



# **Broadform Liability Insurance**

Terms and Conditions

# BROADFORM LIABILITY INSURANCE

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# Broadform liability insurance cover

Your schedule, terms and conditions, together with any correspondence or endorsements sent to you, as well as any oral agreements we make, form the policy/contract of insurance (“the policy”) between you and us. Please ensure that you are familiar with the contents of all of the documents and that all of the details noted on your schedule are correct in every respect.

The schedule will show which sections of the policy are included under this contract, as well as the limits of indemnity per section. The schedule will also state the applicable basic excess per section, in the event of a claim which is covered under the policy.

Please note that some parts of each section may offer automatic additional cover that is restricted in amount. These forms of automatic additional cover may not appear in the schedule but are described where applicable in this policy.

It is of the utmost importance that you have read the entire schedule and policy and that you understand what is covered, the limits applicable and the exclusions. It is your responsibility to contact us to ensure that the schedule accurately reflects what has been requested and/or agreed as being insured under the policy, and to correct any errors that you may notice.

## Definitions:

For the purposes of this policy:

### 1 Business:

This means the scope of your business activities as set out in your schedule.

### 2 Claim:

Each separate act, error or omission resulting or contained in a written demand/notice, legal/administrative proceeding received by you, claiming compensation from you as a result of a negligent act committed by you, after the retro-active date and during the policy and/or the automatic extended reporting period.

### 3 Damages:

The amount that you are legally liable to pay to a third party as a result of your negligent act.

### 4 Damage:

Refers to the loss of possession or control of, or physical 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.

### 5 Defence Cost:

Refers to any reasonable costs, fees and expenses incurred with our prior written consent in the investigation, defence or settlement of any claim made against you and the costs of representation at any investigation, inquiry or other proceedings in respect of matters which have a direct significance to any claim made or which might be made against you, provided such a claim or claims is/are valid. We will also pay for emergency medical treatments deemed necessary in respect of injury which may form the subject of indemnity by this policy. The defence cost which is agreed to be paid from time to time shall not be in addition to the limit of indemnity stated on the schedule. The total liability to pay in accordance with the limit of indemnity as stated in the schedule for which the Insured is legally liable to pay, claimants' costs and expenses and defence costs shall not exceed the limit of indemnity. We will also pay for emergency medical treatments deemed necessary in respect of injury which may form the subject of indemnity by this policy.

### 6 Communicable Disease

Refers to any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- The substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- The method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- The disease, substance or agent can cause or threaten bodily injury, illness, emotional distress or damage to human health, human welfare or property damage.

## **7 Cyber Act**

Refers to an unauthorized, malicious or criminal act or series of related unauthorized, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any COMPUTER SYSTEM.

## **8 Cyber Incident**

- i. Any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any COMPUTER SYSTEM; or
- ii. Any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any COMPUTER SYSTEM.

## **9 Computer System**

Refers to any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, DATA storage device, networking equipment or back up facility owned or operated by You or any other party.

## **10 Electronic Data:**

Refers to any information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and application software, disc in whatever form, tapes, drives, cells, data processing devices, any other media which form part of, or are used in connection with any electronically controlled equipment.

## **11 Data Breach**

- i. The theft, loss, access to, acquisition of, or unauthorized or unlawful use or disclosure of any persons or organisations confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit or payment card information, health information, biometric data or any other type of non-public information, involving access to, processing of, use of or operation of any COMPUTER SYSTEM; or
- ii. The violation of any statute, regulation, common-law, or any other law regulating or protecting access to collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of ELECTRONIC DATA.

## **12 Event:**

Refers to any incident, act, error or omission giving rise to legal liability as insured by this policy.

## **13 Excess:**

Means the amount stated in your policy schedule which you are liable to pay for damages and legal defence. The excess is applicable for each and every legal defence/settlement or series of legal defences/settlements arising from one originating cause or source.

## **14 Inefficacy Claims:**

Refers to claims made against you for economic or financial loss where the other party's property is:

- i. rendered of less value;
- ii. has not achieved its anticipated value; or
- iii. has not been capable of full beneficial use.

Due to the failure of your product or part thereof, to fulfil its intended function or to perform as specified, warranted or guaranteed.

## **15 Injury:**

Refers to any death, bodily injury, illness or disease, mental injury, of or to, any person occurring in the course of or in connection with your business, while you are insured with us.

## **16 Negligent Advice:**

Refers to incorrect or inadequate advice or information of a technical nature given in the promotion of your product/s or service/s 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 for you.

## **17 Occurrence:**

Refers to any one event, or series of events, or continuous, related or repeated exposure to the same or similar set of conditions which unexpectedly and unintentionally results in legal liability as insured under this policy.

## **18 Pollution:**

Refers to the emission, discharge, dispersal, disposal, seepage, release or escape of any liquid, solid, gaseous or thermal irritant, contaminant or pollution into or upon the land, the atmosphere or any water-course or body of water or the generation of smells, noises, vibration, light, electricity, radiation, changes in temperature or any other sensory phenomena, but not fire or explosion.

## **19 Product:**

Refers to any tangible property after it has left your custody or control, which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by you or on your behalf, but does not mean food and drink supplied by you or on your behalf to your employees as a staff benefit.

## **20 Professional Services:**

Refers to advice given, or work done, or any actions taken by you when functioning in any capacity involving special skills or knowledge related to your business.

