

# SANTAM UMBRELLA LIABILITY

## DEFINED EVENTS

1. Damages, costs, fees and expenses which the insured shall become legally liable to pay consequent upon Injury, Damage, Malice or Negligent Advice which occur in the course of or in connection with the Business within the Territorial Limits.
2. All costs incurred with the company's consent in defending or settling such claims.

## LIMITS OF INDEMNITY

The amount payable and recoverable under Defined events 1 and/or 2 for any one event or series of events with one original cause or source, shall not exceed the limit of indemnity stated in the schedule.

## DEFINITIONS

the **Business** is defined in the schedule, but also includes all organisations or functions operated for the benefit of the insured's employees or visitors or for the protection or promotion of the insured's activities;

**Damage** shall mean loss of or damage to tangible property, conversion, trespass, nuisance or wrongful interference with the enjoyment of rights over tangible property;

**Injury** shall mean death, injury, illness (mental or physical), disease, false imprisonment or arrest of or to any person;

**Malice** shall mean malicious legal proceedings, malicious falsehood, defamation, unfair competition or infringement of copyright, title, slogan or idea;

**Negligent advice** shall mean incorrect or inadequate advice given in the promotion of the insured's Products, but without expectation of any other reward;

**Product** shall mean any article 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;

**Territorial limits** shall mean anywhere in the world but not in respect of any judgment, award 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 judgment, award or settlement either in whole or in part);

**Underlying insurance** shall mean cover in force in terms of:

- (i) the Public Liability section of this policy

or

- (ii) Motor third party liability of this policy

or

- (iii) any liability extension on any section of this policy providing cover to property, including the Building Combined section; the House owners section and the Householders section

or

- (iv) the Employers Liability section.

# BASIS OF INDEMNIFICATION

This section provides indemnity as defined hereunder in the following circumstances:

**Excess Layer Protection** provides indemnity within the operative clause where the claim is prima facie covered by the terms of the Underlying Insurance only to the extent that the claim is not met by such Underlying Insurance solely because of the inadequacy of the underlying indemnity limit;

**Additional Risks Protection** provides indemnity where the claim is outside the scope of the operative clause of any Underlying Insurance to the extent of this section's operative clause;

**Difference in Conditions** provides indemnity within the operative clause where the claim is within the operative clause of the Underlying Insurance only where such claim is rejected by because of a policy term, condition or exclusion;

## 1. Excess layer protection

- 1.1 This section is subject to the same terms, exceptions and conditions as the Underlying Insurance.
- 1.2 The excess layer protection provides indemnity:
  - 1.2.1 in excess of the limit of indemnity stated to apply to the Underlying Insurance, except where such limit has been reduced or exhausted by reason of claims, in which case this insurance pays in excess of the first amount payable (if any)
  - 1.2.2 for those costs defined in Defined Events 2, provided that these are not recoverable from the Underlying Insurance. In the event of the wording of the Underlying Insurance contradicting this clause, the company's maximum liability under this clause shall be the same proportion of incurred costs as the settled claim bears to the respective limits of indemnity.
- 1.3 Where the limit of indemnity of the Underlying Insurance is exhausted by previous claims and as a consequence this section operates as a primary policy, in respect of any claim which would otherwise have been indemnified by the Underlying Insurance, the company will interpret this section as if the Underlying Insurance had still been in force.
- 1.4 Where the Underlying Insurance states that generally or in respect of specified claims the limit of indemnity is the aggregate of all indemnifiable claims occurring or made during the period of the Underlying Insurance, then the limit of indemnity under this section is declared to be on an identical basis as the Underlying Insurance.

## 2. Difference in conditions protection

- 2.1 If a claim is covered in terms of the operative clause of the Underlying Insurance, but is then excluded by a policy term, exclusion or condition, then this section will indemnify the insured in accordance with the Defined Events.
- 2.2 If a claim is covered in terms of the operative clause of the Underlying Insurance, but such Underlying Insurance is exhausted by reason of other claims and where, in the opinion of the company, such claim would have been excluded by the Underlying Insurance by reason of a term, exclusion or condition, then the provisions of this Difference in conditions protection will apply.
- 2.3 The company will follow the provisions of the operative clause of the Underlying Insurance in determining the basis on which the insured is indemnified by this clause of this section, being either:
  - 2.3.1 in respect of Injury, Damage or Malice occurring or Negligent Advice during the period of this section (losses occurring), or

2.3.2 in respect of claims made against the insured during the period of this section following Injury, Damage, Malice or Negligent Advice (claims made).

