



THE TRANSPORT CLEAN UP POLICY ENVIRONMENTAL IMPAIRMENT POLLUTION WORDING

1. OPERATIVE CLAUSE

In consideration of the prior payment of the premium by the Insured named in the Schedule and the receipt thereof by the Insurer, the Insurer agrees to indemnify the Insured for the Defined Event which occurred within the Territorial Limits and on or after the retroactive date show in the Schedule and which results in a claim first being made against the Insured during the period of insurance subject to:

- a) and in reliance upon the Insured's accurate and complete representations and statements made to the Insurer or in the Proposal Form;
- b) the limits of indemnity as stated in the Schedule;
- c) the Deductibles as stated in the Schedule;
- d) the Terms, Exclusions and Conditions of this Policy.

It is declared and agreed that the Proposal Form, Schedule, this Policy Wording, any statements made to the Insurer shall all form the basis of this contract of insurance (hereinafter referred to as this Policy). Notwithstanding anything contained to the contrary in this policy it is declared and agreed that nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim.

2. DEFINED EVENTS

2.1. Transportation

The Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident arising from and as a direct consequence of the Transportation of Dangerous Goods including loading and offloading, in or on any Insured Vehicle provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;

- b) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Schedule.

2.2 LDV Solution – (If stated in the Policy Schedule)

This cover is specifically for LDV (vehicle mass under 3500kg) vehicle operators transporting limited quantities of dangerous goods which fall within the exempt quantities as stipulated in SANS10232 as amended in accordance with the National Road Traffic Act 1996 – as amended.

The Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident arising from and as a direct consequence of the Transportation of Dangerous Goods being transported by an LDV (vehicle under mass under 3500kg) including loading and offloading, in or on any Insured Vehicle provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- b) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Schedule
- c) The Compliance Assist benefit is not part of this offering.

2.3 Sub-Contractor Solution – (If stated in the Policy Schedule)

The Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident arising from and as a direct consequence of the Transportation of Dangerous Goods where subcontractors have been appointed by the Insured and the sub-contractors have been specified on the Policy Schedule, including loading and offloading, in or on any Insured Vehicle, provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- b) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule
- c) The Compliance Assist benefit and Driver Solution benefit is not part of this offering.

2.4 Wholesale Solution – (If stated in the Policy Schedule)

Cover in terms of this extension shall only apply where the Insured is not the owner of the vehicles being utilized to transport the dangerous goods or the premises where the product is stored. The Insured will not have custody of the dangerous goods and will utilise specified subcontractors listed in the Policy Schedule.

The Costs and Expenses reasonably incurred by the Insured in his capacity as the Wholesale License Holder and for which the Insured is legally liable to pay in terms of any Law in respect of an Environmental Incident arising from and as a direct consequence of the Transportation of Dangerous Goods by specified sub-contractor listed on the Policy Schedule where the Insured holds a Wholesale license including loading and offloading, in or on any Insured Vehicle provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- b) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Schedule

3. DEFINITIONS

3.1 “Annual Aggregate Limit” means the Insurer’s total liability under this Policy shall not exceed the Annual Aggregate limit shown in the Policy Schedule. This means a limitation of the amount of coverage available to the Insured over a stipulated 12-month policy period.

3.2 “Business” means the business of the Insured as described in the Schedule.

3.3 “Clean-up” means deactivation, removal, neutralisation, nullification and/or remediation of soil, surface water, groundwater, or any other pollution or contamination resulting from an Environmental Incident.

3.4 “Costs and Expenses” means all reasonable costs and expenses, incurred by the Insured with the Insurer’s consent in respect of:

- a) Clean-up;
- b) Rehabilitation;
- c) the investigation and/or monitoring costs, containment and/or maintenance costs and all legal costs associated therewith including reasonable and necessary legal fees, costs and expenses incurred by or on behalf of the Insured, with the prior written consent of the Insurer in the investigation, defence, adjustment, settlement or appeal of any claim or legal proceeding (other than the Insured’s internal expenses).
- d) fees charged by any specialists as designated by the Insurer in the investigation of any incident which may give rise to indemnity in terms of this Policy;
- e) representation at any Inquest or Accident Inquiry in respect of an Environmental Incident, which may form part of the subject of indemnity by this Policy and/or defending any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of indemnity by this Policy;

Provided such expenses:

- i. are specifically mandated by any government or statutory body, agency or entity duly acting under the authority of the Environmental Laws; or
- ii. have actually been incurred by a government or statutory body, agency or entity or by a third party.

but excluding:

