

**ANNUAL PUBLIC & PRODUCTS LIABILITY INSURANCE
(Claims Made)**

1. OPERATIVE CLAUSE

The Underwriters will indemnify the Insured as hereinafter provided for in the Insuring Sections and elected Extensions against their liability to pay compensation (including claimants' costs, fees and expenses) for and arising out of Injury and/or Damage and in accordance with the law of any country but not in respect of any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part)

The indemnity provided herein applies only to claims first made against the Insured during the Period of Insurance and arising out of the Business specified in the Schedule.

For the purpose of determining the indemnity granted:

- 1.1 "Injury" means death, bodily injury, illness or disease, mental injury of or to any person
- 1.2 "Damage" means loss of possession or control of or actual damage to tangible property or interference with servitude or right of access or other infringement of real or personal rights to the use of property
- 1.3 "Pollution" means the emission, discharge, dispersal, disposal, seepage, release or escape of any liquid, solid, gaseous or thermal irritant, contaminant or pollutant into or upon land, the atmosphere or any water-course or body of water or the generation of smells, noises, vibrations, light, electricity, radiation, changes in temperature or any other sensory phenomena, but not fire or explosion
- 1.4 "Product" means any tangible property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured, but shall not mean food and drink supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit.
- 1.5 "Inefficacy Claims" means claims made against the Insured for economic or financial loss sustained by reason of the claimant alleging that his property:
 - (a) is rendered of less value, or
 - (b) has not achieved its anticipated value, or
 - (c) has not been capable of full beneficial usedue to the failure of any Product or part thereof to fulfil its intended function or to perform as specified warranted or guaranteed
- 1.6 "Negligent Advice" means incorrect or inadequate advice or information of a technical nature given in the promotion of the Insured's Products or services but not where such advice or information:
 - (a) is given in exchange for a fee or similar consideration, or
 - (b) is an essential part of a revenue earning activity of the Insured.
- 1.7 "Vehicle" means any land vehicle or trailer (including any machinery or apparatus attached thereto) whether or not subject to vehicle registration or whether or not self-propelled including locomotives and rolling stock.

2. CONTINUOUS EXPOSURE CLAUSE

In the event of any Injury or Damage arising from continuous or continual inhalation, ingestion or application of any substance where the Insured and the Underwriters cannot agree when the Injury or Damage occurred then:

To the extent that the Insured is accountable to the tax authorities for Value Added Tax in respect of any payment in terms of this Policy the Underwriters will include the amount of such tax in the final settlement of any claim under this Policy in addition to the Limits of Liability.

SPECIAL MEMORANDUM

ACQUISITIONS AND NEW BUSINESS

The Indemnity granted by this Policy of Insurance extends to any company formed and/or acquired by the Insured during the Period of Insurance for a period of 30 days of such information or acquisition

PROVIDED ALWAYS THAT:-

1. The retroactive date in respect of such new company shall be deemed to be the date of formation or the date when a newly 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 date of acquisition. In the event of no such declaration the retroactive date shall be the date of acquisition
2. The Insured's business activity remains unchanged to that declared
3. 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 Underwriters at inception hereof
4. The Insured shall advise the Underwriters of such formations and/or acquisitions before the expiry of 30 days thereof and the Underwriters reserve the right to amend the terms of this insurance accordingly.

Subject otherwise to the terms, Exclusions, Conditions and limitations of the Policy.

9.4.4 property belonging to any rail service provider or any government or quasi-government department, provincial administration, municipality or similar body whilst on any premises permanently occupied by the Insured

9.4.5 the ownership, hire, leasing or operation of any airport, airstrip or helicopter pad by or on behalf of the Insured other than airstrips and helicopter pads which are not equipped with control tower operation.

SECTION B - POLLUTION LIABILITY

10. SECTION B - INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause against claims arising out of Pollution but only to the extent that it can be proved that such Pollution

- (a) was the direct result of a sudden specific and indemnifiable event occurring during the Period of Insurance
- (b) was not the direct result of the Insured failing to take reasonable precautions to prevent such Pollution.

11. SECTION B - EXCLUSIONS

This Section is subject to the Exclusions to Section A insofar as they can apply, and also does not cover liability for claims arising out of or in connection with any Product.

SECTION C - PRODUCTS LIABILITY/DEFECTIVE WORKMANSHIP

12. SECTION C - INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause but only against claims arising out of or in connection with any Product or Pollution resulting therefrom subject always to the provisions of Clause 10 of Section B.