- 2.4 If the Underlying Insurance is on a claims made basis, then the company will deal with any claim arising out of an event or circumstance first notified by the insured to the company during the period of insurance of this section even if the Underlying Insurance contains no similar provision.
- 2.5 If a claim is repudiated in terms of an Underlying Insurance on the basis of an exclusion relating to the failure or a product to perform as specified, warranted or guaranteed, or to fulfill its intended purpose and such Underlying Insurance is on a losses occurring basis and the circumstances of the claim is such that the insured or the company cannot mutually agree when the loss occurred, then the company will deal with the claim on the basis that the loss occurred when the claimant first notified the insured of a circumstance or an event which subsequently gave rise to an indemnifiable claim.
- 2.6 The difference in conditions protection does not provide indemnity where a claim is excluded by the wording of the operative clause of the Underlying Insurance, except where a claim is excluded by the Underlying Insurance:
  - 2.6.1 solely on the grounds that the Injury or Damage was not accidental by nature, or did not arise out of an accident;
  - 2.6.2 solely on the grounds that temporary loss of use of property or reduction in value of property did not constitute damage within the operative clause of the Underlying Insurance.

### 3. Additional Risks protection

- 3.1 Additional risks protection will indemnify the Insured in respect of any claim which is not the subject of indemnity by any other policy of insurance, is not indemnifiable (either in whole or in part) by the excess layer protection or the difference in conditions protection and which forms the subject of indemnity by the Defined Events.
- 3.2 The indemnity granted by the additional risks protection is limited to claims made against the insured during the period of this section, or events or circumstances notified by the insured to the company during such period which subsequently give rise to claims being made.
- 3.3 The indemnity limit of this section in respect of cover granted by the additional risks protection is limited to the aggregate of all claims made during the period of this section, or event or circumstances notified by the insured to the company during such period which subsequently give rise to claims being made.
- 3.4 No indemnity is provided by additional risks protection where the company decline to grant indemnity in terms of Underlying Insurance in respect of a claim on the grounds that the Injury, Damage, Malice, Negligent Advice or event did not occur or the claim was not made during the policy period (as the case may be).

## EXTENSIONS

### Indemnity to others

The indemnity granted shall extend at the insured's option and subject to the company's consent which consent shall not be unreasonably withheld to include:

- 1. directors, partners or employees of the insured in that capacity or in their private capacity arising out of any temporary engagement (undertaken with the insured's consent) of the insured's employees;

2. any person or party to the extent that any contract entered into by the insured requires that such indemnity is given;
3. the personal representative of any person or party indemnified.

Provided always that all such persons or parties shall observe, fulfill and be subject to the terms, exceptions and conditions of this policy.

## Cross liability

The insured and persons or parties indemnified by the Extension "Indemnity to others" are indemnified separately and not jointly, and any liability arising between such insured shall be treated as though separate policies had been issued to each, provided that the aggregate liability of the company shall not exceed the limit of indemnity stated in the schedule.

## SPECIFIC EXCEPTIONS

The company will not indemnify the insured in respect of

1. fines, penalties, punitive, exemplary or vindictive damages;
2. pollutions arising out of:
  - (a) seepage, pollution or contamination provided always that this exception shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening;
  - (b) the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening.

This exception shall not extend the policy to cover any liability which would not have been insured under this policy in the absence of this exception;
3. any Injury, Damage, Malice or Negligent Advice which occurs prior to the Retroactive Date which is applicable to the Underlying Insurance;
4. liability arising out of any circumstance or event known to the insured:
  - (a) which is not reported to the company in terms of General condition 6 and/or
  - (b) prior to inception of this section
5. liability arising out of any deliberate or intentional failure of the insured or the insured's management to take reasonable precautions to prevent Injury, Damage, Malice or Negligent Advice;
6. any fine imposed or penalty incurred as a consequence of the commission of a criminal offence;
7. any benefits for which the insured is liable under any relevant workmen's compensation, unemployment compensation or disability benefits law and/or similar law and/or scheme;
8. so much of any compensation or claim as falls within the scope of any compulsory motor vehicle insurance enactment. This exception shall apply notwithstanding that no insurance under such enactment is in force or has been effected;
9. any costs necessary to repair, replace, recondition or modify any Product or part thereof and/or for the loss of use of any Product or part thereof;
10. any liability arising out of the recall of any Product or part thereof;