- i. the salaries of the Insured's employees; and
 - ii. costs, charges or other expenses incurred by the Insured for goods supplied or services performed by or on behalf of the staff or salaried employees of the Insured, or its parent, subsidiary or affiliate.
- 3.5 **“Decanting”** means to pour or transfer, tap, drain, draw out, draw off or let flow from one container into another suitable container.
- 3.6 **“Dangerous Goods”** means goods, substances, products or waste as specified in the standard specifications in the relevant SANS codes including but not limited to SANS 10228 (“The identification and classification of dangerous substances and goods”) and carried on or within a vehicle that is properly licensed to carry such goods, products or waste excluding asbestos, lead, and creosote.
- 3.7 **“Deductible/First Amount Payable”** means the first amount stated as such in the Schedule for which the Insurer is not liable to indemnify the Insured in respect of each claim (or series of claims arising out of one originating cause).
- 3.8 **“Employee”** means any person employed under a contract of service or apprenticeship with the Insured while working for the Insured in connection with the Business.
- 3.9 **“Environmental Laws”** means any stated, statutory instrument, by law, regulation, guidance of standard having the force of law, or any notice, ruling, judgment, order or instructions of any governmental or statutory body or agency or court concerning health and safety or environmental matters that are applicable to the Environmental Incident.
- 3.10 **“Environmental Incident”** means sudden, unintended and unforeseen discharge, dispersal, migration, including, but not limited to vapours, fumes, alkalis, toxic chemicals, medical waste and waste material into and upon land or any water course or body of water including groundwater, provided such conditions are not naturally present in the environments in the amounts or concentrations discovered.
- 3.11 **“Environmental Impairment”** means damage to the environment in respect of which the Insured is held legally liable under the National Environmental Management Act 107 of 1998 (N.E.M.A.), as amended from time to time.
- 3.12 **“Hazcall24”** means EnviroSure’s 24-hour toll free call centre, who will immediately authorise and mobilise response units to the incident scene. The call centre number is 0860 44 44 11 the alternative and cross border contact number for Hazcall24 is +27 604 402 810.
- 3.13 **“Hazchem Certificate”** means drivers of the Insured vehicle need to complete an accredited HAZCHEM training course that is in accordance with the National Road Traffic Act 93/1996, as amended, at a recognised Transport Education and Training Authority (TETA). Drivers need to be in possession of a valid HAZCHEM certificate within the expiry date, serving as a driving permit that is in accordance with the National Road Traffic Act.
- 3.14 **“Inception Date”** means the first date stated in the Schedule to the Policy.
- 3.15 **“Insured”** means the person or persons named in the Schedule and or their duly authorised and properly trained employees.

- 3.16 “Insured Vehicle”** means a self-propelled land motor vehicle, trailer or semitrailer (including any machinery or apparatus attached thereto) licensed to travel on public roads, owned, hired, leased or in the control of the Insured and as stated on the Schedule.
- 3.17 “Law”** means any environmental law, national or local statute, statutory instrument, proclamation by-law, regulation or subordinate legislation with which the Insured is legally required to comply in respect of an Environmental Incident.
- 3.18 “Microbial Matter”** means fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including but not limited to, mould, mildew and viruses, whether or not such Microbial Matter is living.
- 3.19 “Period of Insurance”** means the period set out in the Schedule, or any shorter period arising as a result of cancellation of this Policy.
- 3.20 “Pollutants”** means solid, liquid, gaseous or thermal contaminants or irritants, including vapours, smell, odours, humidity, fumes, smoke, soot or other airborne particulates, acids, alkalis, chemicals, effluent or other noxious substances including medical, infectious and pathological waste.
- 3.22 “Remediation Costs”** mean reasonable and necessary expenses for the investigation, removal and restoration of damage in complying with primary, compensatory and complimentary remediation:
- a) To the extent required by Environmental Laws; or,
 - b) That have been actually incurred by any Governmental or Statutory Body or agency
- 3.23 “Restoration Costs”** means reasonable and necessary costs incurred by the Insured with the Insurer’s written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property to substantially the same condition it was prior to it being damaged during work performed in the course of incurring Clean-Up costs. Such Restoration Costs shall be the cost of replacing or reinstating on the same site property of the same kind or type but not superior to or more extensive than the property when new provided that the Insurer’s limit of indemnity shall not exceed R50 000 per Environmental Incident.
- 3.24 “Rehabilitation”** means the rehabilitation of Environmental Impairment arising from the occurrence of an Environmental Incident.
- 3.25 “Schedule”** means the Schedule to this Policy.
- 3.26 “Territorial Limits”** means Africa, south of the Equator.
- 3.27 “Transportation”** means the conveyance of the Dangerous Goods and/or any other goods that may cause an Environmental Incident by an Insured Vehicle from the place where they are first received by the Insured to their final destination, and includes the handling, loading and offloading by the Insured onto or from the Insured Vehicle that is properly licensed to convey such goods.
- 3.28 “Wholesale License Holder”** means any person or business that purchases and sells prescribed petroleum products / hazardous goods in bulk (1500 litres or more, per

transaction or petroleum products / hazardous goods) from or to a licensed manufacturer, from or to a licensed retailers or also sells prescribed petroleum products / hazardous goods to end consumer for own use in accordance with Section 2A b) of The Petroleum Product Amendment Act, 2003 (Act No 58 of 2003).

