

6. arising out of any Product where the Insured were aware that the Product was likely to cause Injury or Damage before the inception of the cover provided in terms of this Extension

#### 19. SPECIAL PROVISIONS

1. Wherever this Policy provides that notice be given to the Underwriters, such notice shall be given to:

Camargue Underwriting Managers

Eton House  
15 Eton Road  
Parktown  
2193

Postnet Suite 250  
Private Bag X4  
Bedfordview 2004

Registration No:	2000/028098/07
Telephone No:	(011) 356 4845
Fax No:	(011) 356 4847

2. This insurance is governed by the law of the Republic of South Africa whose courts shall have jurisdiction in any dispute arising hereunder
3. Any summons, notice or process to be served upon Underwriters at Lloyds for the purpose of instituting any legal proceedings against them in connection with this insurance shall be served upon Lloyd's South Africa (Pty) Ltd, 7<sup>th</sup> Floor, The Forum, 2 Maude Street, Sandton, South Africa.

### **18.25 Extended Reporting Option (To be exercised by the Insured in the event of non-renewal)**

In respect of Sections and Extensions of this Policy on a Claims Made basis, at the option of the Insured, which option must be exercised within 15 days of non-renewal, and payment of the additional premium required by Underwriters within 30 day, the period within which any claim or circumstance which may give rise to a claim in terms of this Policy is to be reported in terms of Condition 17.1, the Underwriters agree that notice given within 36 months (hereinafter referred to as the extended reporting period) immediately following the expiry (non renewal) of this insurance shall be regarded as having been reported on the last day preceding the expiry (non renewal).

### **18.26 Excess of Loss Liability**

The Underwriters will indemnify the Insured in respect of legal liability to pay all sums including claimant's costs and expenses for, and/or arising out of, Injury to persons and/or Damage caused by or through or in connection with any event for which indemnity is provided in terms of the scheduled Underlying Insurances

#### **Special Exclusions**

This Extension does not grant indemnity in respect of claims:

1. which form the subject of indemnity by the Underlying Insurances but are uninsured by the Underlying Insurance by virtue of any excess, first amount payable and/or deductible clause thereunder;
2. which form the subject of any extension to the Underlying Insurances where the liability of insurers under such extension is less than the Indemnity Limit of the Underlying Insurance specified in the Schedule of Underlying Insurances

#### **Special Conditions**

1. The following are conditions precedent to the granting of indemnity by the Underwriters in terms of this Extension:
  - 1.1 the Underlying Insurances are warranted to be in force throughout the currency of this Policy for not less than the Indemnity Limits shown
  - 1.2 any alteration to the terms, exclusions or conditions of any of the Underlying Insurances must be disclosed immediately in writing to the Underwriters of this Policy and their written confirmation obtained of continuation of cover under this Section.
2. In the event of reduction or exhaustion of any aggregate Indemnity Limit under the Underlying Insurances by reason of claims paid thereunder, this Extension shall:
  - 2.1 in the event of reduction, pay the excess of the reduced underlying limit
  - 2.2 in the event of exhaustion, continue in force as underlying insuranceprovided always that the liability of Underwriters shall not be increased beyond the Indemnity Limit.
3. Liability to pay under this Extension shall not attach unless and until the insurers of the Underlying Insurances shall have paid or have admitted liability or have been held liable to pay the full amount of their indemnity.
4. Underwriters agree to follow the insuring clause of any appropriate underlying insurance to determine the basis of indemnity, being either
  - 4.1 a claim or claims as a result of an Occurrence happening during the Period of Insurance "Occurrence Basis", or
  - 4.2 a claim or claims first made against the Insured during the Period of Insurance "Claims Made Basis".

## 18.16 North America Jurisdiction

Where the Insured has requested an extension to the Operative Clause for indemnity to be granted in respect of any judgement, award or settlement made within the 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) such extension is only granted where so stated in the Schedule to the Policy and where a specific amount has been entered against "Applicable Excess", and where a specific date has been entered against "Retroactive Date" in the Schedule under the heading "North American Jurisdiction". Acceptance by the Insured of this Policy is deemed to be acceptance of the above conditions as precedent to the granting of indemnity against such "North American Jurisdiction".

