

# PUBLIC LIABILITY (OCCURRENCE BASIS)

## DEFINED EVENTS

Damages which the Insured shall become legally liable to pay consequent upon Injury or Damage occurring within the Territorial Limits during the Period of Insurance in the course of or in connection with the Business.

## DEFINITIONS

For the purposes of determining the indemnity granted by this Section the following terms shall mean:

### 1. Damage

Loss of or physical damage to tangible property or wrongful interference with the enjoyment of rights over tangible property.

### 2. Employee

Person/s employed under a contract of service or apprenticeship with the Insured.

### 3. Injury

Death, bodily injury, mental injury, illness (mental or physical) or disease of or to any person.

### 4. Product

Any tangible property (including containers and labels) 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.

### 5. Pollution

The emission, discharge, release, dispersal, disposal, seepage or escape of solid, liquid, gaseous, or thermal contaminants or irritants, including vapours, smell, odours, humidity, fumes, smoke, soot or other airborne particulates, acids, alkalis, chemicals and waste, electromagnetic waves, noise, vibrations, other emission of effluent or noxious substances into or upon the soil, the atmosphere or any watercourse or body of water.

### 6. Costs and Expenses

Costs, charges, expenses and legal costs recoverable from the Insured by a claimant or any number of claimants or incurred by the Company or incurred by the Insured with the Company's prior consent:

- (i) in the defence or settlement of any claim under this section of the Policy or any action or prosecution brought against the Insured in respect of Injury or Damage or other liability as insured in terms of this Section of the Policy;
- (ii) in the representation at any inquest or accident inquiry in respect of Injury which may form the subject of indemnity under this Section of the Policy and/or in defending any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of indemnity by this Section of the Policy.

# LIMITS OF INDEMNITY

The amount payable, inclusive of any Costs and Expenses, for any claim or number of claims for any one event or series of events with one originating cause or source, shall not exceed the Limit of Indemnity stated in the schedule.

In the event of any one originating cause giving rise to a claim or series of claims which form the subject of indemnity by more than one extension of this Section, each extension shall apply separately and be subject to its own separate Limit of Indemnity provided always that the total amount of the Insurer's liability shall be limited to the highest Limit of Indemnity available under any one of the Extensions affording indemnity for the claim or series of claims.

Where more than one Period of Insurance of this Policy, following its renewal or replacement may apply to an originating cause or source, the Insurer's liability will be limited to the maximum Limit of Indemnity for any one such Period of Insurance.

# TERRITORIAL LIMITS

Anywhere in the world but not in connection with:

- (i) any business carried on by the Insured at or from premises outside  
or
- (ii) any contract for the performance of work outside

the Republic of South Africa, Namibia, Botswana, Lesotho, Swaziland, Zimbabwe and Malawi.

# SPECIFIC EXCEPTIONS

The Insurer will not indemnify the Insured in respect of:

## 1. Employees

liability consequent upon Injury to any Employee arising from and in the course of employment by the Insured.

## 2. Property

Damage to:

- (a) (i) property belonging to the Insured;
- (ii) property in the custody or control of the Insured or any employee of the Insured but this exception shall not apply to .premises (or the contents thereof) temporarily occupied by the Insured for work therein;
- (b) that part of any property on which the Insured is or has been working if such Damage results directly from such work.

## 3. Professional advice, vehicles, aircraft, products etc.

liability consequent upon Injury or Damage

(a) **Professional advice or treatment**

caused by or through or in connection with any advice or treatment of a professional nature (other than first aid treatment) given or administered by or at the direction of the Insured.

(b) **Vehicles, watercraft, locomotives**

caused by or through or in connection with the ownership, possession or use by or on behalf of the Insured of any mechanically propelled vehicle (other than a pedal cycle or lawnmower or any pedestrian controlled garden equipment) or trailer or of any watercraft (other than non-motorized watercraft not exceeding 6 metres in length and used only on inland waterways), locomotive or rolling stock, provided that this exception shall not relieve the Insurer of liability to indemnify the Insured in respect of liability consequent upon Injury or Damage caused or arising beyond the limits of any carriage-way or thoroughfare in connection with the loading or unloading of any vehicle, insofar as such Injury or Damage is not insured by any other insurance policy.

(c) **Aircraft**

caused by or through or in connection with:

- (i) the refuelling or defuelling of aircraft;
- (ii) the ownership, possession, maintenance, operation or use of aircraft or an airline;
- (iii) the ownership, hire or leasing of any airport, airstrip or helicopter pad.

(d) **Products**

caused by or through or in connection with any Product other than food and drink provided for consumption on the premises of the Insured.