4. GENERAL CONDITIONS

4.1 Entire Policy

This Policy and the Schedule/s shall 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 the Schedule/s shall bear such specific meaning wherever it may appear. These general conditions apply to the entire Policy.

4.2 Limit of Indemnity

4.2.1 Insurer's total liability to pay damages and the claimant's costs and expenses shall not exceed the sum stated in the Schedule under Limit of Indemnity for each section in respect of any one of the current claims as stated in each section of the Policy and, where stated, in the Annual Aggregate. The limits of indemnity are in excess of the deductible.

4.2.2 Should any limit of indemnity in respect of any section of the policy be altered during the period of insurance, then the previous limit of indemnity shall apply to all claims made or deemed to have been made or arising out of any claims prior to the date such alteration.

4.2.3 Insurer's liability to pay damages, costs or expenses to Municipalities or any Governmental or Statutory Body or agency shall be limited to the sum of R 100 000 for investigation any one incident including the reasonable and necessary expenses for the investigation, removal and remediation and associated monitoring incurred by the Municipal and Governmental or Statutory Body or agency. The Insured accepts liability for any amount claimed by the Municipality, Governmental or Statutory Body or agency in excess of the aforementioned amount. Costs need to be as a direct result of an accident spillage or release into the environment, for which the Insured is liable for.

4.3 Indemnity to Others

The Indemnity granted by this policy shall extend at the Insured's option to:

4.3.1. Officials of the Insured in their business capacity arising out of the conduct of the Business;

4.3.2. The personal representatives of any person indemnified by reason of this Clause 4 in respect of liability incurred by such person;

4.4 Change of Risk

The Insured must inform the Insurer if there are any changes to the circumstances affecting any subject matter Insured by this Policy as soon as practicable and until accepted in writing by the Insurer no increased liability will attach to the Insurer and the Insurer reserves the right to withdraw the cover provided under this Policy with effect from the date on which the change in the circumstances occurred.

4.5 Prevention of Loss

- a) The Insured shall at all times take all reasonable precautions to prevent any circumstance, matter or thing which may give rise to a claim under this Policy and further shall not do, suffer or permit anything whereby the risk of the Insurer shall be increased.
- b) The Insured shall give notice to the Insurer as soon as reasonably practicable of any circumstance, matter or thing which occurred subsequent to the inception date and which the Insured may reasonably be expected to suppose may give rise to claim against the Insurer. Such notice having been given, any claim arising out of any such circumstance, matter or thing shall be deemed to have been made during the Period of Insurance.
- c) The Insured shall take all reasonable steps to properly maintain any Insured Vehicle in its fleet.
- d) Should investigations after an environmental incident reveal that any aspect of the vehicle was not in a fully operational condition or contributed to the cause of the incident for which indemnity is claimed, the insurer is entitled to reject the claim on the basis of the vehicle not being in a road worthy state.
- e) The Insured has a duty to have such insured vehicle assessed by competent private assessors at their own expense.
- f) The Insured shall notify the insurer of all actions and measures taken in respect of vehicles and to supply the insurer with assessment reports and road worthy certificates.
- g) Vehicles are to be in compliance with current legislation regard road worthiness and must have valid road worthiness certificate (COR) issued in terms of the provisions of the Road Traffic Act of 93 of 1996 as amended and/or by any other appropriate authority in accordance with current legislation of the territory in which such vehicles is operating.

4.6 Premiums

The premium is payable annually, quarterly, half yearly or monthly as stated in the Schedule, and payable by the Insured to the Insurer strictly in advance, on or before the Inception Date or renewal date for each period (the due date), failing which, this Policy shall be cancelled and all cover under this Policy shall cease as from midnight on the last day of the period for which the Insurer received payment.

In the event of a policy being cancelled due to non-payment, the Insurer shall not be liable for any Defined Event that may have occurred during the period of non-payment of premium. The Insurer will have sole discretion in the reinstatement of the Policy and/or acceptance of the claim arising from the Defined Event and if so accepted, will require the Insured to pay all outstanding premiums.