## **21 Retroactive Date:**

Refers to the date shown on your schedule and agreed to by us, as being the earliest date upon which an occurrence giving rise to a claim being made during this policy period can be considered.

## **22 Vehicle:**

Refers to any land vehicle or trailer (including any machinery or apparatus attached thereto) whether subject to vehicle registration or whether or not self-propelled, including locomotives and rolling stock, tramways, trolley buses or motor vehicles of any kind running on lines or any other vehicle designed to run on terra firma.

## **23 You or Your/s:**

Refers to any people/person responsible for owning/running your business, whether it is a company, close corporation, partnership or sole proprietorship.

## **How we indemnify you (operative clause)**

Subject to the terms of your policy, we have the option to pay out, or defend you through a service provider of our choice.

We will indemnify you as provided for in the insuring sections and elected extensions against your legal liability to pay compensation/damages (including claimants' costs, fees and expenses) for and arising out of injury and/or damage occurring on or after the retroactive date stated in the schedule and in accordance with the law of any country, subject to what is stated below.

However, any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America and/or Canada and/or Australia will not be covered (or any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part) unless you have requested that there will be no such limitation and have accepted the terms of the North American Jurisdiction Extension 13 and an addendum to extend to include Australia which forms part of this insurance.

This cover will only apply to claims first made against you during the period of insurance with us in connection with your business as specified on your schedule.

## Policy changes and cancellation

We may change or cancel your policy by giving you 31 days' prior written notice. We may give notice by e-mail, SMS or post to your last-known address. Any change or cancellation that you make will be effective from the time and date agreed to. Please note that if you cancel your policy during an insured month, the premium paid for the rest of that month will not be refunded to you.

If you cancel your policy because you also have cover for the same risk with another insurer, then your premium refund will be limited to premiums actually paid in the 12 months prior to cancellation.

## Payments

Your policy is an annual policy and you must make the annual payment in advance on the agreed deduction date stated in the policy schedule.

## Payments not received

If we do not receive the payment for a policy on the deduction date(s) as stated on the schedule, we will allow a 15-day grace period for payment.

If your premium is still not received, your policy will lapse.

## Non-adherence to the policy

If you do not adhere to the terms and conditions of this policy, we have the right not to indemnify you for any claim.

## Policy exclusions

### General exclusions

These exclusions apply to the entire policy including any optional extensions that may be included.

### We will not indemnify you for liability claims:

- 1 where you were aware, before inception and/or renewal of this policy, of the circumstances or event which gave rise to the claim; regardless of whether any notice written, verbally or otherwise of a claim has been submitted to you;
- 2 where the circumstance or event occurred prior to the retroactive date as stated on your schedule;
- 3 arising out of your deliberate, conscious or intentional disregard of the need to:
  - a take all reasonable precautions to prevent any event or circumstance which may give rise to a claim;
  - b comply with any statute governing the conduct of your business;
- 4 arising out of injury to any persons under a contract of employment or apprenticeship with you where such an injury arises out of the execution of such a contract, except and to the extent of the cover provided under any applicable optional extensions;
- 5 arising out of liquidated damage clauses, penalty clauses or performance warranties in any contract or agreement 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 any deliberately dishonest, fraudulent or malicious act or omission of your directors, principals or employees, or theft or fraud by any other person to whom you entrusted your property;
- 7 arising out of any criminal proceedings in respect of the Criminal Procedure Act 56 of 1955;
- 8 arising directly or indirectly from any actual or alleged liability whatsoever for any claim, event or loss or losses caused by, arising out of, resulting from, in consequence of, or any way involving: child molestation or sexual abuse, wrongful or excessive discipline or bullying or harassment of any kind;
- 9 directly or indirectly caused by, contributed to or arising from ionising radiation 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;

**10** for the excess in respect of the first amount of each claim or series of claims arising out of or in connection with one originating cause;

**11** which forms the subject of insurance under any other policy or policies and this policy will not be drawn into contribution with such other insurance;

If at the time a valid claim is noted in terms of this policy and it is also covered by other insurance, we will only pay a rateable proportion of the claim. The rated proportion we will pay is the ratio that the insured amount under this policy bears to the combined insured amounts of all insurance covering the claim. The insured amount and the excess will not be reduced by this limitation;

**12** arising out of any design, formula, treatment, specification or advice of a professional nature given by or on your behalf in exchange for a fee;

**13** arising out of the transportation and/or disposal of dangerous goods. Dangerous goods are items where the transport and/or disposal thereof is regulated by law, including but not limited to those products listed in the South African National Standards SANS 10231;

**14** arising out of punitive, constitutional or exemplary damages of whatever nature, whether in the form of fines, penalties or the multiplication of compensatory awards;

**15** assumed under any contract or agreement unless such a liability would have attached in the absence of such contract or agreement;

**16** caused by or arising out of the actual, alleged or threatened inhalation of ingestion and contact with, exposure to, existence or presence of any fungi or bacteria on or within a building or structure, including its contents or for any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating, disposing of, in any way responding to or assessing the effects of fungi or bacteria by you or by any other person or entity;

For the purpose of this exclusion “fungi” will mean any type or form of fungus, including mould or mildew and any mycotoxins spores’ scents or by-products produced or released by fungi;

**17** arising from the improper or faulty functioning of any computer or computer-related equipment; for example, the inability or prevention of any computer, data processing equipment, microchip, circuits, software, tools, operating systems, hardware, responding, saving, retaining or using any command or instruction. We will not indemnify you should any computer equipment suffer a virus, Trojan horse, time logic bomb or worm, ransomware, malware or other destructive or disruptive code, media or program or interference.

