
Section 13 : Public Liability (Claims Made Basis)

Defined events

Damages which the insured shall become legally liable to pay consequent upon accidental death of or bodily injury to or illness of any person (hereinafter termed injury), or accidental loss of or physical damage to tangible property (hereinafter termed 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.

The limits of indemnity

The amount payable, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants and all other costs and expenses incurred with the company's consent for any one event or series of events with one original cause or source, shall not exceed the limit of indemnity stated in the schedule.

Territorial limits

Anywhere in the world but not in connection with

- (i) any business carried on by the insured at or from premises outside or
- (ii) Any contract for the performance of work outside Botswana the Republic of South Africa, Namibia,
Lesotho, Swaziland, Zimbabwe and Malawi

Specific exceptions

The company will not indemnify the insured in respect of

1. liability consequent upon injury to any person employed by the insured under a contract of service or apprenticeship and arising from and in the course of such employment by the insured
2. 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
 - (b) That part of any property on which the insured are or have been working if such damage results directly from such work
3. liability consequent upon injury or damage
 - (a) 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) 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 company 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, in so far as such injury or damage is not insured by any other insurance policy

- (c) caused by or through or in connection with
 - (i) the refuelling 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) caused by or through or in connection with goods or products (including containers and labels) sold or supplied and happening elsewhere than on premises occupied by the insured other than food and drink supplied incidentally for consumption on the premises
 - (e) 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. damage 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 (other than under the insured's own standard conditions of contract) unless liability would have attached to the insured notwithstanding such agreement
6. (a) liability in respect of injury, damage or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this exception shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended and unforeseen occurrence
- (b) the cost of removing, nullifying or cleaning up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unforeseen occurrence.
- This exception shall not extend the policy to cover any liability which would not have been insured under this policy in the absence of this exception
7. fines, penalties, punitive, exemplary or vindictive damages
8. (a) damages in respect of judgements 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
- (b) costs and expenses of litigation recovered by any claimant from the insured, which are not incurred in and recoverable in the area described in 8(a) above
9. any claim arising from an event known to the insured
- (a) which is not reported to the company in terms of General condition 6
- (b) prior to inception of this section
10. any claim (in the event of cancellation or non-renewal of this section) not first made in writing against the insured within the 48 month period (or extended period in respect of minors) as specified in specific condition 2
11. the first amount payable.

The insured shall be responsible for the first amount payable as stated in the schedule in respect of anyone claim or number of claims arising from all events of a series consequent upon or attributable to any one source or original cause. The provisions of this clause shall apply to claims arising from damage and shall apply to costs and expenses incurred by the insured.

Memorandum

In respect of this section only, General exception 1 is deleted and replaced by the following:

This section does not cover injury, damage or liability directly or indirectly caused by, related to, or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, mutiny, insurrection, rebellion, revolution, military or usurped power.

Specific conditions

1. Any claim first made in writing against the insured as a result of a defined event reported in terms of General Condition 6 (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 company.
2. In the event of cancellation or non-renewal of the policy,
 - (a) any claim resulting from a reported event, first made in writing against the insured during the 48 months immediately following cancellation or non-renewal shall be treated as having been made against the insured on the same day that the insured reported the event. If the claimant is a minor, the period of 48 months will be extended until the expiry of 12 months after the attainment of majority by the claimant
 - (b) the insured may report an event in terms of General condition 6 to the company for up to 15 days after cancellation or non-renewal, provided
 - (i) such event occurred during the period of insurance
 - (ii) any subsequent claim first made in writing against the insured as a result of such event shall be treated as if it had first been made on the last day preceding cancellation or non-renewal and is subject to the 48 month period specified in 2(a) above.
3. 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 original 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 6or
 - (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.

Extensions

Extended reporting option

At the option of the insured and subject to payment of an additional premium to be determined and subject to all the terms, exceptions and conditions of this section, the company agrees to extend the period during which the insured may report an event in terms of General condition 6 for a period to be agreed, but in no circumstances exceeding 36 months (hereinafter referred to as extended reporting period) provided that

- (a) this option may only be exercised in the event of the company cancelling or refusing to renew this section
- (b) this option must be exercised by the insured in writing within 30 days of cancellation or non-renewal
- (c) once exercised, the option cannot be cancelled by either the insured or the company
- (d) the insured has not obtained insurance equal in scope and cover to this section as expiring

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- (e) the company shall only be liable for a defined event, which occurred after the retroactive date but prior to date of cancellation or non-renewal
 - (f) claims first made against the insured or any reported event by the insured during the extended reporting period shall be treated as if they were first made or reported on the last day preceding the cancellation or non-renewal
 - (g) the total amount payable by the company for claims made or reported events during the extended reporting period shall not have the effect of increasing the limit of indemnity applicable as on the last day preceding the cancellation or non-renewal
 - (h) any claim made, following a reported event during the extended reporting period, which is first made against the insured in writing more than 48 months after the last day preceding cancellation or non-renewal, shall not be subject to indemnification by this extension. If the claimant is a minor, the period of 48 months is extended until the expiry of 12 months after the attainment of majority by the claimant.