The Insurer is not obliged to accept premium tendered after cancellation due to non-payment and will not be liable for any claim arising from a Defined Event occurring during the period of non-payment.

4.7 Adjustment to Premium

The Insurer reserves the right to adjust premiums mid-term provided that 31 days' notice of the intention to do so has been afforded to the Insured. Any such premium adjustment shall be effected after midnight on the day on which such notice expires. In the event of a claim becoming payable, the Insurer reserves the right to off-set any outstanding premium payable for the Period of Insurance against claims payable.

4.8 Deductible

The Insurer shall not be liable in respect of any claim under this Policy unless and until the Insured has paid the Deductible set out in the Schedule. The amount payable under this Policy for each and every loss, damage or liability shall be reduced by the amount of the Deductible.

4.9 Jurisdiction and Governing Law

This Policy shall be governed and interpreted in accordance with the laws of the Republic of South Africa. Any dispute or difference arising under or in respect of this Policy shall be subject to and determined within the explicit jurisdiction of the courts of the Republic of South Africa.

4.10 Address

Any summons, notice, or process to be served upon the Insurer for the purpose of instituting any legal proceedings against them in connection with this insurance may be served upon EnviroSure Underwriting Managers (Pty) Ltd.

EnviroSure Underwriting Managers (Pty) Ltd

580 Umbilo Road
Durban
4001

And all process, notices and documents shall be served upon the Insured at its last known address recorded in the Schedule.

4.11 Claims

Upon the occurrence of any event giving rise to a claim in terms of this Policy, the Insured shall:

- a) give notice to the Insurer immediately and within 24 (twenty-four) hours of the Environmental Incident taking place. Such notice having been given, any claim arising out of any such circumstance matter or thing shall be deemed to have been made during the Period of Insurance;
- b) give notice to the Insurer regardless of whether the claim would exceed the Deductible amount stated in the Schedule, following an Environmental Incident;
- c) immediately call the Hazcall24 call centre on 0860 44 44 11 / +2760 440 2810 for assistance, who in return will appoint an Insurer approved spillage Clean-up specialist; Failing to do so may result in an additional Deductible payable of 10% of the claim payable;
- d) as soon as reasonably practicable after the event, but not for a period exceeding 7 (seven) calendar days, submit to the Insurer full details in writing of any claim;
- e) give the Insurer such proofs, information and sworn declarations as the Insurer may require within 7 (seven) calendar days of issue of the claim number.
- f) furnish the Insurer with all technical reports, service and or maintenance reports, proof of repairs following a maintenance failure, laboratory data, field notes or any other documents generated by persons hired by the Insured to investigate the claim and all expert reports, investigations and data collected by experts retained by the Insured,

- whether or not the Insured intends to use the material for any purpose;
- g) furnish the Insurer with any other information developed or discovered by the Insured pertaining to the claim, whether or not deemed by the Insured to be relevant to the claim;
 - h) furnish the Insurer with all demands, summons, notices or other legal process or papers filed with a court of law, administrative agency or investigative body which may be issued or commenced against the Insured in connection with the event giving rise to the claim; and
 - i) all and any other information and documentation that the Insurer may require.
 - j) The Insurer shall not pay nor be liable for any claim: -
 - i. unless the Insured complies with the above conditions; and
 - ii. which is made after the expiry or cancellation of the policy.
 - k) No Insured shall admit or assume any liability, enter into any settlement agreement, consent to any judgment or incur any defence costs without the prior written consent of the Insurer. Only those settlements, judgments, and defence costs consented to by the Insurer and judgments resulting from claims defended in accordance with this Policy, shall be recoverable under this Policy.
 - l) The Insurer's consent shall not be unreasonably withheld provided that the Insurer shall be entitled to exercise all of its rights in this Policy.
 - m) The Insurer may make any settlement of any claim or loss subject to such Insured's written consent. If any Insured withholds consent to such settlement, the Insurer's liability for all loss on account for such claim or loss shall not exceed the amount for which the Insurer could have settled such claim or loss incurred as at the date such settlement was first proposed in writing by the Insurer, less the applicable Deductible.
 - n) If the Insurer rejects any claim, or disputes the quantum of a claim, the Insured has ninety (90) days to make representation to the Insurer, challenging this decision. If the Insurer persist in rejecting the claim or disputing the quantum, the Insured has to have summons issued and served on the Insurer, within six (6) months (180 days) after the expiry of the ninety (90) days period; failing which, the Insured will forfeit his claim and the Insurer will have no further claim in terms of this Policy.

