Commercial Insurance

General exceptions, conditions and provisions

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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.

General exceptions

1. War, riot and terrorism

(a) This policy does not cover loss of or damage to property related to or caused by

(i) civil commotion, labour disturbances, riot, strike, lockout or public disorder or any act or activity which is calculated or directed to bring about any of the aforegoing.

(ii) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) or civil war.

(iii) (1) mutiny, military rising, military or usurped power, martial law or state of siege, or any other event or cause which determines the proclamation or maintenance of martial law or state of siege or

(2) insurrection, rebellion or revolution.

(iv) any act (whether on behalf of any organisation, body or person or group of persons) calculated or directed to overthrow or influence any State or Government or any provincial, local or tribal authority with force or by means of fear, terrorism or violence.

(v) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any State or Government or any provincial, local or tribal authority, or for the purpose of inspiring fear in the public or any section thereof.

(vi) any attempt to perform any act referred to in clause (iv) or (v) above.

(vii) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause 1(a) (i), (ii), (iii), (iv), (v) or (vi) above.

If the company alleges that, by reason of clause 1(a) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this exception, loss or damage is not covered by this policy, the burden of proving the contrary shall rest on the insured.

(b) This policy does not cover loss or damage caused directly or indirectly by or through or in consequence of any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act, 1976 (No. 85 of 1976) or any similar Act operative in any of the territories to which this policy applies.

(c) Notwithstanding any provision of this policy including any exclusion, exception or extension or other provision not included herein which would otherwise override a general exception, this policy does not cover loss of or damage to property or expense of whatsoever nature directly or indirectly caused by, arising out of or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any sequence to the loss, damage or expense.

For the purpose of this General exception 1(c) an act of terrorism includes, without limitation, the use of violence or force or the threat thereof whether as an act harmful to human life or not, by any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government or any other person or body of persons, committed for political, religious, personal or ideological reasons or purposes including any act committed with the intention

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to influence any government or for the purpose of inspiring fear in the public or any section thereof. If the company alleges that, by reason of clause 1(c) of this exception, loss or damage is not covered by this policy, the burden of proving the contrary shall rest on the insured.

2. Nuclear

Except as regards the Fidelity, Stated Benefits and Group Personal Accident sections, this policy does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss directly or indirectly caused by or contributed to by or arising from:

(a) ionising, radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or use of nuclear fuel;
(b) nuclear material, nuclear fission or fusion, nuclear radiation;
(c) nuclear explosives or any nuclear weapon;
(d) nuclear waste in whatever form;

regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
For the purpose of this exception only, combustion shall include any self-sustaining process of nuclear fission.

3. Computer losses

General exception applicable to all sections of this policy insuring damage to property or the consequences of damage to property or any liability

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

(a) loss or destruction of or damage to any property whatsoever (including a computer) or any loss or 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, or
(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 or disruptive 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 General exception 3

(a) Loss or destruction of or damage to the insured property by fire, explosion, lightning, earthquake or by the special perils referred to below or indemnified by the Glass, Employer's Liability, Stated Benefits, Group Personal Accident or Motor section is not excluded by this General exception.
The special perils that are not excluded for the purpose of this special extension are damage caused by:
(i) storm, wind, water, hail or snow excluding damage to property
(1) arising from its undergoing any process necessarily involving the use or application of water;
(2) caused by tidal wave originating from earthquake or volcanic eruption;
(3) in the underground workings of any mine;

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(4) in the open (other than buildings structures and plant designed to exist or operate in the open);
(5) in any structure not completely roofed;
(6) being retaining walls;

Unless so described and specifically insured as a separate item

(ii) aircraft and other aerial devices or articles dropped therefrom;
(iii) impact by animals, trees, aerials, satellite dishes or vehicles excluding damage to such animals, trees, aerials, satellite dishes or vehicles or property in or on such vehicles.

These special perils do not cover wear and tear or gradual deterioration.

(b) General exception 3 also does not apply to consequential loss as insured by any Business Interruption indemnity provided by this policy to the extent that such consequential loss result from damage to insured property by the perils referred to in Special extension (a) above.
(c) 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 Losses General exception and this Special extension.
(d) This Special extension shall not apply to any Public Liability indemnity.

4. Asbestos

Applicable to the Public Liability section, Employer's Liability section and Sub-section D (Liability) of the Buildings Combined/Body Corporate section.

Notwithstanding any provision of this policy including any exclusion, exception or extension or other provision which would otherwise override a general exception, this policy does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss 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.

General conditions

Subject to the provisions of Section 55 of the Short Term Insurance Act No. 53 of 1998 (as amended)

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.

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 premiuim 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, and the first day of

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

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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 as soon as reasonably possible and provide particulars of any other insurance covering such events as are hereby insured.
   - (ii) as soon as practicable after the event inform the police of any claim involving theft or (if required by the company) loss of property and take all practicable steps to discover the guilty party and to recover the stolen or lost property.
   - (iii) as soon as practicable after the event submit to the company full details in writing of any claim.
   - (iv) give the company such proof, 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 licence 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, offer, 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.

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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 wilful 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

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

Subject to the provisions of Section 55 of the Short Term Insurance Act No. 53 of 1998 (as amended)

1. Claims preparation costs

The insurance provided 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, R1 000 or 10% of

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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.

2. 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.

3. 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.

4. Members

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

5. 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.

6. 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.

7. 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 it's sole discretion may determine.

8. Holding covered

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

9. Schedule sums insured blank

If, in a schedule of this policy, the sum insured, limit of indemnity or compensation is
(a) left blank or has no monetary amount stipulated against it;
(b) 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.

10. 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 sub-section 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.

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