#### **4. Vibration and removal of support**

Damage caused by vibration or by the removal or weakening of or interference with support to any land, building or other structure.

#### **5. Pollution**

- (a) liability in respect of Injury, Damage or loss of use of property directly or indirectly caused by Pollution, provided always that this exception shall not apply where such Pollution is caused by a sudden, unintended and unforeseen occurrence;
- (b) the cost of removing, nullifying or cleaning up substances resulting from Pollution unless the Pollution is caused by a sudden, unintended and unforeseen occurrence.

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.

#### **6. Fines, penalties etc.**

fines, penalties, punitive, exemplary or vindictive damages.

#### **7. USA and Canada judgements, awards or settlements**

damages in respect of judgements, award or settlement made within the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part). For the purpose of this specific exception "Damages" shall be deemed to include costs and expenses of litigation recovered by any claimant from the Insured.

## 8. First amount payable

the first amount payable. The Insured shall be responsible for the first amount payable as stated in the schedule in respect of any one claim or number of claims arising from all events of a series consequent upon or attributable to any one source or originating cause or source. The provisions of this clause shall apply to claims arising from Damage or Injury and shall apply to Costs and Expenses.

## 9. Explosives, explosion, fire, flood and animals

liability consequent upon injury or damage directly or indirectly caused by or in connection with or arising from or attributable to

- (a) explosives
- (b) the explosion of any boiler
- (c) fire or explosion
- (d) flood
- (e) the ownership, possession or use by or on behalf of the Insured of any animal

## 10. Impounding or diversion of water

the impounding or diversion of water by the Insured or any person acting on behalf of the Insured.

## 11. Fire damage to sugar-cane or any plantations

fire damage to sugar-cane or any plantation.

## 12. Deliberate or intentional acts

liability consequent upon Injury or Damage arising out of the deliberate, conscious and intentional disregard by the Insured's management of the need to take reasonable precautions to prevent any event or circumstance which may give rise to a claim.

## 13. Unlawful competition

any claim or claims whether actual or alleged howsoever arising in connection with or based upon or arising from or in any way involving actual or alleged unlawful competition, unfair practices, abuse of monopoly power, cartel activities or as may otherwise arise from or be based upon or relate to any breach of a provision of the Competition Act no. 89 of 1998 (as amended) or any similar provision, act or regulation as may be in force in any jurisdiction or country in which the Insured's liability arose.

# MEMORANDUM

In respect of this section only, General exception 1 is deleted and replaced by the following:

This section does not cover Injury, Damage or liability directly or indirectly caused by, related to or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power.

# SPECIFIC CONDITION

## Manifestation clause

When the facts do not speak for themselves and the Insurer and the Insured cannot mutually agree when the Injury or Damage occurred, then for the purposes of determining the indemnity granted:

- (a) the Injury shall be deemed to have occurred when the claimant first consulted a qualified practitioner regarding such Injury, whether or not it was correctly diagnosed at the time. If no such consultation took place, then the Injury shall be deemed to have occurred when the Insured was first advised of the Injury.
- (b) the Damage shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown.

# EXTENSIONS

## 1. Additional Insured

The Insurer will also, as though a separate policy has been issued to each, indemnify:

- (a) in the event of the death of the Insured, any personal representative of the Insured in respect of liability incurred by the Insured;
- (b) any partner or director or employee of the Insured (if the Insured so requests) against any claim for which the Insured is entitled to indemnity under this insurance;
- (c) to the extent required by the conditions of any contract and in connection with any liability arising from the performance of the contract, any employer named in any contract entered into by the Insured for the purposes of the business;
- (d) in respect of the activities of any social or sports club, welfare organisation, first aid, fire or ambulance service, canteen or the like, belonging to or formed by the Insured for the benefit of their employees;
  - (i) any officer or member thereof;
  - (ii) any visiting sports team or member thereof

Provided that:

- (1) the aggregate liability of the Insurer is not increased beyond the limits of indemnity stated in the schedule;
- (2) any person or organisation to which this extension applies is not entitled to indemnity under any other policy;
- (3) the indemnity under (a), (b) and (c) applies only in respect of liability for which the Insured would have been entitled to indemnity if the claim had been made against the Insured.

For the purposes of this extension, the Insurer waives all rights of subrogation or action which they may have or acquire against any of the above, and each party to whom the indemnity hereunder applies shall observe, fulfil and be subject to the terms, exceptions and conditions (both general and specific) of this insurance in so far as they can apply.

## 2. Cross liabilities

Where more than one Insured is named in the schedule, the Insurer will indemnify each Insured separately and not jointly, and any liability arising between such Insureds shall be treated as though separate policies had been issued to each, provided that the aggregate liability of the Insurer shall not exceed the limit of indemnity stated in the schedule.

