

# SPECIALIST INSURANCE FOR THE VINE INDUSTRY: EXTENDED LIABILITY

This section should be read in conjunction with the Public Liability Section of this policy and is subject to the terms, exceptions and conditions of the Public Liability Section.

## 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. Injury

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

### 3. 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.

### 4. 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.

### 5. Legal Costs

Costs, charges and expenses incurred by the Company or by the Insured with the Company's prior consent:

- (i) in the defence or settlement of any claim under this 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.

# PRODUCTS RECALL EXTENSION (if stated in the schedule to be included)

This extension can only be granted in conjunction with the products liability extension of the Public Liability Section.

The Company will indemnify the Insured in respect of any costs and expenses incurred to recall the Insured's Product (or any part thereof) as a result of a decision taken by the Insured or others during the period of insurance and notified to the Company during the period of insurance that it is necessary to recall such Products because their use or consumption (or continued use or consumption) may cause Injury or Damage for which the Insured may become legally liable.

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

## Costs and Expenses

shall mean the reasonable and necessary expenditure incurred for:

1. correspondence, newspaper and/or magazine advertising and television and/or radio announcements with the exclusive purpose for the recalling of the Insured's products;
2. transportation (including packaging and/or temporary storage) in connection with the return of the products (or any part thereof) to the premises of the Insured and/or the manufacturer (or his nominated agents);
3. examination, sorting and/or destruction provided that any claim for such expenditure is not financially greater than a claim for transportation expenditure.

The amount payable under this extension for all costs and expenses incurred during any one (annual) period of insurance shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

The Insured shall 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, be responsible for a first amount payable calculated at 10% of the costs and expenses incurred by the Insured and recovered from the Company provided that the aforesaid amount shall never be less than R25 000.

## Additional Specific Exceptions (applicable to the Products Recall extension)

This extension does not cover liability:

- (i) for any product (or any part thereof);
- (ii) for the costs incurred in the repair, alteration, treatment or replacement of any product (or any part thereof);
- (iii) for or arising from actual or alleged intentional alteration, adulteration or contamination of the Insured's Product;
- (iv) arising from the recall of any product (or any part thereof)
  - (a) forced upon the Insured by any government or public authority where the Insured would not have made a recall but for the intervention of said government or public authority;
  - (b) which is in the custody or control of the Insured;
  - (c) as a result of misdelivery or misdirection of any product by or on behalf of the insured

- (v) arising from any product where the Insured was aware that the product was likely to cause Injury or Damage before the inception of this section;
- (vi) arising from the deliberate or intentional
  - (a) breach of national or local regulations by the Insured
  - (b) failure of the Insured's technical or administrative management to take reasonable precautions to prevent claims
- (vii) arising from any product (or any part thereof) within the United States of America or Canada, if such product sold or supplied by or to the order of the Insured has, to the Insured's knowledge, been exported to the United States of America or Canada by or on behalf of the Insured unless the United States of America and/or Canada liability extension has been stated in the schedule to be included.

## PRODUCTS GUARANTEE (if stated in the schedule to be included)

This extension can only be granted in conjunction with the products liability extension of the Public Liability Section.

The Company will indemnify the Insured against any costs and expenses for which the Insured shall become legally liable to pay for the removal, repair, alteration, treatment or replacement of any product (or any part thereof) which is defective or faulty or which fails to fulfil its intended function (or to perform as specified, warranted or guaranteed) for which it was manufactured, sold, supplied, installed, repaired, altered or treated by or on behalf of the Insured.

The amount payable under this extension for all costs and expenses incurred during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

The Insured shall 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 original cause under this extension, be responsible for a first amount payable calculated at 10% of the costs and expenses incurred by the Company provided that the aforesaid amount shall never be less than R25 000.

### Additional Specific Exceptions (applicable to Products Guarantee extension)

This extension does not cover:

- (i) any costs and expenses incurred by the Insured in recalling any product (or any part thereof);
- (ii) liability consequent upon injury and damage;
- (iii) liability for consequential loss of any nature following the failure of the product (or any part thereof) to fulfil its intended function;
- (iv) liability arising from any product (or any part thereof) intended to be installed and installed in, or intended to form part of and forming part of, an aircraft;
- (v) liability arising from any product (or any part thereof) which has not be delivered to customers by the Insured and which is in the custody or control of the Insured;
- (vi) liability happening in the United States of America or Canada arising from any product (or part thereof) sold or supplied by or to the order of the Insured, if such product has, to the Insured's knowledge, been exported to the United States of America or Canada by or on behalf of the Insured unless the United States of America and/or Canada liability extension has been stated in the schedule to be included.
- (vii) any costs and expenses incurred by the Insured as a result of the intervention of any government or public authority.

# UNITED STATES OF AMERICA AND/OR CANADA LIABILITY (if stated in the schedule to be included)

This extension can only be granted in conjunction with the products liability extension of the Public Liability Section.

The Products Liability Extension under the Public Liability section of this policy is amended as follows in respect of Injury or Damage which results from Products exported to the United States of America or Canada:

1. Additional specific exception (v) of the Products Liability extension is deleted.
2. For the purpose of determining the indemnity granted by this section any word or phrase within this section and the policy requiring and capable of legal interpretation shall be interpreted in accordance with the law prevailing within the Republic of South Africa.
3. In respect of the Product (other than raw materials) the Insured shall:
  - (a) implement and maintain a system in terms of which the Product can be clearly identified by batch number or serial number or date stamp or other similar manner.
  - (b) note and maintain a record of the date on which the actual Product was first put into circulation.

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

4. The information mentioned in 3 together with all supporting documentation, shall be made available to the Company or their nominee at any time on request.

The amount payable under this extension, inclusive of any Legal Costs recoverable from the Insured by a claimant or any number of claimants, and all other costs and expenses incurred with the Company's consent, 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.

The Insured shall 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, be responsible for a first amount payable calculated at 10% of the costs and expenses incurred by the Company provided that the aforesaid amount shall never be less than R5 000 and not exceed R25 000.

## Additional specific exceptions (applicable to the United States of America and/ or Canada liability extension)

This extension does not cover liability consequent upon injury or damage caused by or through or in connection with:

- (i) the drunkenness of any person;
- (ii) the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
- (iii) any statute, ordinance or regulation relating to the sale, distribution or use of alcoholic beverages;
- (iv) any business carried on by agents operating on the Insured's behalf in the United States of America and Canada;
- (v) direct or indirect Pollution of any kind nor the cost of removing, nullifying or cleaning up seeping, polluting or contaminating substances.