

# Africa GIT

## GOODS IN TRANSIT INSURANCE

### EXAMPLE WORDING

#### CONDITIONS:

This policy insures the subject matter subject to the London Institute Cargo Clauses “A” and the terms, conditions and exclusions stated herein or as agreed by Underwriters.

Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause - (CL370) 10/11/2003 including USA & Canada Endorsement as attached.

Marine Cyber Exclusion LMA5402

Institute Strikes Clauses (Cargo) (CL256) 1/1/82.

JC2009/056 – (01/01/09) Termination of Transit Clause (Terrorism)

Institute Replacement Clause 1/1/34

Excluding shipping containers

Excluding Tarpaulin, ropes, chains and the like

Excluding Electronic, mechanical, electrical derangement

Institute Replacement Clause 1/1/34

Excluding Rust, Oxidation and Discoloration

Excluding Scratching, Denting, Chipping, Abrasion and Marring of Paintwork

Excluding Third Party Liabilities Absolutely

#### Geographical Limits

Insured's are permitted to transit Interest(s) to and from Sub-Saharan Africa.

#### Excluded Goods

Fruit and veg, computers, cell phones, tobacco of any nature, cigarettes, antiques, bullion, cash, Jewelry, deeds, furs, specie, alcohol, watches, fresh produce, gold, temperature sensitive pharmaceuticals and cars

#### Returned or Re-Forwarded Goods Clause

In the event of goods covered under this Policy being forwarded to the declared destination and there refused and/or sent to another destination (other than a destination excluded in the Geographical Limits Clause herein) or returned to the Consignor, it is agreed that the insurance continues until such goods are finally disposed of, provided that the Insured shall take all reasonable steps to ensure that the cargo is returned as soon as reasonably possible. Should this result in storage exceeding 96 hours, immediate notice must be given to the Insurers as soon the fact becomes known to the Insured and an additional premium paid if required.

#### Abnormal and/or Out of Gauge Loads Warranty

Where the loads being conveyed are abnormal / over height, the Insured and approved and nominated sub-contractors must comply with the relevant Road Traffic regulations as per the Road Traffic Act and furthermore each trip must follow a pre-planned route. Included in the pre-planning must be the height of bridges, overhead structures, tunnels and projections on or across the carriageway, to prevent the cargo colliding with such overhead bridges, structures and the like.

Abnormal Loads must be accompanied by guide vehicles from origin to destination covered under this policy.

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### **Confiscation Exclusion Clause**

This Policy excludes liability of the Insured for loss of or damage to subject matter insured caused by confiscation, seizure, appropriation, expropriation, deprivation, detention, impounding or requisition legally carried out by customs officials, requisition for title or use or wilful destruction by or under the order of any government (whether civil, military or de facto) and/or public or local authority.

This exclusion shall not override cover provided by this Policy in terms of the Institute Strikes Clauses.

### **Cutting Clause**

In the event of a recoverable claim for breakage, chipping, bending, denting or any other damage to subject matter insured provided this be of such a nature that it is practicable to use the sound portion or portions for the purpose for which they were originally intended the Insurers may pay only for the proportionate insured value(s) of the damaged part(s) plus the cost of cutting off less their salvage value (if any).

### **Excesses / Deductibles**

General Claims:

USD 630 (Six Hundred and Thirty US Dollars) or ZAR 10,000.00 (Ten Thousand Rand) each and every claim.

Theft/Hijacking/Armed Robbery:

USD 1,500 (One Thousand and Five Hundred US Dollars) or ZAR 25,000.00 (Ten Thousand Rand) each and every claim.

### **Basis of Valuation:**

#### **As declared**

Except for goods not sold or for which there is no bill of sale, or commitment to sell or buy; or bill of lading or waybill or no instrument that might constitute an agreement

to buy or sell, shall be valued at cost of replacement or cost of reinstatement, or repair with material of like kind and quality, without deduction for depreciation, irrespective of whether or not the property is replaced, reinstated, or repaired, including the increased cost of repair or construction to comply with any law or ordinance regulating repair or construction.

Excluding second hand goods.

### **Pairs and Sets Clause**

Where the subject matter insured under this policy consists of articles forming a pair or set, this insurance is not to pay more than the value of any particular part or parts which may be lost or damaged, without reference to any special value which such article or articles may have as part of such pair or set and not more than the proportionate part of the insured value of the pair or set.