## 3. Tool of trade

Specific exception 3(b) shall not apply to the operation as a tool of any vehicle or plant forming part of such vehicle or attached thereto, provided that the Insurer shall not be liable hereunder in respect of so much of any liability as falls within the scope of any form of motor insurance or compulsory third party insurance legislation, notwithstanding that no such insurance is in force or has been effected, nor shall the Insurer be liable where any other form of motor insurance has been effected by the Insured covering the same liability.

## 4. Employees' and visitors' property

Specific exception 2(a)(ii) shall not apply to property belonging to any partner, director or employee of the Insured or any visitor to the Insured's premises.

## 5. Transnet and other government departments

Notwithstanding the provisions of Specific exceptions 2(a) (ii) and 3(b), this section extends to indemnify the Insured:

- (a) against liability assumed by the Insured under any contract entered into with or indemnity given to Transnet, government or quasi-government departments, provincial administrations, municipalities and/or similar bodies covering the use of railway sidings or in respect of cartage (hazardous premises) agreements and/or agreements of a similar nature;
- (b) against liability arising from loss of or damage to property belonging to Transnet while in the Insured's custody or control;
- (c) in respect of liability caused by or through or in connection with any vehicle, trailer, locomotive or rolling stock belonging to Transnet while being used by or on behalf of the Insured at any railway siding.

## 6. Unattached trailers

Specific exception 3(b) shall, as far as it relates to trailers, not apply in respect of any trailer not attached to and not having become unintentionally detached from any mechanically propelled vehicle, provided that the Insurer shall not be liable hereunder in respect of so much of any liability:

- (i) which is Insured by or would, but for the existence of this section, be Insured by any other policy or policies effected by the Insured;
- (ii) as falls within the scope of any compulsory third party insurance legislation, notwithstanding that no such insurance is in force or has been effected.

## 7. Emergency medical expenses

The Insurer will indemnify the Insured for all reasonable expenses incurred by the Insured for such immediate medical treatment as may be necessary at the time of an accident causing Injury to any person who may be the subject of a claim for indemnity by the Insured in terms of this section.

## 8. Car parks

Notwithstanding the provisions of Specific exception 2(a)(ii), the Insurer will indemnify the Insured in respect of liability as herein provided arising from loss of or damage to vehicles and their contents and accessories, the property of tenants, customers, visitors or employees of the Insured using parking facilities provided by the Insured.

## 9. Tenant's liability

Specific exceptions 2(a)(ii) and 3(b) of this section shall not apply to premises occupied by the Insured as tenant (but not as the owner) thereof.

## 10. Products liability (if stated in the schedule to be included)

Notwithstanding anything to the contrary contained in Specific exception 3(d), the Insurer will indemnify the Insured in respect of Defined Events happening anywhere in the territories stated in the schedule elsewhere than at premises occupied by the Insured, and caused by any Product (including wrongful delivery and delivery of incorrect Products).

The amount payable under this extension, inclusive of any Costs and Expenses, for any claim or number of claims for any one event or series of events with one originating cause or source or during any one (annual) Period of Insurance, shall not exceed in the aggregate the Limit of Indemnity for this extension stated in the schedule.

### Additional specific exceptions (applicable to Products Liability extension)

This extension does not cover liability:

- (i) for the cost of repair, alteration, recall or replacement of the Product or part thereof (including containers and labels) causing Injury or Damage and/or the loss of use of any Product or part thereof;  

For the purposes of this additional specific exception the term "replacement" shall be deemed to include any credit or refund granted or alternative Product provided by or on behalf of the Insured in lieu of replacement of the defective Product;
- (ii) for the cost of demolition, breaking out, dismantling, delivery, rebuilding, supply and installation of the Product and any other property essential to such repair, alteration or replacement unless physically damaged by the Product;
- (iii) arising from the failure of any Product or any part thereof to fulfill its intended function or to perform as specified warranted or guaranteed but this exception shall not apply to consequent Injury or Damage;
- (iv) arising from Products intended to be installed and installed in, or intended to form part of and forming part of, an aircraft;
- (v) in respect of 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;
- (vi) for any defect in any Product or any part thereof of which the Insured was aware prior to the inception of this extension.

## 11. Statutory legal defence costs (if stated in the schedule to be included)

If the Insured so requests, the Insurer will indemnify any employee, partner or director of the Insured against costs and expenses not exceeding the amount stated in the schedule incurred by or on behalf of such person with the consent of the Insurer in the defence of any prosecution of such person in the course of his occupation with the Insured arising from an alleged contravention of any statute in the course of the Business during the period of insurance.

