of Underwriters for such costs shall not exceed the Indemnity Limit stated in the Schedule in respect of any one claim.

23. **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, Exclusions and Conditions of this Policy, the Underwriters agree to extend the period during which the Insured may report a claim in terms of General Condition 1 for a period to be agreed, but in no circumstances exceeding 36 months (hereinafter referred to as extended reporting period) provided that:

- i. this option may only be exercised in the event of the Underwriters, due to adverse claims experience against this policy, refusing to continue providing the required scope of cover
- ii. this option must be exercised by the Insured in writing within 30 days of cancellation or non-renewal;



- iii. once exercised, the option cannot be cancelled by either the Insured or the Underwriters;
- iv. the Insured has not obtained insurance equal in scope and cover to this Policy as expiring;
- v. the Insurers shall only be liable for any circumstance, matter or thing which occurred after the Retroactive Date but prior to date of cancellation or non-renewal;
- vi. claims first made against 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;
- vii. the total amount payable by the Underwriters for claims made 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.

24. Run Off Cover

Subject otherwise to the terms, Conditions and Exclusions of the Policy, the indemnity provided by this Policy is limited to liability arising from Events which arose on or after the Retroactive Date but before the inception of this policy which result in a claim first being made against the Insured during the Period of Insurance or, notwithstanding General Condition 1, within 24 months thereafter.

25. Excess of Loss Liability

The Underwriters will indemnify the Insured in respect of legal liability to pay all sums including claimant's costs and expenses for, and/or arising out of, Injury to persons and/or Damage caused by or through or in connection with any event for which indemnity is provided in terms of the scheduled Underlying Insurances.

Specific Exclusions

This Extension does not grant indemnity in respect of claims:

- i. which form the subject of indemnity by the Underlying Insurances but are uninsured by the Underlying Insurance by virtue of any excess, first amount payable and/or deductible clause thereunder;
- ii. which form the subject of any extension to the Underlying Insurances where the liability of insurers under such extension is less than the Indemnity Limit of the Underlying Insurance specified in the Schedule of Underlying Insurances.

Specific Conditions

- i. The following are conditions precedent to the granting of indemnity by the Underwriters in terms of this Extension:
 - a. the Underlying Insurances are warranted to be in force throughout the currency of this Policy for not less than the Indemnity Limits shown.
 - b. any alteration to the terms, exclusions or conditions of any of the Underlying Insurances must be disclosed immediately in writing to the Underwriters of this Policy and their written confirmation obtained of continuation of cover under this Section.
- ii. In the event of reduction or exhaustion of any aggregate Indemnity Limit under the Underlying Insurances by reason of claims paid thereunder, this Extension shall:
 - a. in the event of reduction, pay the excess of the reduced underlying limit.
 - b. in the event of exhaustion, continue in force as underlying insuranceprovided always that the liability of Underwriters shall not be increased beyond the Indemnity Limit.
- iii. Liability to pay under this Extension shall not attach unless and until the insurers of the Underlying Insurances shall have paid or have admitted liability or have been held liable to pay the full amount of their indemnity.
- iv. Underwriters agree to follow the insuring clause of the underlying insurance provided that it requires that the claim or claims are first made against the Insured during the Period of Insurance .
- v. For the purpose of this clause, the interpretation of the underlying insuring clause will be the decision of Insurers hereon, not of the underlying insurers. The Insurers hereon will deal with any Claim arising out of an event or circumstance first notified during the Period of Insurance as if the Claim had been made during such period.
- vi. In the event of a claim arising to which the Underwriters hereon may be liable to contribute, no costs shall be incurred on their behalf without their consent being first obtained (such consent not to be



unreasonably withheld). No settlement of a claim shall be effected by the Insured for such a sum as will involve this insurance without the consent of the Underwriters hereon.

- vii. Any claim made against the Insured or the discovery by the Insured of any occurrence of any circumstances which are likely to give rise to a claim of which the Insured becomes aware during the Period of Insurance should they appear indemnifiable under the Underlying Insurances shall be notified as soon as practicable by the Insured in writing to the Underwriters hereon.
- viii. All recoveries or payments recovered or received subsequent to a loss settlement under this Extension shall be applied as if recovered prior to such settlement and all necessary adjustments shall then be made between the Insured and the Underwriters provided always that nothing in this Extension shall be construed to mean that loss settlements under this Extension are not payable until the Insured's ultimate net loss has been finally ascertained.
- ix. Except as otherwise provided herein this Extension is subject to the same terms, exclusions, conditions and definitions as the applicable Underlying Insurance.

26. **EEC Liability Extension**

The Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims, not otherwise insured, brought against him in terms of Regulation 15 of the EC Directive on Package Travel No 90/314/EEC or the United Kingdom Package Travel, Package Holiday and Package Tour Regulation 1992, provided that the Underwriters' liability shall not exceed the limit stated in the Schedule in respect of any one claim or series of claims arising out of one event.

