



## **THE SITE 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 Policy 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 shown in the Policy Schedule and which results in a claim first being made against the Insured during the period of insurance subject to:

- a) 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 Proposal Schedule;
- c) the Deductibles as stated in the Policy Schedule;
- d) the Terms, Exclusions and Conditions of this Policy.

It is declared and agreed that the Proposal Form, Policy Schedule, this Policy Wording and 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 On-Site Environmental Impairment – (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 spillage or leakage of any Dangerous Goods or Pollutants stored or used on a premises, as listed in the Policy Schedule, but excluding Underground Storage Tanks. This applies to the storage of Dangerous Goods and Pollutants in Above Ground Storage Tanks, Warehouses and other means of on-site storage, provided that such storage meets the requirements as contained in the applicable SANS Codes, as well as the loading and off-loading of such products on the premises listed in the Policy Schedule.

#### **2.2 Underground Storage Tanks – (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 spillage or leakage of any Dangerous Goods or Pollutants arising from storage in any Underground Storage Tanks, or the associated underground piping reticulation network, on any premises, as listed in the Policy Schedule.

### 3. DEFINITIONS

- 3.1 “Abandoned Property”** means any risk address owned or leased by the Insured and specified in the Policy schedule, which has been abandoned, sold, given away or has had the operational control of the property relinquished by the Insured.
- 3.2 “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.
- 3.3 “Above Ground Storage Tank”** means any one or a combination of tanks or vessels for the storage of dangerous goods or pollutants that are located totally or substantially (>90%) above the surface of the ground. This includes the vessels themselves and the associated reticulation network, provided that such Above Ground Storage Tanks are eminently suitable for the purpose of storage of the Pollutants/Dangerous Goods contained therein and meets with the requirements of applicable SANS Code.
- 3.4 “Baseline Condition”** means the environmental condition found immediately prior to an Environmental Incident, including impact to natural resources and services, which would have existed in the absence of such an Environmental Incident based upon the best available information.
- 3.5 “Business”** means the business of the Insured as described in the Policy Schedule.
- 3.6 “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.
- 3.7 “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.

- 3.8 “Covered Business Activities”** mean business activities undertaken by or on behalf of the Insured at third party locations.
- 3.9 “Decanting”** means to pour or transfer, tap, drain, draw out, draw off or let flow from one container into another suitable container.
- 3.10 “Dangerous Goods”** means goods, substances, products or waste as specified in the standard specifications in the relevant SANS codes but including not limited to SANS 10263 (“Warehousing of Dangerous Goods”), SANS 10131 (“Above-ground Storage tanks”), SANS 10089 (“The Petroleum Industry Parts 1 to 3 and SANS 10234 Globally Harmonised System of classification and labelling of chemicals”) that are being stored or used as goods products or waste, excluding asbestos, lead, and creosote.
- 3.11 “Deductible/First Amount Payable”** means the first amount stated as such in the Policy 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).
- 3.12 “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.
- 3.13 “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.
- 3.14 “Environmental Incident”** means the 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.
- 3.15 “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.
- 3.16 “Inception Date”** means the first date stated in the Policy Schedule to the Policy.
- 3.17 “Insured”** means the person or persons named in the Policy Schedule and or their duly authorised and properly trained employees.
- 3.18 “Inefficacy”** means the failure or the whole of any part of any product to fulfil its purpose or to perform its function.
- 3.19 “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.
- 3.20 “Loading and Off-loading”** as it applies to dangerous and hazardous goods means removal of the said goods or pollutants from one containment vessel into another within the premises listed in the Policy Schedule and shall include the conveyance of the Dangerous Goods or Pollutants within pipework associated with Above Ground Storage Tanks.
- 3.21 “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.

