

# MACHINERY BREAKDOWN (BUSINESS INTERRUPTION)

## DEFINED EVENTS

If (during the period of insurance) any of the machinery and plant used by the insured at the premises for the purpose of the business is affected by an accident and the business carried on by the insured at the premises is in consequence thereof interrupted or interfered with, the insurer will (subject to the exceptions and conditions of this section and of this policy) pay to the insured as indemnity in respect of item 1 mentioned under the heading "Subject matter insured" in the schedule of this section, the amount of the loss resulting from the aforesaid interruption or interference in accordance with the provisions contained in Appendix 1 of this section, provided that

- (a) the machinery and plant shall during the currency of this section be insured against machinery breakdown;
- (b) the liability of the insurer in respect of the aforementioned item 1, shall in no case exceed the sum insured stated in respect of such item 1 in the schedule of this section.

## DEFINITIONS

For the purposes of this section the following expressions shall have the following meanings:

**"Premises"** – the premises, the situation of which is stated in the schedule of this section

**"Business"** – the insured's business as stated in the schedule of this section

**"Machinery and plant"** – machinery and plant described in the list under the heading "List of machinery and plant" in the schedule of this section.

**"Accident"** – any unforeseen and sudden physical loss of or damage to the machinery and plant necessitating its immediate repair or replacement due to causes such as defects in casting and material, faulty design, faults at workshop or in erection, bad workmanship, lack of skill, carelessness, malice, shortage of water in boilers, physical explosion, tearing apart on account of centrifugal force, short circuit, storm, or any other cause not specifically excluded in terms of any exception, which is applicable to this policy as a whole or to this section in particular, whilst such machinery and plant are:

- (a) working or at rest;
- (b) being dismantled, moved, or re-erected for the purpose of cleaning, inspection, repair or installation at another location within the premises, provided such machinery and plant have successfully completed their acceptance tests.

## SPECIFIC EXCEPTIONS

This section does not cover any loss or claim resulting from interruption of or interference with the business directly or indirectly attributable to any of the following causes:

1. Loss or damage to:

- (a) foundations and masonry, unless specifically included and described in the list under the heading List of machinery and plant in the schedule of this section;
  - (b) exchangeable and replaceable parts such as bits, drills, knives and saw blades;
  - (c) dies, moulds, patterns, blocks, stamps, punches, coatings or engravings on cylinders and rolls;
  - (d) parts which by their use and/or nature suffer a high rate of wear or depreciation such as crushing surfaces, balls, hammers, screens and sieves, engraved soft metal cylinders, wear plates, elevator and conveyor belts or bands, chains, flexible pipes, jointing and packing materials, filter cloths, parts made of glass, rubber, textile or synthetics, grinding wheels, ropes, belts, straps, cables other than electrical conductors, brushes, batteries, tyres, refractory materials, grate bars and burner jets;
  - (e) operating media such as fuels, chemicals, catalysts, filter substances, heat transfer media, cleansing agents and lubricants.
- 2. Loss or damage due to fire, direct lightning, chemical explosion (except flue gas explosions in boilers), extinguishing of a fire or subsequent demolition, aircraft or other aerial devices or articles dropped therefrom, burglary or theft or attempts thereat, collapse of buildings, floods, inundation, earthquake, subsidence, landslide, avalanche, hurricane, cyclone, volcanic eruption or similar natural catastrophes.
  - 3. Loss or damage for which a supplier, contractor or repairer is responsible either by law or under contract.
  - 4. Loss or damage due to any faults or defects existing at the time of commencement of this section within the knowledge of the insured or his representatives, whether such faults or defects were known to the insurer or not.
  - 5. Repair or replacement necessitated by direct damage due to wear and tear, corrosion, erosion, deposits of scale sludge or other sediment, rust, or by scratching of painted or polished surfaces, or by any other direct consequences or progressive or continuous influences from working or atmospheric or chemical action; but the insurer shall be liable for any loss resulting from interruption or interference caused by damage arising from such causes and otherwise insured by this section.
  - 6. Loss or damage due to the imposition of abnormal conditions directly or indirectly resulting from testing, intentional overloading or experiments.
  - 7. Shortage, destruction, deterioration of or damage to raw materials, semi-finished or finished products or other materials required for proper operation, even if the consequence of material damage to an item described in the list under the heading List of machinery and plant in the schedule of this section is involved.
  - 8. Any restrictions on reconstruction or operation imposed by any public authority.
  - 9. The insured not having at their disposal in good time sufficient capital for repairing or replacing destroyed or damaged machinery.
  - 10. Loss of or damage to machinery, mechanical installations and their additional installations or other items which are not described in the list under the heading "List of machinery and plant" in the schedule of this section, even if the consequence of material damage to an item described in the aforesaid list is involved.
  - 11. Loss of business due to causes such as suspension, lapse or cancellation of a lease, license or order et cetera that occurs after the date when the machinery and plant affected by an accident are again in operating condition and the business could have been resumed if the aforesaid lease, license or order et cetera had not been suspended, lapsed or cancelled.