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### **Salvage Disposal Clause**

In the event of loss or damage recoverable under this Policy, the Cargo Owner must take all reasonable steps to mitigate its loss and to sell the damaged goods for the best possible salvage price under the circumstances, with the prior written approval of the Insurers. Should the Cargo Owner fail to do so, the Insurers will nevertheless be entitled to reduce the claim payable under the policy by an amount equivalent to a reasonable salvage.

### **Salvage Loss Clause**

In the event of an allowance not being agreed to or repairs not being possible claims are to be adjusted on the basis of salvage loss whereby settlement is the insured value as defined under the Basis of Valuation herein less net proceeds of the salvage sale.

### **Vehicle Road Worthiness**

It is a condition of this policy that the Insured shall comply with the requirements of the Road Traffic Act 1999 (Act No. 29 of 1989) as amended and/or any subsequent legislation and must hold a valid certificate of fitness at the time of loss.

### **Duration of Coverage Clause**

Including cover throughout all loading and unloading operations.

Including temporary storage in the normal course of transit.

### **Buyer/Sellers Interest**

Goods or merchandise sold by the Insured without benefit of insurance under this policy are covered to the extent that the Assured is unable to collect payment for lost or damaged goods or merchandise provided that such loss or damage would have been recoverable hereunder but for the existence of other insurance. Goods or Merchandise bought by the Insured without benefit of insurance under this policy are covered to the extent that the Assured is unable to collect a claim for lost or damaged goods or merchandise from other insurers provided that such loss or damage would have been recoverable hereunder but for the existence of other insurance.

“Warranted that the existence of this extension of cover is not revealed to the buyer or seller or to any other party interested in this consignment. When any claim is payable under this section of the Contract, insurers shall be subrogated to all rights of recovery hereunder including the right of recovery against the buyer or seller as well as against any other party”

### **Labels and Packing**

In the event of physical loss or damage from a peril insured herein to labels, wrapping or packaging, Insurers shall cover the costs associated with re-labelling, re-wrapping and re-packing.

### **Inventory Exclusion**

Excluding unexplained or mysterious disappearance and/or stock taking losses, whilst in store.

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### **Segregation Clause**

In the event of external signs of damage to the Interest resulting from an insured peril necessitating segregation and/or sorting, the Insurers shall pay the reasonable costs incurred by the Named Insured on both sound and damaged packages, subject to Policy terms and conditions.

The Insurers agree to extend the Policy to cover periods in excess of those provided for in the Institute Clauses referred to, to allow for such segregation and/or sorting prior to delivery to final destination.

### **Sue and Labour**

In the event of any imminent or actual loss or misfortune, it shall be lawful and necessary for the Insured, his or their factors, servants and assigns, to sue, labour and travel for, in and about the defence, safeguard and recovery of the subject matter insured, or any part thereof, without prejudice to this insurance, to the charges whereof, Insurers will contribute according to the rate and quantity of the sum hereby insured.

### **Additional Discharge Expenses**

Subject to the terms, conditions and warranties of this Policy, in the event of loss of or damage giving a rise to a claim under this Policy, the Insurers shall pay to the Named Insured any additional expense incurred by the Named Insured in discharging interest, handling, storing, re-loading or transporting sound and/or damaged Goods by any means other than the normal methods or other than at normal rates.

The Insurers to receive the benefit of any recovery where such charges are recoverable, either in General Average or from the Carriers.

### **Destruction by Governmental Authorities**

The Insurers will indemnify the Insured for loss of or damage to the Interest directly caused by Governmental authorities (acting for the public welfare) to prevent or mitigate a pollution hazard or threat, provided a recoverable claim would have resulted under the Policy (subject to all its terms, conditions and warranties) had the Interest been damaged as a result of the accident or occurrence which gave rise to the threatened pollution.

### **Notice of Cancellation Clause**

This Contract may be cancelled either by the Insured or by the Insurers with thirty (30) days' notice in writing to take effect at the end of the following calendar month in which such notice is given, but seven (7) days' notice at any time in respect of War, Strikes, Riots, Civil Commotions risks except in respect of sendings to or from the United States of America when Strikes, Riots, Civil Commotions risks will be subject to forty eight (48) hours' notice of cancellation. Notice if given not to apply to any risks which shall have commenced or been declared prior to termination of period of notice.

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### **Process Clause**

Subject always to the other terms and conditions of the policy, this insurance excludes physical loss or damage to the subject matter insured whilst the subject matter insured is being processed manufactured tested or otherwise worked upon.