**18** arising out of any contractual liability, unless your schedule states that we are providing you with special cover that you are paying a premium for;

**19** Notwithstanding anything to the contrary contained in this wording, this policy does not apply to any actual or alleged loss, damage, liability, claims fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:

- a Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident;
- b Data Breach; or
- c Loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss of, damage to, corruption of, inability to access or inability to manipulate or theft of any Electronic Data, including any amount pertaining to the value of such Electronic Data

Clause 19a of this exclusion shall not apply in respect of any actual or alleged liability for and/or arising out of:

- any Bodily Injury; or
- any Property Damage arising from physical damage to tangible property (Electronic Data is not tangible property) resulting from or arising out of a Cyber Incident or Cyber Act. Nothing contained in this exception shall provide any coverage for any action taken in controlling, preventing, suppressing or remediating a Cyber Incident or Cyber Act.

Clause 19b of this exclusion shall not apply in respect of any actual or alleged liability for and/or arising out of:

- any Bodily Injury; or
- any Property Damage arising from physical damage to tangible property (Electronic Data is not tangible property)

**20** For the avoidance of doubt this policy does not cover notification costs, crisis consultancy, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services arising out of or in connection with a Data Breach

**21** Related to Communicable Diseases:

Notwithstanding anything to contrary contained in this wording this policy excludes all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount incurred by or accruing to "You", directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

**22** arising out of any electronic device or program.

## **Specific exclusions**

### **1 Asbestos exclusion**

#### **We will not indemnify you for:**

Any legal liability, loss, damage, cost or expense in relation to:

- a any consequential loss directly or indirectly caused by, arising out of the existence of, or exposure to asbestos and/or asbestos-containing materials; or
- b asbestosis and asbestos-related diseases arising out of the mining and/or manufacturing of asbestos or asbestos-related products and the processing of asbestos and asbestos-related products, fibers or dust.

### **2 Computer losses exclusion**

#### **We will not indemnify you for:**

Any legal liability, loss, damage, cost or expense caused by, arising from or contributed to by:

- a loss or destruction of, or damage to any property (including a computer), or any loss or expense resulting or arising therefrom;
- b any consequential loss directly or indirectly caused by, contributed to, consisting of, or arising from the incapacity or failure of any computer to operate correctly:
  - i. to treat any date as the correct date, or true calendar date, correctly or appropriately, to recognise, manipulate, interpret, process, store, receive or to respond to any data or information, to carry out any command or instruction, regarding or in connection with any such a date;
  - ii. to capture, save, retain or correct, to process any data as a result of the operation of any command which has been programmed into any computer, being a command which causes the loss of data or the inability to capture, save, retain or correct, or to process such data in regard to or in connection with any such a date; or
  - iii. to capture, save, retain or to process any data as a result of the action of any computer virus, or other corrupting, harmful or otherwise unauthorised code or instruction including any Trojan horse, time or logic bomb or worm or any other destructive or disruptive code, media or programme or interference.

A computer includes any computer, data processing equipment, micro-chip, integrated circuit or similar device, any computer software tools, operating system, any computer hardware, peripherals and the information or data stored in or on any of the above, whether your property or not.



### 3 War and terrorism exclusion

#### **We will not indemnify you:**

For legal liability, loss, damage, cost or expense of whatever nature, 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:

- a 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
- b 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, on behalf of or in connection with any organisation (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 exclusion also excludes legal liability, loss, damage, cost or expenses of whatever 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 (a) and/or (b) above.

If we allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this policy, the burden of proving the contrary will be upon you.

If any portion of this exclusion is found to be invalid or unenforceable, the portion of the exclusion not affected will remain in full force and effect.

### 4 Sanctions exclusion

#### **We will not be liable:**

for any legal liability, loss, damage, cost or expenses nor will we provide any cover or benefit for any business or activity to the extent that such cover or benefit and/or any such business or activity would violate any applicable economic or trade sanction law or regulations of the United Nations and/or the EU/EEA and/or the United States of America and/or any other applicable national economic or trade sanction laws or regulations.

## **Policy conditions**

### **General Conditions**

These conditions apply to the entire schedule and policy including any endorsements and optional extensions that may be included.

- 1 You will need to give written notice to us as soon as reasonably practicable of any claim made against you (or any specific event or circumstance that may give rise to a claim being made against you) and which forms the subject of indemnity under this policy and will give all additional information as we may reasonably require. Every claim, summons or process, and all documents relating to the claim event or circumstance, must be forwarded to us immediately after receipt by you;
- 2 No admission, offer, promise or payment may be made or given by you or on your behalf without our prior written consent. We have the right to take over and conduct your defence or settlement of any claim or to prosecute on your behalf any claim for indemnity, damages or otherwise and will have full discretion in the conduct of any proceedings and settlement of any claim. You will be required to give all such information and assistance as is reasonably required by us or our appointed representatives;
- 3 You will be required to inform us as soon as reasonably practicable of any fact, event or circumstance which materially changes the information supplied to us at the time when this policy inceptioned, and we may amend the terms of this schedule and/or policy according to the materiality of such a change, legal liability, loss, damage, cost or expense;
- 4 We may, at any time, pay you for any claim or series of claims under this policy to which an insured amount applies, the amount of such a limit (after deduction of any sums already paid) or any lesser amount for which such claim can be settled, and upon such a payment being made we will relinquish the conduct and control of and be under no further liability in connection with such claim;