- 3.22 “Period of Insurance”** means the period set out in the Policy Schedule, or any shorter period arising as a result of cancellation of this Policy.
- 3.23 “Policy Schedule”** means the Policy Schedule attached to and forming part of this Policy.
- 3.24 “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.
- 3.25 “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.
- 3.26 “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.
- 3.27 “Rehabilitation”** means the rehabilitation of Environmental Impairment arising from the occurrence of an Environmental Incident.
- 3.28 “Territorial Limits”** means Africa, south of the Equator.
- 3.29 “Underground Storage Tanks”** means any one or a combination of tanks or vessels that have 10% or more of their volume below the surface of the ground in which they are installed and includes the tanks or vessels themselves, connected underground piping, underground ancillary equipment and containment system and meets with the requirements of the applicable SANS Code.
- 3.30 “Warehouse”** means any building, structure or area fully under cover, and properly ventilated, owned or operated by the Insured and designed, intended or used for, or to facilitate, the storage, loading, off-loading and decanting of Dangerous Goods or Pollutants provided that such Warehouse shall be suitable for the purposes of storage, loading, off-loading or decanting of such Dangerous Goods or potential Pollutants and meets with the requirements of the applicable SANS Code.
- 3.31 “Workmanship”** means the physical act of treating, installing, servicing, altering, repairing or working on any tangible property.

## **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 Policy 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 any one incident in respect of the reasonable and necessary expenses incurred by the Municipal and Governmental or Statutory Body or agency for the investigation, removal and remediation and associated monitoring of the Environmental Incident. 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 Environmental Incident 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 4.3 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.

## **4.6 Premiums**

The premium is payable annually, quarterly, half yearly or monthly as stated in the Policy 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 Policy 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 Policy 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 Policy Schedule, following an Environmental Incident;

- c) immediately call the Hazcall24 call centre on 0860 44 44 11 / +27 60 440 2810 for assistance, who in return will appoint an Insurer approved spillage Clean-up specialist, irrespective of the Deductible/First Amounts payable applicable; Failing to do so may result in an additional Deductible payable of 10% of the claim;
- 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 proof, 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) furnish 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 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 Policy 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 Inspection and Audit**

The Insurer shall have the right but not the duty to inspect any property under the ownership or control of or leased to the Insured for the purposes of the Insured Business and to take samples if deemed necessary, the resultant findings of which will not imply that such a property is safe or in compliance with any law.

#### **4.23 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.

#### **4.24 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 Policy Schedule for any one Defined Event;

#### **4.25 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 17104  
Congella Kwa-Zulu Natal  
4013

#### **4.26 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.

#### **4.27 Assignment**

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

### **5. EXTENSIONS**

#### **5.1 Excess Solution – (If stated in the Policy Schedule)**

In return for an additional premium as stated in the Policy Schedule, the policy is extended to cover the Deductible payable by the Insured.

#### **5.2 Riot & Strike Solution – (If stated in the Policy Schedule)**

This Riot & Strike Solution offering is in no way affiliated to Sasria, nor Nasria nor does it follow the Sasria/Nasria policy wording. The terms and conditions of the Riot & Strike Solution is detailed below.

In return for an additional premium as stated in the Policy Schedule, this Policy is extended to cover the insured against environmental impairment caused by a release of environmental contaminates from a property listed in the Policy Schedule directly related to or caused by:

- a) Any Riot, Strike or any act or activity which is calculated or directed to bring about a Riot, Strike or Civil Commotion;
- b) Any attempt to perform any act referred to in clause a) above;
- c) 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) or b). above;

provided that this extension does not cover:

- i. claims occurring outside of South Africa.
- ii. Public Disorder.

For the purpose of this extension the following terms shall be defined as:

- i. "Civil Commotion" means an outbreak of lawlessness of a fairly considerable scale amongst the citizens of a state which is something between a Riot and total insurrection and is deemed to include labour disturbances or Lockouts.
- ii. "Lockouts" means a situation when an employer refuses to allow workers into their place of work until they agree to various conditions.
- iii. "Public Disorder" means an outbreak of lawlessness of a fairly considerable scale amongst citizens of a state, and is something of a greater degree than riot and of a lesser degree than anarchy.
- iv. "Riot" means a violent disturbance of the peace involving three or more persons which includes protests in furtherance of a political aim, objective or cause.
- v. "Strike" means a period of time when an organized group of employees of a company stops working because of a disagreement over pay or working conditions.

## **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 Risk**

a material change in risk due to a material change in the 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 stored as per information provided by the Insured and listed on the Policy Schedule.

### **6.3 Pre-existing or Known Pollution Conditions**

any claim arising from an Environmental Incident to the receiving environment, where:

- a) the pollution conditions occurred or commenced prior to the date of inception of this policy;
- b) the Insured was aware of the pollution condition, or of any circumstance or event which may give rise to a claim against such a condition, prior to the date of inception of the policy;
- c) pollution conditions are present that should have been reported to the authorities or any area of land identified as an investigation area or registered as contaminated land under the terms of the National Environmental Management: Waste Act (Act 59 of 2008).