4.12 Insurer's rights after an event

- a) On the happening of any event in respect of which a claim is or may be made under this Policy 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 conditions of this Policy, take over and conduct in the name of the Insured the defence or settlement of any claim and prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim. No admission, statement, offer, promise, payment or indemnity shall be made by the Insured without prior written consent of the Insurer.
- b) The Insured shall, at the expense of the Insurer, do and permit to be done all such things as may be necessary or reasonably required by the Insurer for the purpose of enforcing any rights to which the Insurer shall be or would become subrogated upon indemnification of the Insured whether such things shall be required before or after such indemnification.
- c) The Insurer may in the case of any event pay to the Insured the Limit of Indemnity provided in respect of such event or any lesser sum for which the claim or claims arising from such event can be settled and the Insured shall thereafter not be under

further liability in respect of such event.

- d) The Insurer reserves the right to make a full recovery against the Insured for the costs incurred by authorising the claim in good faith, should the claim be rejected in terms of the Policy.

4.13 Other Insurance

Where other insurance may be available for claims and loss covered under this Policy, the Insured shall promptly upon request of the Insurer provide the Insurer with copies of all such policies. If other valid or collectable insurance, self-insured programme or any equivalent policy irrespective of the amount thereof is available to the Insured for claims or loss covered by this Policy, the Insurer's obligations are limited as follows:

- a) This Policy is primary, and the Insurer's obligations are not reflected unless any of the other insurance is also primary. In that case, the Insurer will share with all such insurance by the method described in paragraph b.) below;
- b) If all of the other insurance permits contribution by equal shares, the Insurer will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Insurer will contribute by limits. Under this method, each insurers share is based on the ratio of its applicable limit of insurance to the total of applicable limits of insurance of all insurers.

4.14 Observance of Policy Terms

The Insurer will only provide the insurance offered under this Policy if:

- a) any person claiming indemnity has complied with the Terms, Exclusions and Conditions thereof;
- b) the information given in the proposal form, application and declaration is to the best of the Insured's knowledge and belief complete and correct.

4.15 Misrepresentation and Non-Disclosure

Misrepresentation, mis-description or non-disclosure of any material particular shall render this Policy voidable at the sole discretion of the Insurer.

4.16 Fraud

If any claim under this Policy is in any respect:

- a) fraudulent; or
- b) if any fraudulent means or devices are used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy; or
- c) if any loss, destruction, damage or liability is occasioned by any wilful act on the part of the Insured or with the Insured's connivance; or
- d) if material information in connection with the claim provided by the Insured is not true, then all benefits under this Policy shall be forfeited and the Insured shall be obliged to refund to the Insurer any amount paid to the Insured or any other person prior to the discovery of the fraudulent event in respect of the specific claim. The Insurer shall not be obliged to pay any claim lodged after such fraudulent event.

4.17 Fraudulent Claims

If the Insured has given notice of claims under this Policy knowing such notice to be false or fraudulent as regard to amounts otherwise, such claims or loss shall be excluded from cover under the Policy and the Insurer shall have the right at its sole and absolute discretion to avoid its obligation or void the Policy in its entirety and in such case, all cover for loss and claims under the Policy shall be forfeited and all premium redeemed fully earned shall be refundable.

4.18 Cancellation

This Policy or any section thereof may be cancelled immediately by the Insured at any time or by the Insurer on giving 31 days' notice of cancellation in writing to the Insured at the address stated in the Schedule.

If the Insured gives notice of cancellation the Insurer shall refund the pro-rata proportion of the premium for the unexpired Period of Insurance.

If this Policy is cancelled the onus shall be on the Insured to immediately cancel any automatic means of payment that may have been used to pay the premium prior to cancellation.

4.19 Subrogation

In the event of any payment under this Policy, the Insurer shall be subrogated to all the Insured's rights of recovery therefore against any person or organisation and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice the Insurer's rights of subrogation. Any recovery in excess of the Insurer's total payment shall be restored to the Insured less the costs of such recovery.

4.20 Changes

This Policy can be changed only by written endorsement that the Insurer makes to the Policy.

4.21 Access to Information

The Insured agrees to provide the Insurer with access to any information produced and / or discovered by the Insured relating to Claims or Loss covered under this Policy, whether or not deemed by the Insured to be relevant to such loss.

4.22 Action against the Insured

No action shall lie against the Insurer, unless as a condition precedent thereto there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurer. Any person or organisation or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organisation shall have any

right under this Policy to join the Insurer as a party to any action against the Insured to determine the Insured's liability, nor shall the Insurer be impleaded by the Insured or his/her legal representative.