- 5 This policy document, as well as your schedule must 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 will bear specific meaning wherever it may appear;
- 6 The interpretation of the terms and exclusions of this schedule and policy (and any phrase or word contained therein) will be interpreted in accordance with the law of the Republic of South Africa;
- 7 Where your premium is provisionally based on your estimates, you will keep accurate records and after expiry of the period of insurance, declare as soon as possible, the details that we require. The premium will then be adjusted, and any difference paid by or allowed to you, subject to any minimum premium applicable;
- 8 If any indemnity is sought under this policy by any fraudulent means, all benefits under this policy will be forfeited;
- 9 In the event that we make any payment under this policy, we shall be subrogated (to the extent of such payment) to all of your rights of recovery, and you shall co-operate with us in securing such rights. You shall not do anything to prejudice our ability to assert such rights;
- 10 We will be liable only for loss derived exclusively from a covered claim. If a claim involves both covered and uncovered matters or persons under this policy, then reasonable efforts will be used to determine a fair and equitable allocation of loss covered under this policy, taking into account the relevant legal and financial exposures and the relative benefits obtained by each of the relevant parties. If we cannot agree on an allocation in accordance with this condition within 14 days, then it is agreed that the issue shall be referred for determination to a Senior Counsel whose decision shall be final and binding on the parties, and the costs of Senior Counsel shall be shared according to the allocation of loss that is determined;
- 11 We will not defend you if you refuse to consent to a settlement that we recommend, and which the claimant will accept. In this case, you must then defend the claim at your own expense. Because of your refusal, our liability will not exceed the amount for which we could have settled such a claim (had you consented) plus claim expenses incurred prior to the date of such refusal;
- 12 If the limit of indemnity is increased during the period of insurance, our liability in respect of claims made against you or for circumstances of which we were notified, or should have been notified, prior to the increase, will not exceed the limit of indemnity applicable prior to such increase;
- 13 If you cancel or choose not to renew your policy, you have the right, following the effective date of the cancellation or non-renewal, to a period of sixty (60) days (herein referred to as the "extended reporting period") in which to give us written notice of claims first made against you during the extended reporting period, for any Occurrences that occurred prior to the end of the policy period and otherwise covered by this policy;

The extended reporting period does not apply to claims that are covered under any subsequent insurance you purchase.

## Specific Conditions

If we cancel or do not renew the policy you have the option, subject to the payment of an additional premium to be determined by us and subject to the terms, exclusions and conditions of this policy, to extend the period during which you may report a claim in terms of General Condition 13 for a period to be agreed but in no circumstances exceeding a period of 48 months (hereinafter referred to as the "optional extended reporting period") provided that:

- a this option may only be exercised if we, due to adverse claims experience against this policy, refuse to continue providing the required scope of cover;
- b this option must be exercised by you in writing within 31 days of cancellation or non-renewal;
- c once exercised, the option cannot be cancelled by either party to this contract;
- d you have not obtained similar insurance to this policy as expiring;
- e we will only be liable for any injury or damage which occurred after the retroactive date but prior to the date of cancellation or non-renewal;
- f claims first made against you during the optional extended reporting period shall be treated as if they were first made or reported on the last day preceding the cancellation or non-renewal; and
- g the total amount payable by us for claims made during the optional 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.

## **Cancellation or Non-renewal Option**

In the event that we cancel or do not renew the policy you have the option, subject to the payment of an additional premium to be determined by us and subject to the terms, exclusions and conditions of this policy, we will extend the period during which you may report a claim in terms of General Condition section point 2 for a period to be agreed but in no circumstances exceeding a period of 48 months (hereinafter referred to as the optional extended reporting period) provided that:

- i. this option may only be exercised if we, due to adverse claims experience against this policy, refuse to continue providing the required scope of cover;
- ii. this option must be exercised by you in writing within 31 days of cancellation or non-renewal;
- iii. once exercised, the option cannot be cancelled by either party to this contract;
- iv. you have not obtained insurance equal in scope and cover to this policy as expiring;
- v. we will only be liable for any circumstance, matter or thing which occurred after the retroactive date but prior to the date of cancellation or non-renewal;
- vi. claims first made against you during the optional extended reporting period shall be treated as if they were first made or reported on the last day preceding the cancellation or non-renewal; and
- vii. the total amount payable by us for claims made during the optional 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.

## **Continuous Exposure Clause**

If we cannot agree on the timing of the occurrence, then for the purposes of determining any indemnity under this policy:

- a. the injury will be deemed to have occurred when the other party first consulted a qualified medical practitioner in respect of such an injury. If no such consultation took place, then the injury will be deemed to have occurred when you became aware of the injury;
- b. any other occurrence will be deemed to have occurred when it first became evident to the other party, even if the cause was unknown.

The above criteria apply to claims first made during the period of insurance and also where it is not otherwise possible to determine whether the occurrence giving rise to a claim occurred before or after the retroactive date.

## **Notification Extension Clause**

Should you notify us during your period of insurance of any occurrence that may give rise to a claim or claims, then acceptance of such a notification means that we will deal with such a claim(s) as if they had first been made against you on the same day that you notified us of such occurrence.

