
SECTION 7 – PUBLIC LIABILITY (CLAIMS MADE BASIS)

DEFINED EVENTS

Damages which the Insured shall become legally liable to pay consequent upon Injury or Damage which occurred in the course of or in connection with the Business within the Territorial Limits and on or after the Retroactive date shown in the Schedule, and which results in a claim or claims first being made against the Insured in writing during the Period of Insurance.

DEFINITIONS

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

- 1. Damage**
Loss of or physical damage to tangible property.
- 2. Employee**
 - a) any person/s employed under a contract of service or apprenticeship with the Insured.
 - b) any person/s engaged by or on behalf of the Insured to perform a contract constituting the provision of labour only for the purpose of carrying out the day-to-day operations of the Business.
 - c) any person engaged by or seconded to the Insured (including a volunteer worker) whilst performing any function for or on behalf of the Insured.
 - d) any person engaged or contracted by any other party to perform work (including a volunteer worker) at any premises or site of the Insured.
- 3. Injury**
Death, bodily injury, mental injury, illness (mental or physical) or disease of or to any person.
- 4. Costs and Expenses**
Costs, charges, expenses and legal costs recoverable from the Insured by a claimant or any number of claimants or incurred by the Insurer or incurred by the Insured with the Insurer's prior consent:
 - a) in the defense or settlement of any claim under this section of the Policy or any action or prosecution brought against the Insured in respect of Injury or Damage or other liability as insured in terms of this Section of the Policy.
 - b) In the representation at any inquest or accident inquiry in respect of injury which may form the subject of indemnity under this section of the policy and/or in defending any proceedings in a court of summary jurisdiction in respect of matters which may from the subject of indemnity by this section of the policy.
- 5. Vehicle**
Means a land vehicle (including any machinery or apparatus attached thereto) whether or not subject to motor vehicle registration and whether or not self-propelled including railway locomotive and rolling stock.
- 6. Occurrence**
An event or series of events or continuous or repeated exposure to the same or similar set of conditions which unexpectedly or unintentionally results in liability as insured in terms of this policy. All such exposure to substantially the same general conditions at or emanating from one premise or location shall be deemed an occurrence.

LIMITS OF INDEMNITY

Insurers' total liability to pay damages and claimants' costs and expenses and also Costs and Expenses in connection therewith shall not exceed the sum stated in the Schedule of Limits of Indemnity in respect of any one occurrence or claim. The limits of indemnity are in excess of the deductible and/or self-insured retention.

Should any Limit of Indemnity be altered during the Period of Insurance the original Limit of Indemnity shall apply to all claims made or deemed to have been made or arising out of any occurrence prior to the date of such alteration.

TERRITORIAL LIMITS

Anywhere in the world but not in connection with any business carried on by the Insured at or from premises outside or any contract for the performance of work outside the Republic of South Africa, Namibia, Botswana, Lesotho, Swaziland, Zimbabwe, Malawi, Mozambique, Democratic Republic of Congo (DRC) no further north than Kolwezi, Mozambique, Angola, Zambia and Tanzania.

SPECIFIC EXCLUSIONS

The Insurer will not indemnify the Insured in respect of:

1. Employees

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

2. Property

Damage to:

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

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

liability consequent upon Injury or Damage

(a) **Professional advice or treatment**

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

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

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

(c) **Aircraft**

caused by or through or in connection with

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

(d) **Products**

caused by or through or in connection with any goods or product (including containers and labels).

(e) **Completed work**

occurring after the completion and handing over of any work and caused by or through or in connection with any defect or error in or omission from such work.

4. Vibration and removal of support

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

5. Liability assumed by agreement

assumed by agreement unless liability would have attached to the Insured notwithstanding such agreement.

6. Removal or weakening of support

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

7. Pollution

- a) personal injury or bodily injury or financial loss or loss of, damage to, or loss of use of property directly or indirectly arising out of the discharge, dispersal, release or escape of pollutants;
- b) the cost of removing, nullifying or cleaning up pollutants;
- c) fines, penalties, punitive or exemplary damages arising directly or indirectly out of the discharge, dispersal, release or escape of pollutants;

For the purposes of this exclusion, "pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

8. Fines, penalties etc.

fines, penalties, punitive, exemplary or vindictive damages.

9. Judgements, awards or settlements

damages in respect of judgements, award or settlement delivered or obtained in the first instance otherwise than by a court of competent jurisdiction within the Republic of South Africa, Namibia, Botswana, Lesotho and Swaziland. For the purpose of this specific exception "Damages" shall be deemed to include costs and expenses of litigation recovered by any claimant from the Insured.

10. Events known to the Insured

any claim arising from an event known to the Insured

- (a) which is not reported to the Insurer in terms of General Condition 7
- (b) prior to inception of this section or inception of any extension under this section.

11. First amount payable

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

12. Deliberate or intentional acts

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

13. Unlawful competition

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

SPECIFIC CONDITIONS

1. Claims first made in writing against the insured

Any claim first made in writing against the Insured as a result of a Defined Event reported in terms of General condition 7 (hereinafter termed reported event) shall be treated as if it had first been made against the Insured on the same day that the Insured reported the event to the Insurer.

2. Reporting of events after cancellation or non-renewal of policy

In the event of cancellation or non-renewal of the policy, the Insured may report an event in terms of General condition 6 to the Insurer within 30 days after expiry of the Period of Insurance provided such event occurred during the Period of insurance.

3. Series of claims from one originating clause

Any series of claims made against the Insured by one or more than one claimant during any period of insurance consequent upon one event or series of events with one originating cause or source shall be treated as if they all had first been made against the Insured

- (a) on the date that the event was reported by the Insured in terms of General condition 6 or
- (b) if the Insured was not aware of any event which could have given rise to a claim, on the date that the first claim of the series was first made in writing against the Insured.

4. Manifestation clause

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

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

EXTENSIONS

1. Cross liabilities

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

2. Tool of trade

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

3. Transnet and other government departments

Notwithstanding the provisions of Specific Exclusion 2(a)(ii), 3(b) and 5, this section extends to indemnify the Insured:

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

4. Unattached trailers

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

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

5. Emergency medical expenses

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

6. Acquisitions and new businesses

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

Provided always that:

- (a) the Retroactive Date in respect of such new company shall be deemed to be the date when a newly formed and/or acquired company first purchased liability insurance of the type hereby insured on a "Claims Made" basis, subject to a declaration from the newly acquired company's previous management of no known or reported claims or circumstances likely to give rise to a claim at the date of acquisition. In the event of no such declaration, the Retroactive Date shall be the date of such acquisition;
- (b) the Insured's business activities remain unchanged;
- (c) the annual turnover of all newly formed and/or acquired companies does not exceed 5% (five percent) of the estimated annual turnover of the Insured as advised to the Insurer at inception hereof;
- (d) the Insured shall advise the Insurer of such formations and/or acquisitions before the expiry of 90 days thereof and the Company may amend the terms of this section of the Policy accordingly.