If the insurer alleges that by reason of any of the provisions of specific exceptions (3) and (4) above, any loss or claim is not covered by this section the burden of proving the contrary shall rest on the insured.

# AMENDMENT REGARDING GENERAL EXCEPTIONS

For the purposes of this section only the general exceptions of this policy are cancelled and replaced by the following:

1. (A) This policy does not cover any loss or claim resulting from interruption of or interference with the business directly or indirectly attributable to any loss or damage related to or caused by:
  - (i) civil commotion, labour disturbances, riot, strike, lockout or public disorder or any act or activity which is calculated or directed to bring about any of the foregoing;
  - (ii) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) or civil war;
  - (iii) (a) mutiny, military rising, military or usurped power, martial law or state of siege, or any other event or cause which determines the proclamation or maintenance of martial law or state of siege;  
(b) insurrection, rebellion or revolution;
  - (iv) any act (whether on behalf of any organisation, body or person or group of persons) calculated or directed to overthrow or influence any State or Government or any provincial, local or tribal authority with force or by means of fear, terrorism or violence;
  - (v) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any State or Government or any provincial, local or tribal authority, or for the purpose of inspiring fear in the public or any section thereof;
  - (vi) any attempt to perform any act referred to in clause (iv) or (v) above;
  - (vii) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause A (i), (ii), (iii), (iv), (v) or (vi) above.

If the insurer alleges that, by reason of clause A(i), (ii), (iii), (iv), (v), (vi) or (vii) of this exception, loss or damage is not covered by this policy, the burden of proving the contrary shall rest on the insured.
- (B) This policy does not cover loss or claim resulting from interruption of or interference with the business directly or indirectly attributable to any loss or damage caused directly or indirectly by or through or in consequence of any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act, 1976 (No. 85 of 1976) or any similar Act operative in any of the territories to which this policy applies.
2. This policy does not cover loss or claim resulting from interruption of or interference with the business directly or indirectly attributable to any loss or damage caused directly or indirectly by or through or in consequence of or contributed to by
  - (i) nuclear weapons material;
  - (ii) ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this exception only, combustion shall include any selfsustaining process of nuclear fission.

## SPECIFIC CONDITIONS

1. The due observance and fulfilment of the terms of this section and of this policy insofar as they relate to anything to be done or complied with by the insured shall be a condition precedent to any liability of the insurer.

2.
  - (a) Representatives of the insurer shall at any reasonable time have the right to inspect and examine the risk and the insured shall provide the representatives of the insurer with all details and information necessary for the assessment of the risk
  - (b) The insured shall as soon as possible notify the insurer in writing of any material change in the risk and cause at their own expense such additional precautions to be taken as circumstances may require, and the scope of cover and/or premium shall, if necessary, be adjusted accordingly.
3. If at any time after the commencement of this section
  - (a) the business is wound up or carried on by a liquidator, receiver, trustee or judicial manager or is permanently discontinued,
  - (b) the insured's interest ceases other than by death,
  - (c) any alteration is made or admitted by the insured whereby the risk of accident is increased,
  - (d) the retention of standby or spare machinery or any other loss-minimising factors in existence when the insurance under this section was effected, is reduced or discontinued or such stand-by or spare machinery is not maintained in an efficient working condition and available for immediate use,then the insurance under this section shall, notwithstanding anything to the contrary contained in general condition 1 of this policy, cease unless and until the continuance of the insurance under this section is confirmed in writing by the insurer.
4. The insured shall exercise all reasonable care in the selection of employment and supervision of all employees and in the prevention of any loss or damage and in compliance with any statutory regulations and manufacturer's recommendations. The stipulations of this specific condition (4) are applicable in addition to the stipulations of general condition 5 of this policy.
5. The insured shall be obliged to keep complete records. All records (for example inventories, production and balance sheets) for the three preceding years shall be held in safe-keeping or (as a precaution against their being simultaneously destroyed) the insured shall keep separate sets of such records.
6. On the happening of any occurrence that may result in a claim under this section the insured shall
  - (a) immediately notify the insurer by telephone or telegram of the aforesaid occurrence and send the insurer written confirmation thereof within 48 hours after the aforesaid occurrence;
  - (b) do and concur in doing and permit to be done all such things as may be reasonably practicable to minimise or establish the extent of any interruption of or interference with the business or to avoid or diminish the loss resulting therefrom;
  - (c) as far as may be reasonable practicable without causing any increase in the period of interruption or interference with the business take precautions to preserve any things that might prove necessary or useful by way of evidence in connection with any claim;
  - (d) discontinue the use of any damaged machinery and plant unless the insurer authorised otherwise, and the insurer shall not be liable in respect of any further interruption or interference with the business arising out of the continued use of any damaged machinery and plant without the insurer having giving its consent to such use until the aforesaid machinery and plant have been repaired to the satisfaction of the insurer.
7. In the event of a claim being made under this section the insured shall at the insured's own expense within 30 days after the expiry of the indemnity period (or within such further time as the insurer may in writing allow) submit to the insurer a written statement setting forth full particulars of the insured's claim together with details of all other insurances covering the accident or any part of it or consequential loss (of any kind whatsoever) resulting therefrom. The insured shall at their own expense also produce and furnish to the insurer such books of account and other business books, documents, proof, information, explanation and other evidence as may be reasonably required by the insurer for the purpose of investigating or verifying the claim, together with (if required) a statutory declaration regarding the truth of the claim and of any matters connected with the claim.