In consideration of the granting of such indemnity the Insured agrees to accept the following terms and Exclusions in respect of any such judgement, award or settlement:

- A The indemnity does not apply to awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensatory awards or damages or in any other form whatsoever.
- B The indemnity does not apply to claims for or arising out of Pollution as defined elsewhere in this Policy of Insurance.
- C The indemnity does not apply to claims which form the subject of any Extension under Clause 18.
- D Underwriters shall not be liable for the amount shown as the Applicable Excess in the Schedule, being the first amount of each and every claim. For the purpose of this sub-clause D "claim" shall be deemed to include compensatory awards, claimants' costs, fees and expenses and associated Defence Costs.
- E The indemnity does not apply to claims arising out of Injury and/or Damage occurring prior to the Retroactive Date stated in the Schedule under the heading "North American Jurisdiction".

Subject in all other respects to the terms and Exclusions of the Policy which shall not be deemed in any way whatsoever to over-ride, modify or alter any of the specific terms and Exclusions applicable to this Extension Clause.

## 18.17 Contractor's Liability

The Underwriters will indemnify the Insured in respect of all sums for 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 any construction works undertaken by or on behalf of the Insured named in the Schedule at the construction site

### Specific Exclusions

This extension excludes liability for:

- a) Damage to property for which indemnity is provided in terms of a Contract Works policy whether insured or not ;
- b) caused by the intentional removal of support of any property;
- c) Damage to property on which an insured is working to the extent that such Damage results directly from the work, provided that this exclusion is limited to that work which is defective in workmanship, materials or design and which is the cause of Damage to property,

provided that the liability of Underwriters shall not exceed the Indemnity Limit stated in the Schedule in respect of any one event

## 18.18 Lateral Support

The indemnity granted by this Policy is extended to include liability for loss of or damage to property caused by the accidental removal or weakening of or interference with support to such property provided that the indemnity granted in terms of this Extension shall apply only in respect of such claims caused by the negligence of any contractor or sub-contractor or the Insured in the carrying out of any construction works.

## 18.19 Claims Preparation Costs

9. for damage to property of Transnet other than to the extent of any requirement of statute or statutory regulation.

#### **18.12 Carriers' Liability – Consequential Loss**

Underwriters will indemnify the Insured in respect of claims for consequential loss following Damage to goods or merchandise in the course of carriage or whilst being loaded, off-loaded and/or discharged. It being expressly understood that no cover is provided in terms of this extension for the cost of repair or replacement of goods lost, damaged or destroyed.

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; 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.
9. for damage to property of Transnet other than to the extent of any requirement of statute or statutory regulation.

#### **18.13 Custody and Control**

Notwithstanding Exclusion 9.4 of Section A the Underwriters will indemnify the Insured against liability for and/or arising out of Damage to property temporarily in the Insured's possession for storage or any other purpose (other than Vehicles in the Insured's possession for the purpose of maintenance or repair) insofar as such property is not the subject of any material damage policy available to the Insured, provided that the liability of the Underwriters shall not exceed the Indemnity Limit stated in the Schedule.

#### **18.14 Pure Economic Loss**

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 out of negligence (other than in the provision of Professional Services) in the course of the Business. For purposes of this Extension "Professional Services" shall include advice given or work done or any actions taken by the Insured when functioning in any capacity involving special skill or knowledge.

- b). any decision of the underlying insurer to accept a claim "ex gratia" or "without prejudice" shall not be binding on the Underwriters;
- c) no action or decision of the underlying insurer which prejudices the Underwriters in the conduct or settlement of any claim under this Policy shall be binding on Underwriters.

If no insurance of the class insured in terms of this Policy is purchased locally, this Policy shall act as primary insurance subject to the Excess stipulated in the Schedule provided that such cover will only apply

- a) to claims made against the Insured during the Period of Insurance; and
- b) in respect of liability arising from any Injury, Damage or event giving rise to pure financial loss (as provided for in coverages providing for loss not related to physical damage to property) occurring or alleged to have occurred on or after the applicable Retroactive Date stated in the Schedule.