27. **Recall**

Underwriters will indemnify the Insured for Expenses incurred as a consequence of a decision by the Insured during the Period of Insurance to recall the Insured's Products from any place within the Territorial Limits and notified to Underwriters during the Period of Insurance where such Product(s) are likely to cause Injury or Damage for which the Insured may become legally liable.

Where the recall is initiated by the Insured, Underwriter's prior consent is required (such consent will not be unreasonably withheld).

Specific Definition

Expenses shall mean reasonable and necessary costs of:

- i. media communication and correspondence; and/or;
- ii. transportation in connection with the return of the Products or any part thereof to the manufacturer or their nominated agents; and/or;
- iii. destruction except to the extent that any claim for such costs is greater than a claim for transportation expenses.

Specific Exclusions

This Extension does not cover liability arising out of:

- i. any Product or part thereof;
- ii. costs incurred in the repair, reconditioning, modification, or replacement of any Product or part thereof;
- iii. or for actual or alleged intentional alteration, adulteration or contamination of the Insured's Product but this Specific Exclusion shall not apply to the Insured's legal liability incurred in the defence of any legal action arising out of such intentional alteration, adulteration or contamination of the Insured's Product by persons other than the Insured and not acting on behalf of the Insured, provided that Underwriters' liability for such expense shall not exceed 10% of the Indemnity Limit for this Extension;
- iv. the recall of any Products
 - a. forced upon the Insured by any government or public authority where the Insured would not have made a recall but for the intervention of a government or public authority; or
 - b. which are in the care, custody or control of the Insured or any subsidiary of the Insured; or
 - c. as a result of misdelivery or misdirection of any Product by or on behalf of the Insured;



- v. the deliberate or intentional
 - a. breach of national or local regulations by the Insured; or
 - b. failure of the Insured's management to take reasonable precautions to prevent claims;
- vi. any Product where the Insured were aware that the Product was likely to cause Injury or Damage before the inception of the cover provided in terms of this Extension.
- vii. any Product (including any marketing advisory service in connection with any Product) within North America where such Product was to the knowledge of the Insured intended for sale or resale in North America or such sale or resale could reasonably have been contemplated by the Insured.

Provided always that total liability of the Underwriters under this extension shall not exceed the extension's Indemnity Limit in respect of all claims made during the Period of Insurance.

28. **Data Protection Extension**

The Underwriters will indemnify the Insured in respect of Claims first made during the Period of Insurance for Cyber Events occurring on or after the Retroactive Date stated in the Schedule. This extension applies notwithstanding General Exclusion 21 but is subject otherwise to the Operative Clause and the terms, Conditions and Exclusions of this policy insofar as they are not overridden in this extension.

The Underwriters will indemnify:

- i. **Security and Privacy Liability**
the Insured's Legal Liability arising out of Security Breach or Privacy Breach;
- ii. **Privacy Regulatory Defence and Penalties**
the Insured's Legal Liability arising from, a civil regulatory action, a civil penalty, or fines to the extent insurable by law, imposed by a governmental regulatory body against the Insured arising from a Security Breach, Privacy Breach or Breach of Privacy Regulations;
- iii. **Crisis Management Costs, Customer Notification Expenses**
the Insured for Crisis Management Costs, Customer Notification Expenses and Customer Support Expenses when such costs and expenses are incurred, following a Security Breach, Privacy Breach or breach of Privacy Regulations;

provided always that the total liability of the Underwriters under this extension shall not exceed the amount stated in the Schedule in respect of all claims made during this period.

Specific Definitions

For the purposes of this extension:

- i. **Computer Network(s)** means interconnected electronic, wireless, web, or similar systems (including all hardware and software) used to process data or information in an analogue, digital, electronic or wireless format including, but not limited to, computer programs, electronic data, operating systems, servers, media libraries, associated input and output devices, mobile devices, networking equipment, websites, extranets, off line storage facilities (to the extent that they hold electronic data), and electronic backup equipment.
- ii. **Crisis Management Costs** means any fees reasonably and necessarily incurred by the Insured and approved by the Underwriters for the engagement of a public relations consultant, advertising expenses and legal expenses if the Insured reasonably consider that such appointment is needed in order to avert or mitigate any material damage to any of their brands.
- iii. **Customer Notification Expenses** means reasonable costs incurred by the Insured following a Security Breach, Privacy Breach, or Breach of Privacy Regulations on the Insured's Computer Network that results in the compromise of personal information maintained on the Insured's Computer Network.
- iv. **Customer Support Expenses** means those reasonable and necessary expenses the Insured incurs for the provision of credit file monitoring services and identity theft education and assistance.
- v. **Cyber Costs and Expenses** means costs authorised by the Underwriters, for:
 - a. The Insured's own costs to restore, re-collect, or replace data, owned by the Insured including expenses for materials, working time, and overhead cost allocation at the affected location(s) associated with restoring or replacing data owned by the Insured.



