

COMMERCIAL SELECT POLICY

Subject to the terms, exceptions and conditions (precedent or otherwise) and in consideration of, and conditional upon, the prior payment of the premium by or on behalf of the insured and receipt thereof by or on behalf of the company, the company specified in the schedule agrees to indemnify or compensate the insured by payment or, at the option of the company, by replacement, reinstatement or repair in respect of the defined events occurring during the period of insurance and as otherwise provided under the within sections up to the sums insured, limits of indemnity, compensation and other amounts specified.

Where more than one insurance company or insurer participates in this insurance, the expression "company" shall be amended to "insurers" wherever it appears in this policy. In this event the percentage share of each insurer will be as expressed in the schedule of this policy and the liability of each such insurer individually shall be limited to the percentage share set against its name.

Specific exceptions, conditions and provisions shall override general exceptions, conditions and provisions.

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Signed for the insurer

Please check this document carefully and let Botswana Insurance Company Limited know if any amendment is necessary.

IMPORTANT-

IN ADDITION TO THE ABOVE PLEASE INFORM THE INSURER.

1. if you pay your insurance premium each month and you change
 - 1.1 your bank or other paying authority,
 - 1.2. the branch of your bank.

If you do not advise the insurer accordingly, your premium debit will not be processed, your insurance will lapse and you will no longer be protected by your policy.

2. of any changes of address or of the property insured, or any factor affecting the policy.

GENERAL EXCEPTIONS CONDITIONS AND PROVISIONS

General Exceptions

1. The following shall be excluded from this Agreement:

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

- i) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war.
- ii) Abandonment and/or permanent or temporary dispossession resulting from detention, confiscation, seizure, restraint, commandeering, nationalisation, appropriation, destruction or requisition by order of any government de jure or de facto or by any public authority.
- iii) Mutiny, civil commotion, military rising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege.
- iv) Any act, including but not limited to labour disturbance, lock-out, riot or strike, 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 political or local authority, or for the purpose of imposing fear in the public or any section thereof.
- v) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clauses i) to iv) above.
- vi) Plundering, looting, war pillage in connection with civil commotion or any of the activities referred to in clause 4 above.

For the purposes of clauses iv), v) and vi), any loss or damage occasioned directly by a labour disturbance, lock-out, riot or strike or in order to bring about any social or economic change which is not politically motivated as envisaged in clause 4 shall not be excluded.

In any action, suit or other proceeding where the Insurer alleges that by reason of these provisions any loss, damage, cost or expense is not covered by this Insurance Agreement, the burden of proving that such loss, damage, cost or expense is covered shall be upon the Insured.

2. Except as regards the Fidelity, Stated Benefits and Group Personal Accident sections

(i) this policy does not cover

(a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss

(b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

For the purpose of this exception only, combustion shall include any self-sustaining process of nuclear fission.

(ii) the indemnity provided by this policy shall not apply to nor include any loss, destruction, damage or legal liability directly or indirectly caused by, or contributed to by, or arising from nuclear weapons material.

3. Sanction Limitation and Exclusion Clause

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- (i) No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Japan, United Kingdom or United States of America.

General Conditions

1. Misrepresentation, misdescription and non-disclosure

Misrepresentation, misdescription or non-disclosure in any material particular shall render voidable the particular item, section or sub-section of the policy, as the case may be, affected by such misrepresentation, misdescription or non-disclosure.

2. Other insurance

If, at the time of any event giving rise to a claim under this policy, an insurance exists with any other insurers covering the insured against the defined events, the company shall be liable to make good only a rateable proportion of the amount payable by or to the insured in respect of such event. If any such other insurance is subject to any condition of average, this policy, if not already subject to any condition of average, shall be subject to average in like manner.

3. 3A Cancellation

This policy or any section may be cancelled at any time by the company giving 30 days' notice in writing (or such other period as may be mutually agreed) or by the insured giving immediate notice. On cancellation by the insured, the company shall be entitled to retain the customary short period or minimum premium for the period the policy or section has been in force. On cancellation by the company, the insured shall be entitled to claim a pro-rata proportion of the premium for the remainder of the period of insurance from the date of cancellation, subject to general condition 4.

3B. Continuation of cover (where premium is payable by bank debit order or by transmission account)

The premium is due in advance and, if it is not received by the company by due date, this insurance shall be deemed to have been cancelled at midnight on the last day of the preceding period of insurance unless the insured can show that failure to make payment was an error on the part of his bank or other paying agent.

Due date will be the first day of every calendar month where premium is payable monthly, the first day of

- (a) each third
- (b) each sixth or
- (c) each twelfth calendar month following inception where premium is payable quarterly, half-yearly or annually.