### 18.9 Warehousemen's Liability

Underwriters will indemnify the Insured in accordance with the Operative Clause in respect of claims for and/or arising out of Damage to property in the Insured's custody and control while:

- 1. contained in any premises occupied by the Insured as a warehouse or storage facility
- 2. whilst being loaded into any storage facility or being off-loaded therefrom

Within the Territorial Limits

#### Special Condition

It is a condition precedent to liability hereunder that the Insured obtain agreement from their customers to the Insured's Standard Trading Conditions insofar as they can apply in respect of property in the Insured's care, custody and control while contained in any premises occupied by the Insured as a warehouse or storage facility or being offloaded therefrom, it being understood and agreed that the Insured's customers retain full responsibility for their own property whether insured or not

#### Special Exclusions

This Extension does not cover liability for claims:

- 1. for and/or arising out of mechanical or electrical derangement unless accompanied by other physical damage
- 2. caused by or contributed to by the dishonesty of any employee of the Insured or of persons to whom the property has been entrusted by the Insured
- 3. arising out of the willful illegal sale of the property, willful conversion or willful or wrongful secretion
- 4. arising out of any delay in the return or delivery of the property as required, unless such delay is the direct result of Damage indemnifiable under this extension
- 5. arising out of any activity of the Insured as Stevedores and/or Customs, Clearing and Forwarding Agents
- 6. arising out of the acceptance by the Insured of:
  - a) money, securities for money, jewellery, furs, precious metals or stones or works of art
  - b) perishables or goods which require storage under refrigerated or controlled temperature conditions

For the purposes of (a) above "precious metals" shall mean silver, gold and platinum

- (b) amounts recoverable under any Act in terms of which any employee may claim compensation for work related injuries.

### **Employee to Employee Liability**

Underwriters will at the request of the Insured indemnify any employee of the Insured subject to the agreement of the Underwriters (which agreement shall not be unreasonably withheld) in respect of claims made by one employee against another provided always that:

- (a) such Injury arises solely during and in the course of his/her employment
- (b) no indemnity shall be provided hereunder where such injury is caused whilst the employee is under the influence of intoxicating drugs or alcohol
- (c) no indemnity shall be provided hereunder for injury resulting from use of firearms
- (d) no indemnity shall be provided for liability arising out of any condition directly or indirectly caused by or associated with Human Immune Virus (HIV) or the mutant derivatives or variations thereof or in any way related to Acquired Immune Deficiency Syndrome or any Syndrome or condition of a similar kind howsoever it shall be named

### **Provided always that:-**

The total liability of the Underwriters under this extension 18.4 shall not exceed the amount stated in the Schedule in respect of all claims made during the Period of Insurance.

## **18.5 Errors and Omissions**

Underwriters will indemnify the Insured for all sums which the Insured becomes legally liable to pay arising from any claims made against the Insured during the Period of Insurance as a direct result of any negligent act, error or omission in the conduct of the Insured's professional activities.

This Extension does not cover liability for and / or arising out of:

1. claims which are indemnified by any other Section or Extension of this Policy
2. the ownership, possession, leasing or use of any property (mobile or immobile) which term shall include any vehicle, aircraft or watercraft
3. Pollution
4. injury, sickness, illness, disease or death sustained by any person
5. any Product or the recall of any Product or part thereof
6. insurance activities and/or failure to arrange insurances (other than by Travel Agents) financial advice or cost estimates or financing of any projects and contract guarantees and/or suppliers guarantees of whatsoever nature
7. claims made by one Insured against another unless emanating from an independent third party
8. liquidated damage clauses, penalty clauses or performance warranties or as imposed in terms of Section 99 of the Customs Act
9. any negligent act, error or omission which occurred before the retroactive date applicable to this Extension
10. any claims where the Insured were aware of the circumstance which gave rise to the claim before the inception of this Policy
11. claims arising out of the dishonesty of directors, principals or employees of the Insured or the activities of operations formed or acquired by the Insured subsequent to the inception of this insurance unless agreed to in writing and endorsed hereon by the Underwriters
12. errors and omissions in the provision of professional services provided by a qualified medical practitioner or nursing sister

the claim event or circumstance shall be forwarded to the Underwriters immediately they are received by the Insured.

- 17.2 No admission offer promise or payment shall be made or given by or on behalf of the Insured without the written consent of the Underwriters who shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim or to 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 and the Insured shall give all such information and assistance as the Underwriters may reasonably require.
- 17.3 The Insured shall give notice as soon as reasonably practicable of any fact, event or circumstance which materially changes the information supplied to the Underwriters at the time when this Policy was effected, and Underwriters may amend the terms of this Policy according to the materiality of such change.
- 17.4 The Underwriters may at any time pay to the Insured in connection with any claim or series of claims under this Policy to which an Indemnity Limit applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claims.
- 17.5 The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or Schedule shall bear such specific meaning wherever it may appear.