Additional insured

The company will also, as though a separate policy had been issued to each, indemnify

- (a) in the event of the death of the insured, any personal representative of the insured in respect of liability incurred by the insured
 - (b) any partner or director or employee of the insured (if the insured so requests) against any claim for which the insured is entitled to indemnity under this insurance
 - (c) to the extent required by the conditions of any contract (and notwithstanding Specific exception 5), and in connection with any liability arising from the performance of the contract, any employer named in any contract entered into by the insured for the purposes of the business
 - (d) in respect of the activities of any social or sports club, welfare Organisation, first aid, fire or ambulance service, canteen or the like, belonging to or formed by the insured for the benefit of their employees,
 - (i) any officer or member thereof
 - (ii) any visiting sports team or member thereof
- provided that
- (1) the aggregate liability of the company is not increased beyond the limits of indemnity stated in the schedule
 - (2) any person or organisation to which this extension applies is not entitled to indemnity under any other policy
 - (3) the indemnity under (a), (b) and (c) applies only in respect of liability for which the insured would have been entitled to indemnity if the claim had been made against the insured.

For the purposes of this extension, the company waives all rights of subrogation or action which they may have or acquire against any of the above, and each party to whom the indemnity hereunder applies shall observe, fulfil and be subject to the terms, exceptions and conditions (both general and specific) of this insurance in so far as they can apply.

Security Firms

Notwithstanding Specific exception 5 if in terms of a contract with a security firm engaged to protect the insured's property in the course of the business of the insured stated in the schedule or persons, the insured becomes legally liable for the acts or omissions of the employees of the security firm in the course of their employment, then this section includes such legal liability to the extent that indemnity would have been granted under this section had the said employees been under a contract of service to the insured and not the security firm, but not exceeding the limit of liability stated in the schedule.

If, at the time of an event giving rise to a claim, the security firm is entitled to indemnity under any other policy in respect of the same event, the company shall not be liable to make any payment except in respect of any amount above the amount payable under such other policy.

Cross liabilities

Where more than one insured is named in the schedule, the company will indemnify each insured separately and not jointly and any liability arising between such insured shall be treated as though separate policies had been issued to each, provided that the aggregate liability of the company shall not exceed the limit of indemnity stated in the schedule.

Tool of trade

Specific exception 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 company 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 company be liable where any other form of motor insurance has been effected by the insured covering the same liability.

Employees' and visitors' property

Specific exception 2 (a) (ii) shall not apply to property belonging to any partner, director or employee of the insured or any visitor to the insured's premises.

Liability by agreement

Notwithstanding the provisions of specific exceptions 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 Botswana Railways, 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 Botswana Railways 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 Botswana Railways while being used by or on behalf of the insured at any railway siding.

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 company shall not be liable hereunder in respect of so much of any liability

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

Emergency medical expenses

The company 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.

Car parks

Notwithstanding the provisions of specific exception 2 (a) (ii), the company will indemnify the insured in respect of liability as herein provided arising from loss of or damage to vehicles and their contents and accessories, the property of tenants, customers, visitors or employees of the insured using parking facilities provided by the insured.

Tenant's liability

Specific exceptions 2(a) (ii) and 3(b) of this section shall not apply to premises occupied by the insured as tenant (but not as the owner) thereof.

Products liability (if stated in the schedule to be included)

Notwithstanding anything to the contrary contained in specific exception 3(d), the company will indemnify the insured in respect of defined events happening anywhere in the territories stated in the schedule elsewhere than at premises occupied by the insured, and caused by goods or products (including containers and labels) sold or supplied (including wrongful delivery and delivery of incorrect goods) by the insured in connection with the business.