Provided that:

- (i) in the case of an appeal, the Insurer shall not indemnify such person unless a senior counsel approved by the Insurer shall advise that such appeal should, in his opinion, succeed;
- (ii) the Insurer shall not indemnify such person in respect of any fine or penalty imposed by any magistrate or judge or any loss consequent thereon;
- (iii) such person shall, as though he were the Insured, observe, fulfil and be subject to the terms, exceptions and conditions of this policy and this section thereof in so far as they can apply;
- (iv) if the prosecution arises from or in connection with any Product, the Insurer will only indemnify the Insured or any employee, partner or director of the Insured if the extension for Products Liability is stated in the schedule to be included.

## 12. Wrongful arrest and defamation

The defined events are extended to include damages

- (i) resulting from wrongful arrest (including assault in connection with such wrongful arrest)
- (ii) in respect of defamation

provided always that the Limits of Indemnity shall not exceed the amount stated in the schedule.

## 13. Fire and explosion liability

Specific exceptions 9(b) and 9(c) are deleted.

The amount payable under this extension, inclusive of any Costs and Expenses, for any claim or number of claims for any one event or series of events with one originating cause or source or during any one (annual) Period of Insurance, shall not in the aggregate exceed R250 000 or the Limit of Indemnity for this extension stated in the schedule, whichever is the higher.

It is a condition of this extension that, at the happening of an occurrence that gives rise to a claim in terms of this extension, the Insured complies with the requirements of the National Veld and Forest Fire Act No. 101 of 1998 (as amended).

## 14. Animals

Notwithstanding anything to the contrary contained in Specific exception 9(e) the Insurer will indemnify the Insured in respect of Defined Events caused by animals (owned by the Insured or for which the Insured is legally responsible) used or kept by the Insured in connection with the Insured's Business:

- (a) whilst being driven anywhere within the territorial limits provided the Insured takes reasonable precautions to comply with legislation regarding the driving of animals on public roads; or
- (b) whilst on any premises of the Insured; or
- (c) whilst at any location (but excluding any premises of the Insured) anywhere within the territorial limits where such animals are temporarily kept or temporarily housed; or



- (d) whilst straying from the location referred to in paragraph (c) above or straying from the premises referred to in paragraph (b) above.

The amount payable under this extension inclusive of any Costs and Expenses for any claim or number of claims for any one event or series of events with one originating cause or source or during any one (annual) Period of Insurance, shall not exceed in the aggregate the Limit of Indemnity for this extension stated in the schedule.

## 15. Flood (if stated in the schedule to be included)

Specific exception 9(d) is deleted.

The amount payable under this extension, inclusive of any Costs and Expenses, for any claim or number of claims for any one event or series of events with one originating cause or source or during any one (annual) Period of Insurance, shall not exceed in the aggregate the Limit of Indemnity for this extension stated in the schedule.

## 16. Liability for damage to sugar-cane or any plantation (if stated in the schedule to be included)

Specific exception 11 is deleted.

The amount payable under this extension inclusive of any Costs and Expenses for any claim or number of claims for any one event or series of events with one originating cause or source or during any one (annual) Period of Insurance, shall not exceed in the aggregate the Limit of Indemnity for this extension stated in the schedule.

It is a condition of this extension that, at the happening of an occurrence that gives rise to a claim in terms of this extension, the Insured complies with the regulations of the National Veld and Forest Fire Act No. 101 of 1998 (as amended).

## 17. Warehouseman's liability

Specific exception 2(a)(iii) shall not apply to liability arising from loss of or damage to property/goods in the custody or control of the Insured or any Employee of the Insured for storage purposes provided that:

1. the Insurer will however not indemnify the Insured in respect of liability as herein provided arising from loss of or damage to the property/goods themselves, but only for the consequential losses resulting from such loss or damage and for which the Insured shall become legally liable to pay;
2. the loss of or damage to the property/goods occurs in a warehouse (building) occupied by the Insured as owner or tenant;
3. the amount payable under this extension inclusive of any Costs and Expenses for any claim or number of claims for any one event or series of events with one originating cause or source or during any one (annual) Period of Insurance, shall not exceed in the aggregate the Limit of Indemnity for this extension stated in the schedule;
4. in respect of any one claim or number of claims arising from all events of a series consequent upon or attributable to any one source or originating cause under this extension, the Insured shall be responsible for a first amount payable calculated at 10% of the Costs and Expenses incurred by the Insurer, provided that the aforesaid amount shall never be less than R1 000 and not exceed R25 000.