## **Indemnity to others**

### **We will indemnify:**

1. other parties if they entered into an agreement with you for any purpose of your business, but only to the extent required by such an agreement to grant such an indemnity and subject to the Specific Exclusions clause of the Public Liability section and General Exclusion 5;
2. your officials in their business capacity arising out of the performance of your business or in their private capacity arising out of their temporary engagement as your employees;
3. the officers, committee and members of your canteen, social, sports, medical, firefighting and welfare organisation in their respective capacities; and
4. the personal representatives of the estate of any person who would otherwise be indemnified by your policy, but only in respect of liability incurred by such a person.

Provided always that all such persons or parties will observe, fulfil and be subject to the terms, conditions and exclusions of this policy as though they were the insured.

## **Cross-liabilities**

Each person or party will be separately indemnified in respect of claims made against any of them by any other person/party subject to our total liability not exceeding the stated limits of indemnity.

## **Limits of Indemnity**

Our liability to pay compensation, other party's costs, fees and expenses and defence costs will not exceed the limits stated on your schedule for any one event or series of events with one original source or cause and/or, where stated, the annual combined amount per section or extension.

Should any one occurrence give rise to a claim or series of claims which falls under more than one section or extension of this policy, each section or extension will apply separately and be subject to its own separate limits. The amount will be limited to the total limit of liability under any one of the sections as stated on your schedule.

Should you be held accountable to any tax authority for Value Added Tax in respect of any payment in terms of this policy, we will include this amount in the final settlement of any claim under this policy in addition to the cover amount.

The excess is not subject to Value Added Tax unless applicable legislation specifically stipulates otherwise.

# **Section A – public liability**

## **Indemnity**

You will be indemnified under this section for damages resulting from accidental death, bodily injury or illness of any person, or accidental loss or physical damage to any tangible property not belonging to you, occurring in the course of or in connection with your business, but not against claims for and/or arising out of:

- a pollution;
- b any product; and/or
- c negligent advice.

## **Specific Exclusions**

This section does not cover liability for claims arising:

- 1 from the ownership, possession or use by or on your behalf of any vehicle, other than claims:
  - i. from the use of any tool or plant forming part of or attached to or used in connection with any vehicle;
  - ii. beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any vehicle;
  - iii. from damage to any bridge, weighbridge, road or anything beneath caused by the weight of any vehicle or of the load carried thereon;
  - iv. out of any vehicle temporarily in your custody or control for the purpose of parking;
  - v. out of the possession or use by you of any vehicle belonging to any rail service provider or any government or quasi-governmental department, provincial administration, municipality or similar body whilst on any premises permanently occupied by you;
  - vi. which form the subject of Optional Extension 5 - Employers' Liability;
- 2 from liability which is the subject of statutory or similar legislation controlling the possession, ownership or use of vehicles and in respect of which liability:
  - i. you are compelled to effect insurance or otherwise furnish security; or
  - ii. the state or other governmental authority has accepted responsibility;
- 3 out of the ownership, possession or use by or on your behalf of any aircraft, watercraft or hovercraft (other than watercraft not exceeding fifteen metres in length and then only whilst on inland waterways);

- 4 out of the ownership, hire, leasing or operation of any airport, airstrip or helipad by or on your behalf;
- 5 from damage to property owned, leased or hired by or under hire purchase or on loan to you or otherwise in your care, custody or control;
- 6 any advice, examination, prescription or treatment given or supplied by you or any of your employees;
- 7 the ownership or use of any motor vehicle or trailer, watercraft, locomotive or rail carriage;
- 8 any product or other property sold, supplied, repaired, serviced, installed, altered, tested, treated or worked on by you or anyone on your behalf;
- 9 any form of pollution, contamination or gradual process;
- 10 any fine, penalty or indirect financial losses;
- 11 from the need to make good, repair, remove, rectify, replace or recall any product or work;
- 12 for rectifying or recalling defective work;
- 13 from the death, bodily injury or illness of any of your employees or family members.

## Section B – pollution liability

Optional cover: If you have selected the cover as described below and your schedule states that you are paying a premium for it.

### Indemnity

You will be indemnified by this section in accordance with the Operative Clause (see “How we indemnify you (Operative Clause)”) against claims arising out of pollution but only to the extent that it can be proved that such pollution:

- a was the direct result of a sudden identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place, occurring during your period of insurance; and
- b was not the direct result of you failing to take reasonable precautions to prevent such pollution.

### Specific exclusions

This section is subject to the specific exclusions in the Public Liability Section A and does not cover liability for claims arising out of or in connection with any product.

## Section C – products liability/defective workmanship

Optional cover: If you have selected the cover as described below and your schedule states that you are paying a premium for it.

### Indemnity

**Products Liability** - We will indemnify you if you are held legally liable by a third party for death, injuries or damage to property, which was caused by or through or in connection with goods or products (including containers and labels) sold or supplied, including the wrongful delivery and delivery of incorrect goods, by you in connection with your business anywhere other than on your business premises as noted on the schedule.

**Defective Workmanship Liability** - We will indemnify you if the part of any property on which you are working or have been working on causes damage to third party property as a result of such work done by you. This cover applies if liability results from injury or damage happening after the completion and handing over of any work and is caused by, or through or in connection with, any defect or error in or omission from such work but specifically excludes the property worked on by you .