8. If at the time of any accident resulting in a loss insured against under this section there be any other insurance effected by or on behalf of the insured covering the same loss or any part thereof the insurer shall not be liable to pay or contribute more than its rateable proportion of any sum payable in respect of the whole of such loss. Provided, however, that the insurer shall not be liable to pay for or contribute to any loss that is insured by or would but for the existence of this section be insured by any business interruption or loss of profits or consequential loss policy or policies covering marine risks or fire and/or explosion risks.
9. The total amount of the indemnity that is provided under this section shall be payable two weeks after the final determination of such amount. If after the expiry of one month since the beginning of an interruption of or interference with the business and after the expiry of each further month it is possible to determine the minimum amount that the insurer is liable to pay in respect of the then elapsed period of the aforesaid interruption or interference the insured shall be entitled to demand that the aforesaid minimum amount be paid to the insured as an instalment in respect of the total amount of the indemnity that is provided under this section.  
Provided, however, that
  - (a) the insurer shall be entitled to postpone any payment
    - (i) if there is any doubt as to the insured's right to receive payment until the necessary proof is furnished;
    - (ii) if, as a result of any physical loss or damage or any interruption of or interference with the business any police or penal investigation has been initiated against the insured, until the completion of such investigations.
  - (b) the insurer shall not be liable to pay interest other than interest for default.
10. In the event of an accident to any machinery and plant that may result in a claim under this section the insurer shall have the right to take over and control all necessary repairs or replacements.
11. On the happening of any occurrence in respect of which a claim is or may be made under this section the insurer and every person authorised by the insurer may (without thereby incurring any liability and without diminishing the right of the insurer to rely upon any other conditions of this policy) enter any building where the loss has happened and may take possession of or require that any of the machinery and plant be surrendered to them and may keep possession of and deal with such machinery and plant for all reasonable purposes and in any reasonable manner. This condition shall be evidence of the leave and license of the insured to the insurer so to do. If the insured or anyone acting on their behalf does not comply with the requirements of the insurer or hinders or obstructs the insurer during the aforementioned acts, then all benefit under this section shall be forfeited.

## APPENDIX 1 – PROVISIONS

The insurance under item 1 of this section is limited to loss of gross profit due to (a) Reduction in turnover and (b) Increase in cost of working and the amount payable as indemnity thereunder shall be

- (a) In respect of reduction in turnover: The sum produced by applying the rate of gross profit to the amount by which the turnover during the indemnity period shall in consequence of the accident fall short of the standard turnover;
- (b) In respect of increase in cost of working: The additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in turnover that but for that expenditure would have taken place during the indemnity period in consequence of the accident, but not exceeding the sum produced by applying the rate of gross profit to the amount of the reduction thereby avoided,  
less any sum saved during the indemnity period in respect of such of the charges and expenses of the business payable out of gross profit as may cease or be reduced in consequence of the accident, provided that the amount payable shall be proportionately reduced if the sum insured in respect of item 1 of this section be less than the sum produced by applying the rate of gross profit to the annual turnover.

# DEFINITIONS AND NOTES

For the purposes of the insurance under item 1 of this section the following expressions shall have the following meanings:

gross profit – the amount by which

- (1) the sum of the value of the turnover and the value of the closing stock shall exceed
- (2) the sum of the value of the opening stock and the amount of the specified working expenses.