## Additional specific exceptions (applicable to the Warehouseman's liability extension)

This extension does not cover liability for

- (a) loss or damage caused by:
  - (i) the dishonesty of any principal, partner, director or employee of the Insured or any person to whom the property/goods are entrusted, whether acting alone or in collusion with others;
  - (ii) wilful and illegal sale of property/goods by the Insured, wilful conversion or wilful and wrongful secretion;
  - (iii) forged warehouse receipts;
  - (iv) 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.
- (b) loss of or damage to cash, bank and currency notes, coins (including Krugerrands and similar coins), cheques (including travellers cheques), money and postal orders, current negotiable postage, revenue and holiday pay stamps, credit card vouchers and documents, certificates or other instruments of a negotiable nature, title deeds, manuscripts or securities of any kind, jewellery, diamonds, gold, silver, bullion, precious and semi-precious metals and stones, livestock and animals.

## 18. Hunters liability

Notwithstanding anything to the contrary contained in Specific exception 3(a), this section extends to indemnify the Insured against liability arising out of any hunting activities arranged by the Insured and occurring on the Insured's premises provided that:

- (i) any visitors participating in such hunting activities who are not permanent residents of the Republic of South Africa will be accompanied by a Professional Hunter who is in possession of a valid professional hunters permit;
- (ii) any visitors not described under (i) above are accompanied by the Insured or an Employee of the Insured;
- (iii) prior to participating in any hunting activity all visitors will sign a document drawn up by a qualified attorney disclaiming the liability of the Insured or any partner or director or employee of the Insured as a result of any hunting activities;
- (iv) the Insured must comply with all laws, by-laws and local, municipal, regional and government regulations applicable to hunting activities.

## 19. Gratuitous advice

Notwithstanding anything to the contrary contained in Specific exception 3(a) the Insurer will indemnify the Insured in respect of Defined Events caused by the unintentional failure of the Insured to perform the legal duty to exercise due care owed to another person or party in providing technical information or advice to such person or party.

Provided that this section does not cover liability:

- (i) arising out of the insolvency of the Insured;
- (ii) arising out of financial services and/or cost estimates provided by or on behalf of the Insured;
- (iii) arising out of defamation;

- (iv) arising out of design, formula, supervision, treatment or advice given by or on behalf of the Insured in exchange for a fee;
- (v) arising out of technical information or advice given in connection with a Product unless the extension for Products Liability is included in the schedule.

If at the time of any event giving rise to a claim under this extension, indemnity is also provided under any other insurance, this extension shall not be drawn into contribution with such other insurance except in respect of any excess over and above the amount payable by such other insurance.

## 20. Acquisitions and new businesses

The indemnity granted by this section of the Policy extends to any company formed and/or acquired by the Insured during the Period of Insurance for a period of 90 days of such formation and/or acquisition.

Provided always that:

1. the Insured's business activities remain unchanged;
2. the annual turnover of all newly formed and/or acquired companies does not exceed 5% (five percent) of the estimated annual turnover of the Insured as advised to the Insurer at inception hereof;
3. the Insured shall advise the Insurer of such formations and/or acquisitions before the expiry of 90 days thereof and the Insurer may amend the terms of this section of the Policy accordingly.

## 21. Extensions for guesthouses and lodges

These extensions only apply to that part of the risk that relates to the guesthouse and/or lodge if Insured in terms of this section:

### A. Cleaning/Dry cleaning of guests effects

Notwithstanding Special exceptions 2(a)(ii) and 2(b) the Insurer will indemnify the Insured for loss or damage to guests' laundry whilst undergoing a process of cleaning and or dry cleaning provided that

- (a) the Insurer's liability is limited to R10 000 per event and R50 000 in any one (annual) period of insurance;
- (b) the Insurer shall not be liable for the first R1 000 of any one event.

### B. Property of guests

Specific exception 2(a)(ii) is cancelled and replaced by:

2(a)(ii) Property in the custody or control of the Insured or any Employee of the Insured but this exception shall not apply to:

- (1) property (other than motor vehicles) of visitors to the Insured's premises or of principals directors members partners or Employees of the Insured;
- (2) vehicles not hired by or lent to the Insured (including their contents and accessories) utilising the Insured's parking facilities;
- (3) premises not owned or rented by the Insured temporarily occupied by him for the purposes of work thereon or therein unless liability arises solely in terms of an agreement.

**C. Wrongful arrest and defamation**

The Defined Events are extended to include damages:

- (i) resulting from wrongful arrest (including assault in connection with such wrongful arrest);
- (ii) in respect of defamation

provided always that the Limits of Indemnity shall not exceed R100 000 per event and R500 000 in any one (annual) Period of Insurance.