### Specific exclusions

This section does not cover liability for claims where costs are:

- 1 incurred in the repair, reconditioning, modification or replacement of any product or part thereof which is or is alleged to be defective;
- 2 arising out of the recall of any product or any part thereof;

- 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 a failure will result in injury and/or damage;
- 4 arising out of any goods or products intended to be installed and installed in, or intended to form part and forming part of the incorporation into the structure, machinery or controls of any aircraft: this includes claims arising from any work on any aircraft of part thereof;
- 5 arising out of Negligent Advice in respect of any product;
- 6 for rectifying or recalling defective work;
- 7 arising out of the failure of the product to perform as warranted;
- 8 arising from inefficacy of such work or because the work did not produce the result anticipated or claimed;
- 9 arising prior to the handing over of such work;
- 10 arising from defective or faulty design, formula, plan or specification of the product;
- 11 any product or other property sold, supplied, repaired, serviced, installed, altered, tested, treated or worked on by you or anyone on your behalf.

## Optional Extensions

Optional extensions will only be granted to the extent that your schedule specifically reflects that an Optional Extension has been selected. Only where Optional Extension/s have been selected, this policy will extend to include the following subject to the limits, excesses and retroactive dates as specified on your schedule and subject to the terms, conditions and exclusions of this policy.

### 1 Advertising Liability

You will be indemnified by this extension in accordance with the Operative Clause of this policy for legal liability arising in connection with your business during your period of insurance for:

- a libel, slander or defamation;
- b infringement of copyright, title or slogan;
- c piracy or unfair competition or idea misappropriation under any implied contract;
- d any invasion of the rights of privacy committed or alleged to have been committed in any advertising, publicity article, internet content, broadcast or telecast which arises out of your advertising activities.

### We will not be liable for any liability arising from:

- a the failure of performance of a contract, but this exception does not apply to the unauthorised appropriation of ideas based upon breach of or alleged breach of an implied contract;
- b infringement of trade mark, service mark or trade name other than titles or slogans by use thereof in connection of goods, products or services sold, offered for sale or advertised;
- c incorrect description or mistake in the advertised price of goods, services sold, offered for sale or advertised;
- d the failure of goods, products or services to conform with advertised quality or performance;
- e an offence committed by you when your principal business is advertising, broadcasting, publishing or telecasting;
- f the cost of replacing the advertisement giving rise to a claim;
- g any act committed with malice;
- h fines or penalties imposed on you.

## 2 Claims Preparation Costs

The indemnity in terms of this policy is extended to include costs incurred by you to produce and certify any particulars or quantifications of the claim expressly requested by us in order to investigate any claim, provided that the claim for such costs will not exceed the insured amount for claims preparation costs stated on your schedule in respect of any one claim.

## 3 Contractor's Liability

This policy extends to indemnify you for any amounts for which you can become legally liable to pay in connection with any claim or claims arising from injury and/or damage arising out of or in connection with any construction works undertaken by or on your behalf as stated on your schedule.

### We will not indemnify you for:

- a damage to property for which indemnity is provided in terms of a contract works policy, whether insured or not;
- b damage to property caused by the intentional weakening or removal of support of any property;
- c damage arising out of defective design;
- d damage to property on which you are working to the extent that any such damage results directly from the work, provided that this exclusion is limited to that work which is defective in workmanship or materials and which is the cause of damage to property.

## 4 Defamation

We will indemnify you under the Public Liability Section for claims arising out of defamatory statements made or alleged to be made by you, whether written or oral.

### We will not indemnify you for:

- a claims which fall under the Wrongful Arrest Extension.
- b claims arising out of any publication in any journal, magazine, website, blog, social media platform or newspaper or on radio, television or any other broadcast platform.

## 5 Employers' Liability

We will indemnify you under the Public Liability Section for claims arising out of injury to any person employed under a contract of service or apprenticeship with you where such an injury arises out of and in the course of the execution of such a contract.

We will not indemnify you for:

- a claims arising from illness or disease or attributed to prolonged exposure to substances, factors or circumstances particular to any particular employment or occupation; or
- b amounts recoverable under any Act in terms of which any employee may claim compensation for work-related injury regardless of whether you have complied with your obligations in accordance with such Act.

## 6 European Union Liability

Subject otherwise to the terms, conditions, exclusions and limitations of this policy, the following changes are made to this policy in regard to bodily injury and damage caused by product/s exported to any European Union (EU) country or European Free Trade Association (EFTA) country. For cover to attach under this extension, in respect of products (other than raw materials) you will:

- a implement and maintain a system in terms of which products can be clearly identified by batch number or serial number or date stamp or other similar manner; and
- b note and maintain a record of the date on which the products were first put into circulation.

This record will be maintained so as to provide the required detail for a minimum period of 10 years after the products were first put into circulation.

The information mentioned in sub-clauses (a) & (b) above together with all supporting documentation, will be made available to us or our nominee/s at any time on request.

In respect of this indemnity, you will be responsible for the excess amount applicable to this extension as shown on your schedule.

## 7 Excess Motor Liability

Notwithstanding anything herein contained to the contrary in Specific Exclusion 1 of the Public Liability Section A, this insurance extends to indemnify you for any amounts in excess of any underlying motor liability insurance as stated on your schedule. This extension is subject to the following provisions:

- a We will not indemnify you for claims for which compulsory insurance is required by any legislation.
- b The underlying motor liability will be enforced for the whole duration of the policy, providing an insured amount of no less than **R5 000 000.00** in respect of any one single event or occurrence.
- c We agree to follow the insuring clause of any appropriate underlying insurance to determine the basis of indemnity, being either
  - i. a claim or claims as a result of an occurrence happening during your period of insurance (Occurrence Basis); or
  - ii. a claim or claims first made against you during your period of insurance (Claims Made Basis).