4.23 Cross Liabilities

When the Insured comprises more than one legal entity then each legal entity indemnified shall be indemnified separately in respect of claims made against any of them as if a separate policy has been issued to each and the Insurer waives all rights of subrogation or action it may have or acquire arising from this special extension provided that the Insurer's liability in aggregate shall not exceed the limit of indemnity stated in the schedule for any one Defined Event;

4.24 Special Provision

Wherever this Policy provides that notice be given to the insurers, such notice shall be given to: -

Envirosure Underwriting Managers (Pty) Ltd

580 Umbilo Road
Durban
4001

Telephone No: (031) 205 4918
Email: Sjanine@envirosure.co.za

P O Box 16055
Brighton Beach Durban
4036

4.25 Separation of Insureds

Misrepresentation, concealment, breach of any term or condition, or violation of any duty under this Policy by one named Insured shall not prejudice the interest of coverage for another named Insured under this Policy.

4.26 Assignment

This Policy may not be assigned without the Insurer's prior written consent.

5. EXTENSIONS

5.1 Side Tank Solution – Petrol/Diesel Tank of the Vehicle (If stated in the Policy Schedule)

The Clean Up costs reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of any Law, in respect of an Environmental Incident arising from a direct consequence of the leakage or loss of fuel from the vehicle's own fuel tank (which is used to propel the vehicle) and not in respect the load of any Insured Vehicle.

Side tank cover will also be inclusive of a fuel reimbursement voucher to the maximum value of R5000 (five thousand rand) per claim subject to 1 claim per every 5 vehicles on cover on the Policy Schedule within a 12 month period of insurance. Envirosure reserves the right to

stipulate the manner in which the reimbursement is issued. Reimbursements of fuel costs are limited to *bona fide*/valid side tank claims.

5.2 Excess Solution RSA– (If stated in the Policy Schedule)

In return for an additional premium as stated in the Policy Schedule, this Policy is extended to cover the Deductible payable by the Insured for an incident occurring within the Republic of South Africa subject to the following:

- a) Cover in respect of minor leakages, drips and spillages from the vehicle, load and/or mechanical enhancements to the vehicle such as hydraulic pumps and lifts will be covered under this extension, provided that the claim does not exceed R50 000 per incident and forms part of the Annual Aggregate limit listed on the Policy Schedule.
- b) Cover will extend to include load transfers related to claim prevention and must be authorized by the insurer.
- c) Cover will only be applicable for claims occurring within South African borders.

5.3 Excess Solution Cross Border – (If stated in the Policy Schedule)

In return for an additional premium as stated in the Schedule, the Policy is extended to cover the cross border Deductible payable by the Insured. Cover in respect of 5.2 a) and b) above is not covered in terms of this Cross Border Excess extension.

5.4 Contingency Solution – (If stated in the Policy Schedule)

It is declared and agreed that the Policy is extended to indemnify any contractor or sub-contractor of the Insured for an Environmental Incident arising in the course of the Business of the Insured and caused by or through or in connection with any vehicle not the property of or provided by the Insured provided that:

- a) cover is limited to incidents where such contractor or sub-contractors underlying environmental insurance policy has not responded as a result of the non-payment of premium.
- b) such contractor or sub-contractor shall observe, fulfil and be subject to the Terms, Exclusions and Conditions of this Policy as though they were the Insured
- c) Obtained written confirmation of details of the subcontractor's own insurance cover, before any load transportation is subcontracted to that subcontractor.
- d) Created a binding contractual liability on the part of the subcontractor for any loss or damage to the goods whilst under the subcontractors control, and that this contractual liability has been clearly confirmed in writing between the transport broker and the subcontractor before any load transportation is subcontracted to that subcontractor.

5.5 Harbour Solution – (If stated in the Policy Schedule)

Cover for spillages as a direct result of the loading / off-loading activities from a vessel to the Insured vehicle whilst in the harbour / port. Cover will extend to clean up costs only in accordance with the warranties and limits set out in the Schedule.

6. EXCLUSIONS

The Insurer shall not be liable to indemnify the Insured for:

6.1 Non-Compliance

Any claim that arises from any Environmental Incident, directly or indirectly caused by the deliberate instructions of the Insured, or any liability for loss, injury or damage arising from the Insured's intentional, wilful or deliberate non-compliance with any laws, statutory instruments, by-laws, regulations, guidelines or standards having the force of law and which apply to such Environmental Incident and/or the handling, storage or dealing, in any manner, with Dangerous Goods.

6.2 Material Change in Use

A material change of use arising from material change in Business during the policy period. A change in use is considered material if amongst other things:

- a) It results in more stringent remediation standards than those imposed on the Insured as at the Inception Date;
- b) Such information would have materially altered the terms and conditions applied by the Insurer prior to the Inception Date.
- c) A change in the declared commodities transported as per information provided by the Insured and listed on the Policy Schedule.