### **6.4 Origin of Environmental Impairment**

any claim arising from an Environmental Incident occurring under the On-site Environmental Impairment or Underground Storage Tank Risk policies, where the initial point of product release does not occur within the property boundary of a premises, as defined in the Policy Schedule.

### **6.5 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.

## **6.6 Upgrade and Maintenance Activities**

any claim arising from an Environmental Incident under the On-site Environmental Impairment or Underground Storage Tank Risk policies that originates from wear and tear, routine maintenance or upgrade activities, including repair, replacement or reconstruction including incorrect fitment and insulation by contractors and/or sub-contractors.

## **6.7 Wear and Tear and/or Gradual Deterioration**

any claim arising from an Environmental Incident under the On-site Environmental Impairment or Underground Storage Tank Risk Policies that may arise, originate or become aggravated by the Insured's failure to take reasonable precautions for the maintenance, safety of the property insured and for the minimisation of any damage that may arise out of wear and tear or gradual deterioration of the underground storage tanks and or storage vessels or containers. This does not apply to the iron oxidation of certain Underground Storage Tanks if stated to apply in the Policy Schedule.

## **6.8 Product Inefficacy**

Product Inefficacy for any product which relates to:

- a) a product defect which was known by the Insured prior to the date of policy inception,
- b) the costs to repair, recondition, modify or replace the whole or part of a product which is defective or is alleged to be defective, as well as the loss of use of the product,
- c) recalling the whole or part of a product.

## **6.9 Workmanship**

any Workmanship performed by the Insured which relates to rectifying or recalling the Workmanship, failure of the Workmanship to perform as expected or as required.

## **6.10 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.

## **6.11 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.

## **6.12 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;

## **6.13 Wilful Actions**

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

## **6.14 Fires & Explosions**

any claim for damage arising from a fire or explosion.

### **6.15 Abandoned Property**

any Environmental Incident which occurs at or after the time during which a covered risk address has become Abandoned Property.

### **6.16 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.

### **6.17 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.

### **6.20 Naturally Occurring Substances**

any naturally occurring substance in its unaltered form or altered solely through naturally occurring processes or phenomena. However, this does not apply in instances where it has been shown that the naturally occurring substance exceeds the amounts or concentrations naturally present and/or was the consequence of a discharge, dispersal, release or escape of such a naturally occurring substance.

### **6.21 Advice and Professional Services**

any rendering or failure to render any professional service or advice, regardless of whether or not that advice is ordinary to the Business or not and regardless of whether a Claim is made or brought by any other person or organisation.

### **6.22 Fines & Penalties**

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

### **6.23 Ransom**

any ransom requests payable due to the surrender of property as a result of a threat of harm to the named insured or an employee of the insured.

### **6.24 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.

### **6.25 Territorial Limits**

any claim that arises outside the Territorial Limits as defined.

### **6.26 Insured vs. Insured**

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

## **6.27 Employers 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.

## **6.28 Microbial Matter**

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

## **6.29 Sasria/Nasria**

loss of or damage directly related to or caused by:

- a) any riot, strike, public disorder, civil commotion, labour disturbances or lockouts or any act or activity which is calculated or directed to bring about any of the aforesaid;
- b) 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;
- c) 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;
- 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.

## **6.30 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.

## **6.31 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.

### **6.32 War Fund**

which a fund has been established in terms of any war damage insurance and compensation legislation.

### **6.33 Nuclear**

any legal liability, loss (including consequential loss), damage, cost or expense caused directly or indirectly by any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

Nuclear material, nuclear fission or fusion, nuclear radiation, nuclear waste from the use of nuclear fuels or nuclear explosives or any nuclear weapon.

### **6.34 Nuclear/chemical/biological terrorism**

loss(es), regardless of any contributory cause(s), in any way caused or contributed to by an act of terrorism involving the use or release or the threat thereof any nuclear weapon or device or chemical or biological agent.

For the purpose of this exclusion an act of terrorism means an act including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or personal purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public in fear.

If it is alleged that by reason of this exclusion any loss(es) is not covered by this extension the burden of providing the contrary shall be upon the insured.

### **6.35 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**