- b. The Insured's own reasonable and necessary costs and expenses of specialists, investigators, forensic auditors, or loss adjusters retained by the Insured for the purpose of conducting a review or audit to substantiate that a Cyber Event is occurring or has occurred.
- vi. Cyber Event means any of the following incidents which occur on the Insured's computer network:
 - a. Security Breach,
 - b. Privacy Breach,
 - c. Breach of Privacy Regulations,
 - d. An attack by Malicious Code,
 - e. Data becoming unreadable as a result of the accidental damage or destruction of the hardware on which it is stored
 - f. Failure of a direct or back-up power supply
 - g. Accidental destruction of Data caused by human error
 - h. Malfunctions or incorrect operation of the Insured's Computer Network caused by a development error in software which is ready for operational use.
- vii. Legal Liability means damages and reasonable necessary expenses, incurred with the Insurer's written consent, in the investigation and defence of a claim against the Insured. Legal Liability does not include the Insured's internal costs such as salaries, overheads and other expenses that it would have existed irrespective of the claim.
- viii. Malicious Code means software designed to infiltrate or damage a computer network without the owner's informed consent by a variety of forms including, but not limited to, Trojan horses, spyware, dishonest adware, and crimeware.
- ix. Privacy Breach means a breach of confidentiality, infringement, or violation of any right to privacy including, the wrongful disclosure of confidential or private information.
- x. Privacy Regulations means the following, as well as similar statutes and regulations, as they currently exist and as amended, associated with the confidentiality, access, control, and use of personally identifiable, non-public information including, but not limited to:
 - a. the Constitution of the Republic of South Africa Act 108 of 1996;
 - b. the Electronic Communications and Transactions Act, 25 of 2002;
 - c. the Promotion of Access to Information Act 2 of 2000;
 - d. the Consumer Protection Act 68 of 2008 and regulations regarding the privacy of consumer information;
 - e. the Regulation of Interception of Communications and Provision of Communications-Related Information Act 20 of 2002;
 - f. Protection of Personal Information Bill 2009; and
 - g. the common law in relation to the right to privacy.
- xi. Security breach means the Insured's actual or alleged breach of duty in preventing the intentional misuse of the Insured's computer network to: modify, delete, corrupt, destroy or wrongfully disclose data or participate in a denial of service.
- xii. Underwriters means Lloyd's syndicate 4711 (Aspen) as evidenced by contract no. B1150 SOL084130F for 100%.

Specific Exclusions

The Underwriters shall not be liable for any loss directly or indirectly arising out of or in any way attributable to:

- xiii. The wear and tear, drop in performance, progressive or gradual deterioration, or aging of electronic equipment and other property or hardware used by the Insured or the failure of the Insured or those acting on the behalf of the Insured to adequately maintain any Computer Network or, or other equipment or hardware associated with such Computer Network.
- xiv. The electrical or mechanical failure of any equipment which is not the Insured's property. Electrical failure includes the inability to transmit data.
- xv. Circumstances which arose prior to the inception of this policy which the Insured could have reasonably have foreseen would likely give rise to a claim
- xvi. Injury.



- xvii. The actual or alleged inaccurate, inadequate, or incomplete description of goods, products, or services; including the price thereof, cost guarantees, cost representations, contract price or cost estimates being exceeded.
- xviii. Shares and other securities
- xix. Any deliberate act or omission of the Insured which the Insured could reasonably have foreseen would increase the likelihood and or quantum of a claim in terms of this policy.
- xx. Any criminal act of the Insured.
- xxi. Liability assumed by the Insured under any agreement unless such liability would have existed in the absence of such agreement.
 - i. The Insured failing or ceasing to provide a product or service.
 - ii. Gambling, pornography, prizes, awards, coupons, or the sale or provision of prohibited, restricted, or regulated items including, but not limited to, alcoholic beverages, tobacco, or drugs;
 - iii. Damage. Data is not considered tangible property.
 - iv. The Insured shall bear the First Amount Payable stated in the Schedule for each and every loss under the Policy.



SPECIAL PROVISIONS

1. Wherever this Policy provides that notice be given to the Underwriters, such notice shall be given to:

Camargue Underwriting Managers (Pty) Ltd

33 Glenhove Road, Melrose Estate, 2196. Postnet Suite 250, Private Bag X4, Bedfordview 2008

Registration Number: 2000/028098/07.

Telephone: 011 778 9140

Facsimile: 011 778 9199

2. This insurance is governed by the law of the Republic of South Africa whose courts shall have jurisdiction in any dispute arising hereunder.
3. Any summons, notice or process to be served upon Underwriters at Lloyds for the purpose of instituting any legal proceedings against them in connection with this insurance shall be served upon Lloyd's South Africa (Pty) Ltd, 7th Floor, The Forum, 2 Maude Street, Sandton, South Africa.