6.3 Prior Knowledge

Any claim arising from an Environmental Incident existing prior to the Inception Date of this Policy and not disclosed in the application for this Policy, if any, and/or which the Insured knew or could reasonably have been expected to know, that such Environmental Incident could give rise to a claim under this Policy.

6.4 Vehicles

An Environmental Incident arising from any accident, loss, damage or liability to any Insured Vehicle:

- a) while the Insured Vehicle is being used in contravention of the provisions of the National Road Traffic Act 93 of 1996 as amended, the National Road Traffic Regulations 2000 and/or any other applicable or subsequent legislation and/or regulations providing for the use of motor vehicles on a public roadway;
- b) incurred while the Insured Vehicle is being driven by the Insured or any Employee of the Insured:
 - i. while under the influence of intoxicating liquor or drugs (unless administered by or prescribed by and taken in accordance with the instructions of a member of the medical profession other than himself) or while not licensed to drive such vehicle;
 - ii. or any other person with the general consent of the Insured who to the Insured's knowledge is under the influence of intoxicating liquor or drugs (unless administered by or prescribed by and taken in accordance with the instructions of a member of the medical profession other than himself) or is not licensed to drive

such Insured Vehicle or the vehicle specifications or the driver thereof does not comply with the provisions of the National Road Traffic Act 193 of 1996 as amended, the National Road Traffic Regulations 2000 and/or any other applicable or subsequent legislation and/or regulations providing for the use of motor vehicles on a public roadway; provided that any driver shall be deemed to be licensed to drive the Insured Vehicle if he is complying with the licensing laws relating to any of the territories referred to in the Territorial Limits or if a non-compliance with any licensing law is solely because of a failure to renew any licence subject to periodic renewal or if a licence is not required by law or while such driver is learning to drive and is complying with the laws relating to learner drivers.

- c) while the Insured Vehicle is used in any professional or organised racing or demolition contest or stunting activity, or while practicing for such contest or activity or Insured Vehicles being prepared for such a contest or activity.

6.5 Non-Conveyance – At Rest Cargo

Any claim arising from a pollution condition or environmental impairment that commences:

- a) after the cargo is considered to have reached its final destination; or,
- b) while the cargo is in storage having been off loaded from the vehicle that was transporting it; or
- c) while the cargo is unsecured and at rest (including but not limited to any rests or stops) in excess of 72 hours in total at any one time; or
- d) is no longer in the control of the Insured or the entity conducting the transportation of the cargo on the Insured's behalf or has been relinquished to a third party whom for the purpose of this policy, shall mean any person other than the Insured.

6.6 Historic Contamination

Any claim arising from an Environmental Incident to the receiving environment, where the Environmental Incident occurred or commenced prior to the date of inception of this policy.

6.7 Pre-existing Contamination

Any claim arising from a Pre-existing contamination incident prior to the occurrence of the Environmental Incident.

6.8 Gradual Pollution

Any claim directly or indirectly arising from seepage, pollution or contamination provided that this exclusion shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended and unforeseen Environmental Incident.

6.9 Reasonable Precautions

Any Environmental Incident arising from the gross negligence or the deliberate, conscious and intentional disregard by the Insured's technical or administrative management of the need to take reasonable precautions to prevent any event of circumstance which may give rise to a claim.

6.10 Wrongful Delivery

Any claim resulting from Injury, Damage or Environmental Impairment arising out of wrongful delivery of goods, products or wastes into an incorrect receptacle, to the wrong address or incorrect goods or products delivered.

6.11 Expected or Intended Loss

Any Environmental Incident that is expected or intended from the standpoint of the Insured, as well as the failure of the Insured to:

- a) remedy any defect or danger or take such additional precautions as may be required as soon as possible after the discovery of an Environmental Incident;
- b) take reasonable steps to use, maintain and upgrade their facility operations;

6.12 Wilful Actions

Any Environmental Incident that is as a result of the wilful and intended actions of the insured.

6.13 Wear and Tear

Any Environmental Incident arising, originating or resulting from wear and tear or gradual maintenance deterioration of the vehicle or tanker/trailer but not limited to the equipment's parts or components as a result of rust, oxidization, corrosion, decay or deterioration over time.

6.14 Costs of the Halting of Business Operations

Any costs or loss of revenue resulting from the halting of the business operations of the Insured during the period of Rehabilitation, if required after the occurrence of an Environmental Incident.

6.15 Property Damage Exclusions

Any physical damage or destruction of any tangible property owned, occupied, leased or third-party property, including any result in loss of use and diminution in value of the property other than as provided for under Restoration Costs.