13. SECTION C - EXCLUSIONS

This Section does not cover liability for claims;

- 13.1 for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof which is or is alleged to be defective
- 13.2 for costs arising out of the recall of any Product of any part thereof
- 13.3 arising out of the failure of any Product or part thereof to fulfil its intended function or to perform as specified, warranted or guaranteed unless such failure shall result in Injury and/or Damage
- 13.4 arising out of any Product which with the Insured's knowledge is intended for incorporation into the structure, machinery or controls of any aircraft
- 13.5 arising out of Negligent Advice in respect of Defective Workmanship
- 13.6 for the cost of rectifying or recalling defective work
- 13.7 arising from inefficacy of such work or because the work did not produce the result anticipated or claimed
- 13.8 arising prior to the handing over of such work
- 13.9 arising from any work on any aircraft or part thereof.

16.11 for claims arising out of or which may arise out of or in connection with electric and/or magnetic and/or electrical fields.

16.12 arising out of any Wrongful Act committed by any director and/or officer of the Insured

For the purposes of this Insurance "Wrongful Act" shall mean any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, mistreatment, breach of fiduciary obligation, libel, slander, wrongful trading, breach of warranty of authority or other legal liability on the part of any director or officer, jointly or severally, which arises solely by reason of the conduct of their duties or their capacity as directors and officers.

16.13 WAR AND TERRORISM EXCLUSION

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto it is agreed that this Policy excludes loss, damage, cost or expenses of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

(1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

(2) any act of terrorism,

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 (or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This General Exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event of any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

16.14 ASBESTOS EXCLUSION

This Policy shall not apply to liability directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by or arising from the existence of or exposure to asbestos and/or any asbestos containing materials. This exclusion also applies to any obligation to defend any claim or suit against the Insured alleging liability resulting from the existence of or exposure to asbestos and/or any asbestos containing materials and to Insurers' liabilities for any costs fees or expenses arising therefrom provided always that this entire exclusion shall not apply to liability which is specifically unrelated to the known or suspected harmful injurious or damaging effects of asbestos Products, fibres or dust

16.15 SPECIFIC INSURANCES EXCLUSION

The Indemnity provided by this Policy of Insurance does not cover liability for claims arising out of dishonesty of the directors, principals or employees of the Insured or theft or fraud by any other person, nor does this Policy provide indemnity for any liability arising out of the activities of operations domiciled in the United States of America or Canada.

17. GENERAL CONDITIONS

(Conditions 17.1 to 17.5 are precedent to Underwriters' liability to provide indemnity under this Policy)

17.1 The Insured shall give written notice to the Underwriters as soon as reasonably practicable, but in any event no later than the last day of the Period of Insurance, of any claim made against the Insured (or any specific event or circumstance that may give rise to a claim being made against the Insured) and which forms the subject of indemnity under this Policy and shall give all such additional information as the Underwriters may require. Every claim, writ, summons or process and all documents relating to

- (iii) the total liability of the Underwriters under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured during the Period of Insurance

18.2 Wrongful Arrest

Underwriters will indemnify the Insured in respect of claims arising out of Wrongful Arrest (as hereinafter defined) committed or alleged (other than by the Insured) to have been committed by the Insured in the course of the Business

Provided always that:-

- (a) for the purposes of this Extension, the terms "Wrongful Arrest" shall mean:-
 - (i) assault and battery committed or alleged to have been committed at the time of making or attempting to make an arrest or in resisting an overt attempt to escape by a person under arrest before such person has been or could be placed in the custody of the police or a law enforcement officer
 - (ii) defamation, injuria, false imprisonment or malicious prosecution either committed or alleged to have been committed directly in connection with an arrest or arising out of the investigation of acts of shoplifting or theft
 - (iii) wrongful discharge of any employee
- (b) no indemnity shall be granted in respect of claims:-
 - (i) made against the Insured by any person or persons other than those being or having been or alleged to have been arrested or under arrest, or their personal representatives
 - (ii) Arising out of unfair labour practice as within the meaning of the relevant Labour Laws as promulgated in the Republic of South Africa from time to time.
- (c) the total liability of the Underwriters under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured during the Period of Insurance

18.3 Defamation

Underwriters will indemnify the Insured in respect of claims arising out of defamatory statements, whether written or verbal, made by the Insured

Provided always that:-

- (a) no indemnity shall be granted in respect of claims:-
 - (i) which form the subject of Extension 18.2 - Wrongful Arrest
 - (ii) arising out of any publication in any journal, magazine or newspaper or on radio or television
- (b) the total liability of the Underwriters under this extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured during the Period of Insurance.