The interpretation of the terms and Exclusions of this Policy (and any phrase or word contained therein) shall be interpreted in accordance with the law of the Republic of South Africa.

- 17.6 Where the Premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as Underwriters require. The premium shall then be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any Minimum Premium that may apply.
- 17.7 This Policy may be cancelled by the Insured at any time by giving immediate notice or by the Underwriters by the giving thirty days notice in writing of such cancellation to last known address of the other party.
- 17.8 If any claim under this Policy is in any respect fraudulent all benefit in respect of such claim shall be forfeited.

## **18. EXTENSIONS (Applicable only to the extent indicated in the Schedule)**

It is understood and agreed that this Policy extends to include the following, subject to the limits and excesses specified in the Schedule and subject to the terms, Conditions and Exclusions of the Policy insofar as they can apply and provided that the total liability of the Underwriters is not increased beyond that which would have applied in the absence of such extensions.

### **18.1 Statutory Defence Costs**

Underwriters will indemnify the Insured against legal costs, fees and expenses incurred with the consent of the Underwriters in the defence of any criminal action brought against the Insured as a result of the alleged contravention of any Statute governing the conduct of the Business [other than any Statutes governing the ownership, possession, use or licensing of motor Vehicles, aircraft or watercraft, the relevant Labour Laws as promulgated in the Republic of South Africa from time to time, or the Companies Act No. 61 of 1973 (as amended from time to time)] and as read in conjunction with the Criminal Procedure Act No. 56 of 1955 (as amended from time to time)

#### **Provided always that:-**

- (i) no indemnity shall be granted for fines or penalties
- (ii) in the case of an Appeal, the Underwriters shall not indemnify the Insured unless a Senior Counsel (to be agreed to by the Underwriters) shall advise that such Appeal should be likely to succeed.

## SECTION D - NEGLIGENT ADVICE

### 14. SECTION D - INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause but only in respect of claims arising out of Negligent Advice.

### 15. SECTION D - EXCLUSIONS

This Section does not cover liability for claims arising out of:

- 15.1 Negligent Advice given in respect of any Product unless the Insured shall have effected cover under Section C of this Policy
- 15.2 financial services and/or cost estimates given by or on behalf of the Insured
- 15.3 the insolvency of the Insured
- 15.4 defamation or injuria.

### 16. GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS AND EXTENSIONS OF THE POLICY

This Policy does not cover liability:

- 16.1 for any claims where the Insured was aware, before inception of this Policy, of the circumstances or event which gave rise to the claim
- 16.2 occurring prior to the applicable Retroactive Date stated in the Schedule
- 16.3 arising out of the deliberate, conscious or intentional disregard by the Insured's technical or administrative management of the need to take all reasonable steps to prevent claims
- 16.4 arising out of Injury to any persons under a contract of employment or apprenticeship with the Insured where such Injury arises out of the execution of such contract except to the extent and where the Insured has elected to purchase Extension 18, Employers' Liability
- 16.5 arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that it can be proved that liability would have attached in the absence of such clauses or warranties
- 16.6 directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, military or usurped power or confiscation of, nationalisation of, requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority
- 16.7 directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.  
For the purposes of this General Exclusion only, combustion shall include any self-sustaining process of nuclear fission.  
This General Exclusion will not apply to liability arising from the ownership, possession or use by or on behalf of the Insured, of radio-active isotopes
- 16.8 for the applicable Excess in respect of the first amount of each claim or series of claims arising out of one originating cause.
- 16.9 which forms the subject of insurance by any other policy or policies and this Policy shall not be drawn into contribution with such other insurance
- 16.10 for any claims arising out of any design, formula (other than design or formula of a Product), specification or advice of a professional nature given by or on behalf of the Insured in exchange for a fee.

## SECTION A - PUBLIC LIABILITY

### 8. SECTION A - INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause but not against claims for and/or arising out of:

- (a) Pollution
- (b) any Product
- (c) Negligent Advice.