6.16 On-site Exclusion

Clean-Up Costs on, in or under property owned, leased or rented by the Insured or in the Insured's care, custody or control unless as a direct result of spillage from vehicles listed on the Policy Schedule during loading and offloading.

6.17 Consequential Loss

Any other consequential loss not specifically insured in terms of the Defined Events.

6.18 Bodily Injury

Any bodily injury, death, illness or disease of or to any person.

6.19 Injury, Damage, Claims, Expenses or Clean Up costs;

- a) Where the Insured is entitled to indemnity under any other insurance policy;
- b) Whilst the State or other Governmental Authority has accepted responsibility;
- c) Where the Insured Vehicles are driven by or in the control of any person not in possession of a valid, legitimate and suitable licence and/or driving permit as may be required by law for that type of vehicle and/or load at that time of loss;
- d) Where the Insured Vehicle is carrying any load, the weight or volume of which is in excess of that which is legally permissible for a vehicle of that type in accordance with current legislation at the time of loss;
- e) Where the cargo is being transported and or handled outside of the legislative requirements relating to transportation of such cargo;
- f) Where the Insured Vehicle is not in compliance with current legislation regarding road worthiness or does not have a valid certificate of fitness issued by an appropriate authority in accordance with current legislation of the territory in which the Insured Vehicle is operating.

6.20 Harbour and Ports Off-loading and On-Loading

Spillages as a direct result from loading and off- loading in a harbour or port not originating from a land surface are excluded from cover unless stated to be included on the Policy Schedule.

6.21 Sub-contractors – specifically excluded unless included on the Policy Schedule.

6.22 Fines & Penalties

Any fines, penalties, punitive, multiple, vindictive or exemplary damages

6.23 Contractual Liability

Any claim arising from liability assumed under any contractual agreement, unless such liability would have attached to the Insured notwithstanding such contractual agreement or as specifically insured in terms of this Policy.

6.24 Territorial Limits

Any claim that arises outside the Territorial Limits as defined.

6.25 Insured vs. Insured

Any Insured against any other person or entity who is also an Insured under this Policy.

6.26 Employer Liability

Any claim by:

- a) an Employee of the Insured in respect of injury to and/or loss of life of the Employee, arising out of and in the course of employment by the Insured; or
- b) the spouse, child, parent, brother or sister of that employee as a consequence of paragraph a.) above; or

- c) any fellow Employee of the Insured arising out of and in the course of the fellow Employee's employment.

6.27 Microbial Matter

Any claim alleged to be caused by Microbial Matter unless such has been used in the Clean Up and Rehabilitation process.

6.28 Sasria/Nasria

Loss of or damage directly related to or caused by:

- a) 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;
- b) 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;
- c) any riot, strike, public disorder, civil commotion, labour disturbances or lockouts or any act or activity which is calculated or directed to bring about a riot, strike or public disorder;
- d) any attempt to perform any act referred to in clause a), b) or c) above;
- e) 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), b), c) or d) above.

6.29 Terrorism

Any liability, loss, damage or expense of whatsoever nature directly or indirectly caused by, resulting from, happening through or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in sequence to the loss, damage or expense.

For the purpose of this exclusion, terrorism means an act of violence or an act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

In any action suit or other proceedings where the Insurer allege that by reason of this definition a loss, damage or expense is not covered by this Policy, the burden of proving that such loss, damage or expense is covered shall be upon the Insured.

6.30 War

Any loss or damage occasioned by or through or in consequence directly or indirectly of any of the following occurrences namely:

- a) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, civil commotion, mutiny, military or popular rising, insurrection, rebellion, revolution, military or usurped power;
- b) Any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of any government *de jure* or *de facto* or to the influencing of it by terrorism or violence;
- c) Martial law or state of siege or any events or causes which determine the proclamation or maintenance of martial law or state of siege;
- d) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clauses a), b) and c) are excluded from the protection of this Policy.

If the Insurer alleges that, by reason of a), b), c) or d) of this exclusion, loss or damage is not covered by this Policy, the burden of proving the contrary shall rest on the Insured.

6.31 Nuclear

Any legal liability of whatsoever nature, directly or indirectly; caused by or as a consequence of the use of nuclear weapons or material, or by ionizing radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.

6.32 Economic and Trade Sanctions

If coverage for a **claim** under this policy is in violation of any economic or trade sanctions by the United States of America, the United Nations (UN), the European Union (EU)/ European Economic Area (EEA) or any other applicable national economic or trade sanction law or regulations, then coverage for that **claim** will be null and void.

Underwritten by Centriq Insurance Company Limited

Registration number: 1998/007558/06

FSP: 3417