18.4 Employers Liability/Employee to Employee Liability

Notwithstanding anything to the contrary contained in General Exclusion 16.4, this Policy extends to include claims arising out of Injury to any person employed under a contract of service or apprenticeship with the Insured where such Injury arises out of and in the course of the execution of such contract

Provided always that:-

No cover is provided in respect of:-

- (a) liability for claims arising from illness or disease or contributed to by prolonged exposure to substances, factors or circumstances peculiar to any particular employment or occupation

Provided always that the total liability of the Underwriters under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured in the Period of Insurance as reflected in the Schedule.

18.6 Breach of Copyright

Underwriters will indemnify the Insured for legal costs incurred with the prior consent of Underwriters in the defence of any claim brought against the Insured during the Period of Insurance for any infringement and/or breach of copyright or patent committed or alleged to have been committed during the Period of Insurance.

This Extension does not cover liability:

- (i) arising out of any act, error, or omission amounting to a breach of professional duty in terms of the Business named in the Schedule,
- (ii) arising out of any breach of implied warranty of authority or of trust unless committed in good faith,
- (iii) arising out of defamatory statements whether written or verbal made by the Insured,

Provided always that the total liability of the Underwriters under this Extension shall not exceed the Limit of Liability in respect of all claims made against the Insured in the Period of Insurance as reflected in the Schedule.

18.7 Advertising Liability

The Underwriters will subject to the terms of this Extension indemnify the Insured to the extent and in the manner hereinafter for all claims which may be made against the Insured during the Period of Insurance arising out of Advertising Liability

Provided always that

- (a) this Extension does not cover liability for claims:-
 - (i) arising out of any advertising agency owned by the Insured
 - (ii) for the cost of replacing the advertisement giving rise to a claim
 - (iii) arising out of the failure of contract performance, except unauthorised appropriation of ideas based upon alleged breach of an implied contract
 - (iv) arising out of incorrect description or mistake in the advertised price of goods, products or services sold, offered for sale or advertised
 - (v) arising out of any act committed with malice.
 - (vi) in respect of fines or penalties imposed on the Insured
- (b) the Insured shall at all times retain all rights of recourse against any person or party supplying any product or otherwise providing any service to the Insured
- (c) the total liability of the Underwriters under this Extension shall not exceed the Indemnity Limit in respect of all claims made against the Insured during the Period of Insurance.

18.8 African Territories (DIC/DIL)

In respect the Insured's operations in Africa outside of the Republic of South Africa, the indemnity provided by this Policy is limited to the difference between the scope of cover or in limit of indemnity provided by any insurer in the territory in which the operation is situated and the indemnity available in terms of this Policy.

Where this Policy responds in excess of indemnity provided in terms of such locally purchased liability insurance:-

- a) the indemnity payable hereunder shall be only up to but not exceeding such further amount as would provide the maximum indemnity in terms of this Policy;

18.10 Warehousemen's Liability – Consequential Loss only

Underwriters will indemnify the Insured against all sums for which the Insured becomes legally liable to pay for consequential losses arising out of the warehousing of goods and/or merchandise by or on behalf of the Insured but excluding any liability for the actual cost of repair or replacement of such goods.

Special Exclusions

Underwriters shall not be liable in terms of this extension for claims arising out of:

1. loss of or damage to property leased, let, rented, hired or lent to the Insured.
2. the willful illegal sale of property in the custody and control of the Insured;
3. the dishonesty of the Insured's Employees or persons to whom property in the custody and control of the Insured is entrusted;
4. the ownership or possession of or use by or on behalf of the Insured of any motor vehicle;
5. Damage to account bills, currency, deeds, evidences of debts, money, notes or securities all of which is/are in the custody or control of the Insured;

18.11 Carriers' Liability

Underwriters will indemnify the Insured in respect of all claims against the Insured for which the Insured is legally liable to pay compensation arising out of or in connection with Damage arising in the course of the carriage, loading, off loading and/or discharge of goods or merchandise (whether containerised or otherwise) carried by the Insured within the Territorial Limits specified in the Schedule.

This extension shall only apply where legal liability arises following failure of the Insured's conditions of carriage (or any other similar contract conditions) to prevent such legal liability attaching to the Insured.