The amount payable under this extension, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants, and all other costs and expenses incurred with the company's consent, for any one event or series of events with one original cause or source or during any one (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

Additional specific exceptions (applicable to products liability extension)

This extension does not cover liability

- (i) for the cost of repair, alteration, recall or replacement of the goods or products (including containers and labels) causing injury or damage
- (ii) for the cost of demolition, breaking out, dismantling, delivery, rebuilding, supply and installation of the goods or products (including containers and labels) and any other property essential to such repair, alteration or replacement unless physically damaged by the goods or products
- (iii) (a) arising from defective or faulty design, formula, plan or specification, but if the insured is a retailer this specific exception (iii) does not apply if the insured's activities are wholly restricted to sales, distribution and/or marketing (including any marketing advisory service accompanying the products) of the product, and the insured's activities do not include final preparation which means repackaging, packing, labelling, cleaning or provision of operating instructions prior to sale to the insured's original customers, nor include any enhancement, amendment or alteration to the product

(b) arising from inefficacy or failure to conform to specification, unless such inefficacy or failure is due to negligence in the following of such specification
- (iv) arising from goods or products intended to be installed and installed in, or intended to form part of and forming part of an aircraft
- (v) in respect of injury or damage happening in the United States of America or Canada caused by or through or in connection with any goods or products sold or supplied by or to the order of the insured, if such goods or products have, to the insured's knowledge, been exported to the United States of America or Canada by or on behalf of the insured.

Defective workmanship liability (if stated in the schedule to be included)

Specific exceptions 2(b) and 3(e) are deleted.

The amount payable under this extension, inclusive of any legal costs recoverable from the insured by a claimant or any number of claimants and any other costs and expenses incurred with the company's consent, for any one event or series of events with one original cause or source or during anyone (annual) period of insurance, shall not exceed in the aggregate the limit of indemnity for this extension stated in the schedule.

Additional specific exceptions (applicable to defective workmanship liability)

This extension does not cover liability

- (i) for the cost of rectifying or recalling defective work
- (ii) arising from inefficacy of such work or because the work did not produce the result anticipated or claimed

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- (iii) arising prior to the handing over of such work
 - (iv) arising from defective design

 - (v) arising from any work on any aircraft or part thereof.

Legal defence costs (if stated in the schedule to be included)

If the insured so request, the company will indemnify any employee, partner or director of the insured against costs and expenses not exceeding the amount stated in the schedule incurred by or on behalf of such person with the consent of the company in the defence of any criminal action brought against such person in the course of his occupation with the insured arising from an alleged contravention of the statutes as herein defined during the period of insurance provided that

- (i) in the case of an appeal, the company shall not indemnify such person unless a senior counsel approved by the company shall advise that such appeal should, in his opinion, succeed
- (ii) the company shall not indemnify such person in respect of any fine or penalty imposed by any magistrate or judge or any loss consequent thereon

- (i) such person shall, as though he were the insured, observe, fulfil and be subject to the terms, exceptions and conditions of this policy and this section thereof in so far as they can apply.

The Statutes

The Occupational Health and Safety Act No. 85 of 1993 (as amended), The Mines and Works Act No. 27 of 1956 (as amended),

The Electricity Act No. 40 of 1958 (as amended),

and/or any other Act or Ordinance pertaining to the supply of Electricity

all as read in conjunction with the Criminal Procedure Act No. 51 of 1977 (as amended).

Wrongful arrest and defamation (if stated in the schedule to be included)

The defined events are extend to include damages

- (i) resulting from wrongful arrest (including assault in connection with such wrongful arrest)
- (ii) in respect of defamation

provided always that the limits of indemnity as stated shall not exceed P50 000 under each of (i) and (ii) and P100 000 in any one (annual) period of insurance.

E.C. Liability (if stated in the schedule to be included)

Subject otherwise to the terms and conditions and limitations, the following changes are made to this section of the policy in respect of "injury" or "damage" (as insured by the products liability extension) which results from goods or products exported to any European Community (E.C.) country or any European Free Trade Associations (E.F.T.A.) country.

1. Specific exceptions 8(a) and 8(b) shall not apply to damages or costs and expenses of litigation recovered by any claimant in respect of judgements delivered in the first instance in courts of the E.C. or E.F.T.A.
2. In respect of these goods or products (other than raw materials), the insured shall
 - (a) implement and maintain a system in terms of which these goods or products can be clearly identified by batch number or serial number or date stamp or other similar manner
 - (b) Note and maintain a record of the date on which the actual goods or products were first put in to circulation. This record shall be maintained so as to provide the required detail for a minimum period of 10 years after the Goods or products were first put into circulation.
3. The information mentioned in 2, together with all supporting documentation, shall be made available to the company or their nominee at any time on request.
4. In respect of this indemnity, the insured shall be responsible for the first amount payable shown in the schedule for this extension.