**Stock** – The values of the opening and closing stocks shall be arrived at in accordance with the insured's normal accountancy methods, due provision being made for depreciation.

**Specified working expenses** – those variable expenses (of the business) that are specified under the heading Specified working expenses in the schedule of this section.

**Turnover** – the money (less discounts allowed) paid or payable to the insured for goods sold and delivered and for services rendered in the course of the business at the premises.

**Indemnity period** – the period, not exceeding the indemnity period stated in the column under the heading "Indemnity period limit" of the list under the heading "List of machinery and plant" in the schedule of this section, commencing with the occurrence of the accident during which the results of the business shall be affected in consequence of such accident, provided always that the insurer shall not be liable for the amount of the loss arising during the time excess, such time excess to commence as from the beginning of the interruption of or interference with the business resulting in a claim under this section.

**Time excess** – the period stated in the column under the heading "Time excess" of the list under the heading "List of machinery and plant" in the schedule of this section.

**Rate of gross profit** – the rate of gross profit earned on the turnover during the financial year immediately before the date of the accident, to which such adjustments shall be made as may be necessary to provide for the trend of the business and of variations in or special circumstances affecting the business either before or after the accident or that would have affected the business had the accident not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results that would but for the accident have been obtained during the relative period after the accident.

**Standard turnover** – the turnover during that period in the twelve months immediately before the date of the accident that corresponds to the indemnity period to which such adjustments shall be made as may be necessary to provide for the trend of the business and for variations in or special circumstances affecting the business either before or after the accident or that would have affected the business had the accident not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the result that but for the accident would have been obtained during the relative period after the accident.

**Annual turnover** – the turnover that but for the accident the insured would have been able to obtain during the 12-month period immediately before either the date when the business is no longer affected or when the indemnity period ends, whichever occurs first.

## NOTE 1

If during the indemnity period goods shall be sold or services shall be rendered elsewhere than at the premises for the benefit of the business either by the insured or by others on their behalf the money paid or payable in respect of such sales or services shall be brought into account in arriving at the turnover during the indemnity period.

# APPENDIX 2 – CLAUSES

It is expressly declared and agreed that the following clauses (each individually) shall otherwise be subject to all the terms, exceptions and conditions of this section and all the terms, exceptions and conditions (insofar as they can apply) of this policy, as if they had been incorporated in such clauses.

## 1. Clause regarding overhauls

In determining the amount payable as indemnity under this section due allowance shall be made for the time spent on any overhauls, inspections or modifications carried out during any period of interruption of or interference with the business.

## 2. Clause regarding benefits after recommissioning

If during a period of 6 months immediately following the recommissioning of the machinery and plant after an accident the insured derives benefit from deferred sales or from increased production and/or profits as a consequence of an interruption of or interference with the business, such benefits shall be taken into account in determining the amount payable as indemnity under this section.

## 3. Clause regarding reinstatement of sum insured

For the period following the occurrence of an accident up to the last day of any (annual) period of insurance the sum insured under this section shall be reinstated by payment of an additional premium on a pro rata basis, such additional premium to be calculated on that part of the aforesaid sum insured that corresponds to the amount paid as indemnity under this section. The agreed sum insured shall, however, remain unaltered.

## 4. Clause regarding return of premium

If the insured declares at the latest six months after the expiry of any (annual) period of insurance that the gross profit earned during the accounting period of 12 months most nearly concurrent with the aforesaid (annual) period of insurance, as certified by the insured's auditors, was less than the sum insured thereon, a pro rata return of premium, not exceeding one-third of the premium paid on such sum insured for such (annual) period of insurance, shall be made in respect of the difference. If any accident has occurred giving rise to a claim under this section the aforesaid return shall be made in respect only of so much of the aforesaid difference as is not due to such accident.

## 5. Clause regarding prolongation of the period of interruption

The insurer shall not be liable under this section in respect of the prolongation of any period of interruption of or interference with the business resulting directly or indirectly from the operation of:

- (a) any gazetted law of the Republic South Africa, including any exchange control regulation, directed against any other country;
- (b) any law of a foreign country or international law directed against the Republic of South Africa;
- (c) any economic sanctions, conventions, trade embargoes, boycotts, strikes or actions directed against the Republic of South Africa, other than occurring within the borders of the Republic of South Africa.

If the insurer alleges that this clause is applicable by reason of any or all of stipulations (a), (b) and (c) above the burden of proving the contrary shall rest on the insured.