### 9. SECTION A - EXCLUSIONS

This Section does not cover liability for claims arising out of:

- 9.1 the ownership possession or use by or on behalf of the Insured of any Vehicle, other than claims:
  - 9.1.1 caused by the use of:
    - (i) any tool or plant forming part of or attached to or used in connection with any Vehicle
    - (ii) any Vehicle as a tool of trade
    - (iii) a trailer which is not attached to nor has accidentally become detached from a motor Vehicle
  - 9.1.2 arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any Vehicle
  - 9.1.3 for damage to any bridge, weighbridge, road or anything beneath caused by the weight of any Vehicle or of the load carried thereon
  - 9.1.4 arising out of any Vehicle temporarily in the Insured's custody or control for the purpose of parking
  - 9.1.5 arising out of the possession or use by the Insured of any Vehicle 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
  - 9.1.6 which form the subject of Extension 18.4 - Employers' Liability
- 9.2 liability which is the subject of statutory or similar legislation controlling the possession use of motor Vehicles or trailers and in respect of which liability:-
  - 9.2.1 the Insured is compelled to effect insurance or otherwise furnish security, or
  - 9.2.2 the State or other governmental authority has accepted responsibility
- 9.3 the ownership possession or use by or on behalf of the Insured of any aircraft watercraft or hovercraft (other than watercraft not exceeding five metres in length and then only whilst on inland waterways)
- 9.4 damage to property owned leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than:
  - 9.4.1 premises (or the contents thereof) temporarily occupied by the Insured for work therein or other property temporarily in the Insured's possession for work thereon (but no indemnity is granted for damage to the part of the property on which the Insured is working and which arises out of such work)
  - 9.4.2 employees' and visitors' clothing and personal effects
  - 9.4.3 premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement

- (a) Injury shall be deemed to have occurred when the claimant first consulted a qualified Medical Practitioner in respect of such Injury
- (b) Damage shall be deemed to have occurred when it first became evident to the claimant, even if the cause was unknown.

### **3. NOTIFICATION EXTENSION CLAUSE**

Should the Insured notify the Underwriters during the Period of Insurance in accordance with Condition 17.1 of any specific event or circumstances which the Underwriters accept may give rise to a claim or claims which form the subject of indemnity by this Policy, then acceptance of such notification means that Underwriters will deal with such claim or claims which may later arise as if they had first been made against the Insured during the Period of Insurance.

### **4. INDEMNITY TO OTHERS**

The indemnity granted extends to:

- 4.1 any party who enters into an agreement with the Insured for any purpose of the Business, but only to the extent required by such agreement to grant such indemnity and subject to Clauses 9.4.3 and 16.5
- 4.2 officials of the Insured in their business capacity arising out of the performance of the Business or in their private capacity arising out of their temporary engagement of the Insured's employees
- 4.3 the officers, committee and members of the Insured's canteen, social, sports, medical, fire fighting and welfare organisation in their respective capacities as such
- 4.4 the personal representatives of the estate of any person who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such person

Provided always that all such persons or parties shall observe, fulfil and be subject to the terms, Conditions and Exclusions of this Policy as though they were the Insured.

### **5. CROSS LIABILITIES**

Each person or party indemnified is separately indemnified in respect of claims made against any of them by any other, subject to Underwriters' total liability not exceeding the stated Indemnity Limits.

### **6. DEFENCE COSTS**

The Underwriters will pay all costs, fees and expenses incurred with their prior consent in the investigation defence or settlement of any claim made against the Insured and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be made against the Insured, provided such claim or claims are the subject to indemnity by this Policy. Such costs, fees and expenses are called "Defence Costs".

Underwriters will also pay for such emergency medical treatment as may appear necessary in respect of Injury which may form the subject of indemnity by this Policy.

### **7. INDEMNITY LIMITS**

Underwriters' total liability to pay compensation, claimants' costs, fees and expenses and Defence Costs shall not exceed the Indemnity Limits stated in the Schedule. The Indemnity Limit shall be the maximum amount of the Underwriters' liability in respect of all claims arising out of one original cause. Where the Indemnity Limit is stated to be "in the annual aggregate" the Underwriters' liability for all claims arising in any one Period of Insurance shall be limited to the stated amount irrespective of the number of events giving rise to such claims.

In the event of any one originating cause giving rise to a claim or series of claims which form the subject of indemnity by more than one Section of this Policy, each Section shall apply separately and be subject to its own separate limits of Liability provided always that the total amount of Underwriters' liability shall be limited to the greatest Indemnity Limit of availability under any one of the Sections affording indemnity for the claim or series of claims. All limits stated are payable in excess of the Excess applicable to the relevant claim.