11. any liability arising out of performance warranties or guarantees or clauses stipulating liquidating damages or penalties, except to the extent that it is proved that such liability would have existed in the absence of such contractual provision;
12. any liability for personal Injury caused or contributed to by prolonged exposure to substances, factors or circumstance peculiar to any particular employment or occupation;
13. any liability for motor balance of third party liability unless such liability is in excess of the Underlying Insurance and is indemnifiable there under;
14. any liability arising out of the carriage of passengers for hire or reward or the carriage of fare paying passengers;
15. liability for loss or damage including detrimental change and any consequence there from to any electronic data;
16. liability for any unfair labour practice including but not limited to unfair dismissal within the meaning of the Labour Relations Act No. 66 of 1995 as amended, or any Act passed in substitution therefore;
17. Injury or Damage happening in the United States of America or Canada caused by or through or in connection with any goods or products sold or supplied by or to the order of the insured, if such goods or products have, to the insured's knowledge, been exported to the United States of America or Canada by or on behalf of the insured or such sale or resale should reasonable be contemplated by the insured;
18. any liability if the transport of hazardous substances was not in compliance with chapter VIII of the Road Traffic Act 1996 (Act 93 of 1996);
19. liability arising out of any deliberate or intentional act of the insured, any employee of the insured or any person for whom the insured would be vicariously liable;
20. **Additional specific exceptions** (only applicable to 2. Difference in conditions protection and 3. Additional Risks protection).  
The Difference in Conditions protection and Additional Risks extensions do not cover liability for or arising out of:
  - 20.1 the ownership, hire purchase or leasing of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15,25 metres in length and then only whilst on inland waterways) by or on behalf of the insured;
  - 20.2 the repair, maintenance, refuelling or defuelling of any aircraft, watercraft or hovercraft undertaken by or on behalf of the insured as revenue producing activity;  
Exceptions 20.1 and 20.2 do not apply to liability for death, injury, illness or disease of or to employees of the insured arising out of such employment;
  - 20.3 acts, errors or omissions of the directors or officers of the insured when acting in their capacity as such or in the provision by the insured of professional services which shall include giving advice, any action taken or work done by the insured when carrying on their functions in any capacity involving special skill or knowledge in their calling or the failure to discharge any obligations pursuant thereto. This exception does not apply to Negligent Advice;
  - 20.4 seepage, pollution or contamination being the natural consequence of the operation or existence of the Business;
  - 20.5 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 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 property on which the insured is working and which arises out of such work).

# SPECIFIC CONDITIONS

1. Any dispute between the insured and the company in connection with or arising out of this section shall be decided exclusively in accordance with the law of the Republic of South Africa and exclusively by a competent court of the Supreme Court of South Africa;  
The insured undertakes that they will not institute action against the company nor bring joint proceeding against the company in the Court of any country other than the Republic of South Africa;
2. The insurance under this section shall cease if the Business is wound up or carried on by a liquidator or judicial manager or is permanently discontinued, except with the written agreement of the company;
3. The indemnity granted by this policy is conditional upon the Underlying Insurance remaining in force throughout the Period of Insurance and that the limits of indemnity in terms of the Underlying Insurance shall not be less than:

(a) the Public Liability section:	R1,000,000
(b) the Employers Liability section:	R1,000,000
(c) any liability extension on any section of this policy providing cover to property, including the Building Combined section; the House owners section and the Householders section:	R1,000,000
(d) Motor third party liability:	R2,500,000

If, at the date of loss, the limit of indemnity in terms of the Underlying Insurance, is less than the limits indicated above, then the insured shall be considered as being their own insurer for the difference.
4. If, at the time of any event giving rise to a claim under this section, indemnity is also provided under any other insurance, other than a policy to specifically provide indemnity in excess of this policy, this section shall not be drawn into contribution with such other insurance. The provisions of this condition shall apply notwithstanding that the aforesaid policy be voidable or that the insurer be entitled to avoid liability for an occurrence which has given rise to a claim under such other policy.