4. Adjustment of premium

If the premium for any section of this policy has been calculated on any estimated figures, the insured shall, after the expiry of each period of insurance, furnish the company with such particulars and information as the company may require for the purpose of recalculation of the premium for such period. Any difference shall be paid by or to the insured as the case may be.

5. Prevention of loss

The insured shall take all reasonable steps and precautions to prevent accidents or losses.

6. Claims

- (a) On the happening of any event which may result in a claim under this policy the insured shall, at their own expense
 - (i) give notice thereof to the company within 30 days and provide particulars of any other insurance covering such events as are hereby insured
 - (ii) immediately (within 24 hours) inform the police of any claim involving theft or (if required by the company) loss/damage to property and take all practicable steps to discover the guilty party and to recover the stolen or lost property
 - (iii) within 30 days after the event submit to the company full details in writing of any claim. The Insured shall also, within three (3) months furnish to the Insurers affirmative proof of loss in writing together with full particulars.
 - (iv) give the company such proofs, information and sworn declarations as the company may require and forward to the company immediately any notice of claim or any communication, writ, summons or other legal process issued or commenced against the insured in connection with the event giving rise to the claim.

(b) No claim (other than a claim under the business interruption, fidelity, stated benefits or group personal accident section or the personal accident (assault) extension under the money section, if applicable) shall be payable after the expiry of 24 months or such further time as the company may allow from the happening of any event unless the claim is the subject of pending legal action or is a claim in respect of the insured's legal liability to a third party.

(c) No claim shall be payable unless the insured claims payment by serving legal process on the company within 6 months of the rejection of the claim in writing and pursues such proceedings to finality.

(d) If, after the payment of a claim in terms of this policy in respect of lost or stolen property, the property (the subject matter of the claim) or any part thereof is located, the insured shall render all assistance in the identification and physical recovery of such property if called on to do so by the company, provided that the insured's reasonable expenses in rendering such assistance shall be reimbursed by the company. Should the insured fail to render assistance in terms of this condition when called upon to do so, the insured shall immediately become liable to repay to the company all amounts paid in respect of the claim.

7. Company'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 company and every person authorised by them may, without thereby incurring any liability and without diminishing the right of the company to rely upon any conditions of this policy,

- (i) take, enter or keep possession of any damaged property and deal with it in any reasonable manner. This condition shall be evidence of the leave and license of the insured to the company to do so. The insured shall not be entitled to abandon any property to the company whether taken possession of by the company or not
- (ii) 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, offers, promise, payment or indemnity shall be made by the insured without the written consent of the company.

(b) The insured shall, at the expense of the company, do and permit to be done all such things as may be necessary or reasonably required by the company for the purpose of enforcing any rights to which the company shall be, or would become, subrogated upon indemnification of the insured whether such things shall be required before or after such indemnification.

(c) In respect of any section of this policy under which an indemnity is provided for liability to third parties, the company may, upon the happening 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 company shall thereafter not be under further liability in respect of such event.

8. Fraud

If any claim under this policy is in any respect fraudulent or if any fraudulent means or devices are used by the insured or anyone acting on their behalf or with their knowledge or consent to obtain any benefit under this policy or if any event is occasioned by the willful act or with the connivance of the insured, the benefit afforded under this policy in respect of any such claim shall be forfeited.

9. Reinstatement of cover after loss (not applicable to stock on a declaration basis nor to any section where it is stated to be not applicable)

In consideration of sums insured not being reduced where appropriate by the amount of any loss, the insured shall pay additional premium on the amount of the loss from the date thereof or from the date of reinstatement or replacement (whichever is the later) to expiry of the period of insurance.

10. Breach of conditions

The conditions of this policy and sections thereof shall apply individually to each of the risks insured and not collectively to them so that any breach shall render voidable the section only in respect of the risk to which the breach applies.

11. No rights to other persons

Unless otherwise provided, nothing in this policy shall give any rights to any person other than the insured. Any extension providing indemnity to any person other than the insured shall not give any rights of claim to such person, the intention being that the insured shall claim on behalf of such person. The receipt of the insured shall in every case be a full discharge to the company.

12. Collective insurances

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If this insurance is a collective insurance then the following amendment is made to general condition 6 (a) (iv) above.

"give the leading insurer on behalf of the insurers such proofs, information and sworn declaration as the insurers may require and forward to the leading insurer immediately any notice of claim or any communication, writ, summons or other legal process issued or commenced against the insured in connection with the event giving rise to the claim."

And General condition 7 is substituted by the following

"7. Company'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 leading insurer and every person authorised by them may, without thereby incurring any liability and without diminishing the right of the insurers to rely upon any conditions of this policy,

- (i) take, enter or keep possession of any damaged property and deal with it in any reasonable manner. This condition shall be evidence of the leave and licence of the insured to the lead insurer on behalf of all insurers to do so. The insured shall not be entitled to abandon any property to the insurers whether taken possession of by the leading insurer or not
- (ii) 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 the written consent of the leading insurer.