Underwriters will not indemnify the Insured if conditions of carriage, (or other similar contract conditions) are not duly signed and in force. Underwriters will not, however, rely upon this condition if such contract conditions are pending finalisation.

Special Exclusions

Underwriters shall not be liable under this Extension for claims:

1. for Damage to property belonging to, under hire purchase to, leased by or hired by the Insured; or
2. which are the subject of indemnity of any other Section or Extension of the Policy, especially such cover for consequential loss as is provided for in terms of Extension 18.12; or
3. arising out of the ownership, possession or use by or on behalf of the Insured of any motor vehicle; or
4. arising out of damage to or destruction of account bills, currency, deeds, evidences of debt, money, notes or securities all of which is/are in the custody and control of the Insured;
5. arising out of the dishonesty of the Insured's Employees or persons to whom property in the custody and control of the Insured is entrusted;
6. arising out of the willful illegal sale of property in the custody and control of the Insured;
7. arising out of willful conversion and/or willful or wrongful secretion of property in the custody and control of the Insured;
8. for Damage to property in the custody and control of the Insured caused by change in temperature resulting from the total or partial destruction of any refrigerating or cooling apparatus from any cause.

Special Exclusions

This Extension does not cover liability:-

1. arising from:-
 - 1.1 Injury or Damage caused to the claimants person or property
 - 1.2 any act or omission involving an element of dishonesty
 - 1.3 contract or breach of contract
 - 1.4 breach of copyright, patent, licence, trademark or tradename
 - 1.5 breach of any anti-trust or monopoly legislation
 - 1.6 defamation
 - 1.7 misuse or misappropriation of funds
 - 1.8 the supply, the short supply or late supply of or failure to supply any Product
 - 1.9 the bankruptcy, insolvency or liquidation of the Insured.
 - 1.10 any negligent misrepresentation made by the Insured or the Insured's agent or servant where such misrepresentation was made in the course of contractual negotiations or where such misrepresentation induced a contract
2. to any employee, agent or servant of the Insured who was, such an employee, agent or servant of the Insured at the time the liability was incurred
3. to any shareholder, partner, director or other person having a financial interest in the Insured, who was such a shareholder partner , director or other person at the time when the liability was incurred
4. to any legal persona who is associated, affiliated or related to the Insured and who sustains a loss by virtue of or arising out of such association, affiliation or relationship.
5. for which the Insured is indemnified in terms of any other policy of insurance and this Policy shall not be drawn into contribution with such other policy
6. for any Product or part thereof or the costs incurred in the repair, reconditioning, modification or replacement or the recall of any Product or part thereof
7. for any fine or penalty or for any payment due in terms of any statute, bylaw, statutory regulation or the like
8. assumed by agreement if such liability would not have attached in the absence of such agreement
9. for any trading loss or business risk.
10. arising out of strikes, protests or disturbances by the Insured's employees.

18.15 Products Inefficacy

Notwithstanding anything to the contrary contained in 13.3 of this Policy in the event of any claimant alleging that he has suffered financial loss by reason of tangible property (other than the Insured's Products) being :-

- a) rendered of less value; or
- b) rendered incapable of full commercial benefit

due or alleged (other than by the Insured) to be due to the failure of the Insured's Products to perform as specified, warranted or guaranteed and/or to fulfil their intended function, the Underwriters hereby agree that they will not raise as a defence to granting indemnity by this Policy that no Damage (as envisaged by the Operative Clause of this Policy) has occurred, provided that the Underwriters' liability shall not exceed the limit for Products Inefficacy stated in the Schedule.

The Underwriters will also indemnify the Insured in respect of all costs incurred with the consent of the Underwriters (which consent shall not be unreasonably withheld) in avoiding or mitigating the effects of such failure of the Insured's Products to perform as specified, warranted or guaranteed and/or to fulfil their intended function provided that the Insured shall be liable for the additional Excess stated in the Schedule.

The indemnity in terms of this Policy is extended to include costs incurred by the Insured in producing and certifying any particulars or details required by Underwriters in order to investigate any claim, provided that the liability of Underwriters for such costs shall not exceed the Indemnity Limit stated in the Schedule in respect of any one claim.

18.20 Incidental Medical Malpractice

The Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims arising from Injury caused by medical malpractice which shall mean any negligent act, error or omission in the professional services rendered or which should have been rendered by any medical practitioner, nurse or other medical official in the full or part time service of the Insured.