For the purposes of this clause, the interpretation of the underlying insuring clause will be our decision. If the underlying insurance is on the basis of claims made, we will deal with any claim arising out of an event or circumstance first notified during your period of insurance as if the claim had been made during such a period.

- d In respect of any claim wholly or partially indemnified by any underlying insurance, this policy is subject to the terms, exclusions and conditions of such underlying insurance and we agree to follow the interpretation by the underlying insurer of such terms, exclusions and conditions.
- e Any decision by the underlying insurer to accept or pay a claim “ex gratia” or “without prejudice” will not be binding on us.
- f No action or decision of the underlying insurer which prejudices us in the conduct or settlement of any claim under this policy will be binding on us.
- g No indemnity is granted where any claim is uninsured by the underlying insurance by virtue of any excess or deductible thereunder or which does not form the subject of indemnity thereunder.
- h No indemnity is granted where any claim forms the subject of any extension to any underlying insurance where the insured amount in respect of such an extension is less than the indemnity stated on your schedule.

In the event of exhaustion of any aggregate limit applying to the underlying insurance by virtue of erosion due to claims, this extension will step down to reinstate such underlying limit.

## 8 Exhibitor’s Liability

We will indemnify you in respect of all sums which you will 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 an exhibition venue, including during the transportation of materials and product/s for incorporation therein and subsequent return, provided that the claim amount will not exceed the insured amount stated on your schedule in respect of any one event.

## 9 Incidental Medical Malpractice

We will indemnify you in respect of all sums which you will become legally liable to pay in connection with any claim(s) arising from injury caused by medical malpractice which will 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 your full or part-time employment.

## We will not indemnify you for liability arising out of:

- a any criminal act wilfully committed;
- b services rendered by any person who is under the influence of intoxicants or narcotics;
- c the use of drugs for weight reduction;



- d services rendered in exchange for a fee payable by the patient; or
- e clinical tests or trials of drugs.

Provided always that the total claim amount under this extension will not exceed this extension's insured amount stated on your schedule in respect of all claims made during your period of insurance.

## 10 Products Inefficacy

Notwithstanding anything to the contrary contained in Specific Exclusion 3 of the **Products Liability/Defective Workmanship Section C**, in the event of any other party alleging that they suffered financial loss by reason of tangible property (other than your products) being due to or alleged (other than by you) to be due to the failure of your product/s to perform as specified, warranted, guaranteed and/or to fulfil the intended function, then we hereby agree that we will not raise as a defence to granting indemnity by this policy that no damage (as foreseen by the Indemnity Clause of the Products Liability/Defective Workmanship Section C) has occurred, provided that the amount will not exceed the limit for Products Inefficacy as stated on your schedule.

We will also indemnify you in respect of all costs incurred in avoiding or mitigating the effects of such failure of your product/s to perform as specified, warranted or guaranteed and/or to fulfil their intended function provided that you will be liable for the excess on your schedule in respect of such costs.

## 11 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 will apply only in respect of such claims caused by the negligence of any contractor or sub-contractor or by you while carrying out any works.

## 12 Negligent Advice

You will be indemnified by this section in accordance with the Operative Clause (see "How we indemnify you (Operative Clause)") but only in respect of claims arising out of negligent advice.

### Specific exclusions

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

- 1 negligent advice given in respect of any product unless you have taken out cover under Section C – Products Liability/Defective Workmanship of this policy;
- 2 the rendering of financial services and/or cost estimates given by or on your behalf;
- 3 your insolvency; or
- 4 defamation or injuria.

## 13 North American Jurisdiction Extension

Where you have requested an extension to the Operative Clause for indemnity to be granted in respect of any judgment, award or settlement made within the countries which operate under the laws of the United States of America and/or Canada (or to any order made anywhere in the world to enforce such judgment, award or settlement either in whole or in part) such extension is only granted where so stated on your schedule to the insurance and where a specific amount has been entered against "Applicable Excess", and where a specific date has been entered against "Retroactive Date" on your schedule under the heading "North American Jurisdiction".

Acceptance by you of this insurance is deemed to be acceptance of the above conditions as being precedent to the granting of indemnity against such "North American Jurisdiction".

In consideration of the granting of such indemnity you agree to accept the following terms and exclusions in respect of any such judgment, award or settlement:

- a The indemnity does not apply to awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensatory awards or damages, or of a similar nature.
- b The indemnity does not apply to claims for or arising out of pollution.
- c The indemnity does not apply to claims which form the subject of any Optional Extension to this policy.

- d We will not be liable for the amount shown as the applicable excess on your schedule, being the first amount of each and every claim. For the purpose of this sub-clause “claim” will be deemed to include compensatory awards, claimants’ costs, fees and expenses and associated defence costs.
- e The indemnity does not apply to claims arising out of injury and/or damage occurring prior to the retroactive date stated on your schedule under the heading “North American Jurisdiction”. Provided always that in the event of any injury or damage arising from continuous or continual inhalation, ingestion or application of any substance and where we cannot agree when the injury or damage occurred then the provisions of the Continuous Exposure Clause will apply.
- f The indemnity does not apply to any actual or alleged violation of any responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 or any amendment thereof.
- g The indemnity does not apply to any actual or alleged violation of any of the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934 or similar federal or state law or any common law relating thereto.
- h The indemnity does not apply to any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. Section 1961 and any amendments thereto or any rules or regulations promulgated thereunder.