(b) The insured shall, at the expense of the insurers, do and permit to be done all such things as may be necessary or reasonably required by the insurers for the purpose of enforcing any rights to which the insurers shall be or would become subrogated upon indemnification of the insured whether such things shall be required before or after such indemnification.

(c) In respect of any section of this policy under which an indemnity is provided for liability to third parties, the insurers 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 insurers shall thereafter not be under further liability in respect of such event."

General Provisions

A. Claims preparation costs

The insurance by each section of this policy is extended to include costs reasonably incurred by the insured in producing and certifying any particulars or details required by the company in terms of general condition 6 or to substantiate the amount of any claim, provided that the liability of the company for such costs in respect of any one claim shall not exceed in respect of a particular section P1000 or 10% of the sum insured or limit of indemnity on the item affected, whichever is the lesser amount, plus any amount stated in the schedule to each section against an item for additional claim preparation costs.

B. Payments on account

In respect of any section where amounts recoverable from the company are delayed pending finalisation of any claim, payments on account may be made to the insured, if required, at the discretion of the company.

C. First amount payable

Except where provided for specifically in any section, the amount payable under this policy/section for each and every loss, damage or liability shall be reduced by the first amount payable shown in the schedule for the applicable defined event.

D. Members

Wherever the word “director” is used it is deemed to include “member” if the insured is a close corporation.

E. Liability under more than one section

The company shall not be liable under more than one section of this policy in respect of liability, loss or damage arising from the same happening in respect of the same liability, loss or damage.

F. Meaning of words

The schedules and any endorsements thereto and the policy wording shall be read together and any word or expression to which a specific meaning has been given in any part thereof shall bear such meaning wherever it may appear.

G. Premium payment

Premium is payable on or before the inception date or renewal date as the case may be.

The company shall not be obliged to accept premium tendered to it after inception date or renewal date as the case may be but may do so upon such terms as it at its sole discretion may determine.

H. Holding covered

If the company is holding covered on a risk they will not reject a claim on the basis that the premium has not been agreed.

I. Schedule sums insured blank

If, in a schedule of this policy, the sum insured, limit of indemnity or compensation is:

- (i) left blank or has no monetary amount stipulated against it
 - (ii) reflected as nil or not applicable or not covered or no indemnity extended
- this means the defined event or circumstance shown in the schedule is not insured by the policy.

J. Security firms

If an employee of a security firm employed by the insured under a contract causes loss or damage, the company agrees, if in terms of the said contract the insured may not claim against the said security firm, not to exercise their rights of recourse against the said security firm.

The company shall not raise as a defence to any valid claim submitted under any section or subsection of this policy that the company's rights have been prejudiced by the terms of any contract entered into between the insured and any security provider relating to the protection of the insured property.

Millenium General Exception

General Exception (not applicable to Glass, Employer's Liability, Workmen's Compensation, Stated Benefits, Group Personal Accident or Motor Sections of Commercial Select Policies)

This policy does not cover:

- a) loss or destruction of or damage to any property whatsoever (including a computer) or any loss or expense whatsoever resulting or arising therefrom
- b) any legal liability of whatsoever nature
- c) any consequential loss directly or indirectly caused by or consisting of the failure of any computer or other equipment or system for processing storing or retrieving data whether the property of the insured or not and whether occurring before during or after the year 2000
 - i) correctly to recognise any date as its true calendar date
 - ii) to capture save retain and / or correctly to manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date
 - iii) to capture save or retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software being a command which causes the loss of data or the inability to capture save or retain or correctly to process such data on or after any date

but this shall not exclude subsequent loss destruction or damage not otherwise excluded which results from fire, lightning or thunderbolt, explosion, aircraft or other aerial devices or articles dropped therefrom, riot civil commotion strikers locked out workers persons taking part in labour disturbances, malicious persons, earthquake, storm wind water hail or snow, impact by animals or vehicles or theft or attempted theft hereby insured against where such failure is not the result of wilful misconduct by the insured and that the insured has undertaken all reasonable efforts to prevent such failure and to mitigate the consequences of any such failure.

General Exception applicable to the Motor Section of a Commercial Select Policy

The company shall not be liable for damage consisting of the failure of any computer or other equipment or system for the processing storing or retrieving data (including for the avoidance of doubt engine management systems) whether the property of the insured or not and whether occurring before during or after the year 2000

- a) correctly to recognise any date as its true calendar date
- b) to capture save or retain and / or correctly to manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date
- c) to capture save retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software being a command which causes the loss of data or the inability to capture save retain or correctly to process such data on or after any date

but this shall not exclude subsequent damage not otherwise excluded.

Terrorism Exclusion Clause

Notwithstanding any provision to the contrary within this agreement or any endorsement thereto, this Insurance agreement does not cover any liability, loss, damage, cost 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 any other sequence to the loss, damage, cost or expense.