Specific Exclusions

This Extension does not cover liability arising out of

1. any criminal act willfully committed.
2. services rendered by any person who to the Insured's knowledge is under the influence of intoxicants or narcotics.
3. the use of drugs for weight reduction
4. services rendered in exchange for a fee payable by the patient
5. clinical tests or trials of drugs

18.21 Exhibitor's Liability

The Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims arising from Injury or Damage arising out of or in connection with the erection or dismantling and operation of a stand at exhibition venue including during the transportation of materials and Product for incorporation therein and subsequent return, provided that the liability of Underwriters shall not exceed the Indemnity Limit stated in the Schedule in respect of any one event.

18.22 Professional Fees

The indemnity in terms of this Policy is extended to include professional fees incurred by the Insured in producing and certifying any particulars or details required by Underwriters in order to investigate any claim, provided that the liability of Underwriters for such costs shall not exceed the Indemnity Limit stated in the Schedule in respect of any one claim.

18.23 EEC Liability Extension

The Underwriters will indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay in connection with any claim or claims, not otherwise insured, brought against him in terms of Regulation 15 of the EC Directive on Package Travel No 90/314/EEC or the United Kingdom Package Travel, Package Holiday and Package Tour Regulation 1992, provided that the Underwriters' liability shall not exceed the limit stated in the Schedule in respect of any one claim or series of claims arising out of one event.

18.24 Recall

Underwriters will indemnify the Insured for Expenses incurred as a consequence of a decision by the Insured during the Period of Insurance to recall the Insured's Products from any place within the Territorial Limits and notified to Insurers during the Period of Insurance where such Product(s) are likely to cause Injury or Damage for which the Insured may become legally liable.

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

For the purpose of this clause, the interpretation of the underlying insuring clause will be the decision of Insurers hereon, not of the underlying insurers. If the underlying insurance is on a "claims made basis", Insurers hereon will deal with any Claim arising out of an event or circumstance first notified during the Period of Insurance as if the Claim had been made during such period.

5. In the event of a claim arising to which the Underwriters hereon may be liable to contribute, no costs shall be incurred on their behalf without their consent being first obtained (such consent not to be unreasonably withheld). No settlement of a claim shall be effected by the Insured for such a sum as will involve this insurance without the consent of the Underwriters hereon.
6. Any claim made against the Insured or the discovery by the Insured of any occurrence of any circumstances which are likely to give rise to a claim of which the Insured becomes aware during the Period of Insurance should they appear indemnifiable under the Underlying Insurances shall be notified as soon as practicable by the Insured in writing to the Underwriters hereon.
7. All recoveries or payments recovered or received subsequent to a loss settlement under this Extension shall be applied as if recovered prior to such settlement and all necessary adjustments shall then be made between the Insured and the Underwriters provided always that nothing in this Extension shall be construed to mean that loss settlements under this Extension are not payable until the Insured's ultimate net loss has been finally ascertained.
8. Except as otherwise provided herein this Extension is subject to the same terms, exclusions, conditions and definitions as the applicable Underlying Insurance.

Definition

Expenses shall mean reasonable and necessary costs of:

1. media communication and correspondence; and/or
2. transportation in connection with the return of the Products or any part thereof to the manufacturer or their nominated agents; and/or
3. destruction except to the extent that any claim for such costs is greater than a claim for transportation expenses.

Special Exclusions

Underwriters shall not be liable under this Extension for claims:

1. for any Product or part thereof;
2. for the costs incurred in the repair, reconditioning, modification, or replacement of any Product or part thereof;
3. for or arising out of actual or alleged intentional alteration, adulteration or contamination of the Insured's Product but this Specific Exclusion shall not apply to the Insured's legal liability incurred in the defence of any legal action arising out of such intentional alteration, adulteration or contamination of the Insured's Product by persons other than the Insured and not acting on behalf of the Insured, provided that Underwriters' liability for such expense shall not exceed 10% of the Indemnity Limit for this Extension;
4. arising from the recall of any Products
 - 4.1 forced upon the Insured by any government or public authority where the Insured would not have made a recall but for the intervention of a government or public authority; or
 - 4.2 which are in the care, custody or control of the Insured; or
 - 4.3 as a result of misdelivery or misdirection of any Product by or on behalf of the Insured;
5. arising out of the deliberate or intentional
 - 5.1 breach of national or local regulations by the Insured; or
 - 5.2 failure of the Insured's technical or administrative management to take reasonable precautions to prevent claims;