Subject in all other respects to the terms and exclusions of this policy which will not be deemed in any way to override, modify or alter any of the specific terms and exclusions applicable to this extension section.

## 14 Pure Economic Loss

We will indemnify you in respect of all sums which you will become legally liable to pay in connection with any claim(s) arising from negligence (other than in the provision of professional services) in the course of the business. For purposes of this Section, “professional services” will include advice given, work done, or any actions taken by you when functioning in any capacity involving special skill or knowledge.

### **We will not be liable for any liability:**

- a arising from:
  - i. injury to the third party and/or damage to his/her property;
  - ii. any act or omission involving an element of dishonesty;
  - iii. contract or breach of contract;
  - iv. breach of copyright, patent, license, trademark or tradename;
  - v. breach of any anti-trust or monopoly legislation;
  - vi. defamation;
  - vii. misuse or misappropriation of funds;
  - viii. any product, the supply, short supply or late supply of, or failure to supply any product;
  - ix. your bankruptcy, insolvency or liquidation; or
  - x. any negligent misrepresentation made by you or your employees, agents or assistants where such misrepresentation was made in the course of contractual negotiations or where such misrepresentation induced a contract;
- b to any of your employee/s, agent/s or assistant/s who was/were, such employee/s, agent/s or assistant/s of yours at the time the liability was incurred or has at any time thereafter been such an employee, agent or assistant;
- c to any shareholder, partner, director or other person having a financial interest in you or your business, who was such a shareholder, partner, director or other person at the time when the liability was incurred or at any time thereafter;
- d to any natural or juristic person who is associated, affiliated or related to you or your business and who sustains a loss by virtue of or arising out of such association, affiliation or relationship;
- e for which you are indemnified in terms of any other policy of insurance and where this policy will not be drawn into contribution with such another policy;

- f 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;
- g for any fine or penalty or for any payment due in terms of any statute, bylaw, statutory regulation or the like;
- h for loss or damage including detrimental change and any consequence therefrom to any electronic data howsoever caused;
- i assumed by agreement if such liability would not have attached in the absence of such an agreement;
- j for any trading loss or business risk;
- k arising out of strikes, protests or disturbances by your employees.

## 15 Southern African Territories

In respect of your operations situated outside of the Republic of South Africa but limited to Botswana, Lesotho, Madagascar, Mozambique, Namibia, Swaziland, Tanzania, Malawi and Seychelles, the indemnity provided by this policy is limited to the difference in scope of cover or in the insured amount provided by us 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:

- a the indemnity payable hereunder will be only up to but not exceeding such a further amount as would provide the maximum indemnity in terms of this policy;
- b any decision of the underlying insurer to accept or pay a claim “ex gratia” or “without prejudice” will not be binding on us;
- c no action or decision of the underlying insurer which prejudices us in the conduct or settlement of any claim under this policy will be binding on us.

If no insurance of the class insured in terms of this policy is purchased locally, this policy will act as primary insurance subject to the excess which is stated on your schedule.

## 16 Statutory Defence Costs

We will indemnify you or any of your director/s or employee/s under the Public Liability Section against legal costs, fees and expenses incurred with our prior written consent in the defence of any criminal action brought against you or any of your director/s or employee/s 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 vehicles), 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).

## We will not indemnify you:

- a for fines or penalties imposed as a consequence of any criminal act; and
- b in the case of an appeal, unless a Senior Counsel (to be agreed to by us) will advise that such an appeal is likely to succeed.

## 17 Warehouseman’s and Carrier’s Liability

You will be indemnified by this extension in accordance with the Operative Clause (see “How we indemnify you (Operative Clause)”) but only against claims for and/or arising out of damage to property in your custody and control whilst:

- a contained in any premises occupied by you as a warehouse or storage facility;
- b in transit, including loading and unloading and temporary overnight storage, in any vehicle owned, hired or leased by you;

within the territorial limits and which property forms the subject of your standard trading conditions so far as they can apply in respect of property in your care, custody and control while contained in any premises occupied by you as a warehouse or storage facility or being offloaded therefrom, it being understood and agreed that your customers retain full responsibility for their own property whether insured or not.

## 18 Wrongful Arrest

We will indemnify you under the Public Liability Section for claims arising out of wrongful arrest, committed or alleged (other than by you) to have been committed by you in the course of your business, provided that:

- a for the purposes of this Extension, the term “Wrongful Arrest” means:
  - i. 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 a person has been or could be placed in the custody of the police or a law enforcement officer;
  - ii. 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; or
  - iii. wrongful detention of any employee.
- b no indemnity will be granted in respect of claims:
  - i. made against you by any person(s) other than those being, or having been, alleged to have been arrested or under arrest, or their personal representatives;
  - ii. made against you by any of your director/s, partner/s or employee/s or their personal representatives;
  - iii. arising out of an unfair labour practice, within the meaning of the relevant labour laws as promulgated in the Republic of South Africa from time to time.

## Undertaking in respect of the ombudsman

We subscribe to the principles and rules of the Ombudsman for Short-term Insurance (incorporated under Section 21 of the Companies Act) and we will always abide by his/her rulings in respect of any matter referred to him/her by a client.

The Ombudsman for Short-term Insurance can be contacted on [www.osti.co.za](http://www.osti.co.za). The FAIS Ombud can be contacted on [faisombud.co.za](http://faisombud.co.za).



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