For the purpose of this exclusion, terrorism means an act, including but not limited to the use of violence or force and/or the threat thereof, whether as an act harmful to human life or not, by any person or group(s) of person(s), whether acting alone or on behalf of,

or in connection with any organisation(s) or government(s) or any person or body of persons, committed for political, religious, personal, ethnic or ideological reasons or purposes including any act committed with the intention to influence any government and/or for the purpose of inspiring fear in the public or any section thereof.

In any action, suit or other proceeding in which the Insurer alleges that by reason of this definition any loss, damage, cost or expense is not covered by this Insurance Agreement, the burden of proving that such loss, damage, cost, or expense is covered shall be upon the Insured.

Asbestos Exclusion

It is hereby understood and agreed that this contract shall not apply to, and does not cover, any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly caused by, arising out of, resulting from, in consequence of, in any way involving, or to the extent contributed to by, the hazardous nature of asbestos in whatever form or quantity.

Computer Loss General Exclusion

General Exclusion applicable to all sections of this Agreement insuring damage to property or the consequences of damage to property or any liability

Notwithstanding any provision of this Agreement including any special exclusion or extension or other provision not included herein which would otherwise override a general exclusion, this Agreement does not cover:

- a) loss or destruction of or damage to any property whatsoever (including a computer) or any loss or expense whatsoever resulting or arising therefrom;
- b) any legal liability of whatsoever nature;
- c) any consequential loss;

directly or indirectly caused by or contributed to by or consisting of or arising from the incapacity or failure of any computer, correctly or at all,

- i) to treat any date as the correct date or true calendar date, or correctly or appropriately to recognise manipulate interpret process store receive or to respond to any data or information, or to carry out any command or instruction, in regard to or in connection with any such date or
- ii) to capture save retain or to process any information or code as a result of the operation of any command which has been programmed into any computer, being a command which causes the loss of data or the inability to capture save retain or correctly to process such data in regard to or in connection with any such date or
- iii) to capture save retain or to process any information or code due to programme errors, incorrect entry or the inadvertent cancellation or corruption of data and or programmes
- iv) to capture save retain or to process any data as a result of the action of any computer virus, or other corrupting, harmful or otherwise unauthorised code or instruction including any Trojan horse, time or logic bomb or worm or any other destructive code, media or programme or interference.

A computer includes any computer, data processing equipment, microchip, integrated circuit or similar device in computer or non-computer equipment or any computer software, tools, operating system or any computer hardware or peripherals and the information or data electronically or otherwise stored in or on any of the above, whether the property of the Insured or not.

Special Extension to the above General Exclusion

- A. Loss or destruction of or damage to the insured property by fire, explosion, lightning, earthquake or by the special perils referred to in B below or indemnified by the Glass, Employer's Liability, Stated Benefits, Group Personal Accident or Motor section is not excluded by this General Exclusion.
- B. The special perils that are not excluded for the purpose of this special extension are damage caused by:
 - 1. storm, wind, water, hail or snow excluding damage to property

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- a) arising from its undergoing any process necessarily involving the use or application of water;
 - b) caused by tidal wave originating from earthquake or volcanic eruption;
 - c) in the underground workings of any mine;
 - d) in the open (other than buildings structures and plant designed to exist or operate in the open);
 - e) any structure not completely roofed;
 - f) being retaining walls;
- } Unless so described and specifically insured as a separate item
- 2. aircraft and other aerial devices or articles dropped therefrom;
 - 3. impact by animals, trees, aerals, satellite dishes or vehicles excluding damage to such animals, trees, aerals, satellite dishes or vehicles or property in or on such vehicles.
These special perils do not cover wear and tear or gradual deterioration.
 - C. The above General Exclusion also does not apply to consequential loss as insured by any Business Interruption indemnity provided by this Agreement to the extent that such consequential loss results from damage to insured property by the perils referred to in A above.
 - D. This Special Extension will not insure any loss destruction, damage or consequential loss if it would not have been insured in the absence of this Computer Loss General Exclusion and this Special Extension.
 - E. This Special Extension shall not apply to any Public Liability indemnity.

COMMUNICABLE DISEASES EXCLUSION

- 1. This policy, subject to all applicable terms, conditions and exclusions, covers losses attributable to direct physical loss or physical damage occurring during the period of insurance. Consequently, and notwithstanding any other provision of this policy to the contrary, this policy does not insure any loss, damage, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
- 2. For the purposes of this exclusion, loss, damage, claim, cost, expense or other sum, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test:
 - (b.1) for a Communicable Disease, or
 - (b.2) any property insured hereunder that is affected by such Communicable Disease.
- 3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
 - (c.1) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
 - (c.2) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
 - (c.3) the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured hereunder