Notwithstanding the above, whilst the subject matter insured is being processed manufactured tested or otherwise worked upon, this insurance covers physical loss or damage to the subject matter insured proximately caused by the peril(s) of fire lightning explosion aircraft flood windstorm earthquake or theft, subject always to the limits and retentions elsewhere in the policy.

JC2020-005

29/07/2020

### **Loading and Unloading Clause**

The Insurers agree to extend cover to include the period during loading and unloading of the Interest onto or from the Conveyance.

### **War and Strikes Clause**

The rates mentioned herein are inclusive of War and Strikes premiums.

### **Unseaworthiness and Unfitness Exclusion Clause**

The Insurers hereby agree that the Unseaworthiness and Unfitness Exclusion Clause contained in the Institute Clauses applicable to this insurance is deleted and replaced by the following:

“In no case shall this insurance cover loss or damage or expense arising from unseaworthiness of vessel or craft, unfitness of vessel, aircraft, conveyance, container or lift van for the safe carriage of the Interest, where the Named Insured are privy to such unseaworthiness or unfitness at the time the subject matter insured is loaded therein.

The above exclusion shall not apply where this insurance has been assigned to the party claiming hereunder who has bought the Interest in good faith without notice of such unseaworthiness or unfitness.

The Insurers agree to waive any breach of the implied Warranties of seaworthiness of ship and fitness of the ship and fitness of aircraft to carry the Goods to destination, unless the party claiming under this Insurance are privy to such unseaworthiness or unfitness”.

### **Insolvency Exclusion Clause**

It is hereby agreed that the exclusion “loss, damage or expense arising from insolvency or financial default of the owners, managers, charterers or operators of the vessel” is amended to read as follows:-

In no case shall this insurance cover loss, damage or expense arising from insolvency or financial default of the owners, managers, charterers or operators of the vessel where the Insured are unable to show that, prior to the loading of the subject-matter insured onboard the vessel, all reasonable practicable and prudent measures were taken by the Insured, their servants and agents, to establish the financial reliability of the party in default.

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### **Automatic Acquisition**

This policy covers any additional subject matter insured acquired by or becoming at risk to the Insured during the period of this policy, subject to prompt advice to the Insurers.

### **Earthquake**

This policy specifically covers Physical Loss and/or Damage to the subject matter insured resulting from earthquake.

### **Event**

When the term “event” is applied to losses from windstorms, hail and freezing arising out of atmospheric disturbance or condition, riot attending a strike, civil commotion, earthquake and flood, it shall be held to include those losses occurring or commencing during a period of 72 consecutive hours.

The Insured may elect the moment when each 72 hour period shall be deemed to have commenced, provided no two periods overlap and provided no period commences earlier than the date and time of the happening of the first recorded loss.

### **Civil Authority**

This policy also covers any damage to or destruction of the subject matter insured caused by a Civil Authority during a conflagration for the purpose of retarding such conflagration.

### **Debris Removal**

This insurance is extended to cover, in addition to any other amount recoverable under this insurance, extra expenses reasonably incurred by the Insured for the removal and disposal of the subject matter insured, or part thereof, by reason of damage thereto caused by an insured risk, but excluding absolutely:

- 1) any expenses incurred in consequence of or to prevent or mitigate pollution or contamination, or any threat or liability therefrom or
- 2) the cost of removal of cargo from any vessel or craft.

In no case shall the Insurers be liable under this Clause for more than 10% of the proportionate insured value under this policy of the damaged subject matter removed.

### **Possession and Control**

In the event of loss or damage from a peril insured herein to goods or merchandise carrying a brand or trademark or implying a guarantee of the manufacturer or of the Insured, the salvage value of such damaged goods or merchandise shall, at the option of the Insured, be determined after removal of all brands or trademarks. The Insured shall retain control of all damaged goods or merchandise and such goods or merchandise shall not be resold or otherwise disposed of without the Insured's consent.

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The Insured agrees wherever practicable to recondition and sell such goods or merchandise after removal of all brands and trademarks, and any proceeds to be credited against any recoverable claim.

### **Duty of Insured**

It is the duty of the Insured to act in good faith in all matters relating to this insurance, to take all such reasonable measures within their control to maintain in good order all protections for the safety and security of the subject matter insured, to act with reasonable speed and despatch to minimise or avert loss and to maintain Insurers rights of recovery against third parties. Any release or waiver given by the Insured prior to loss (subject to agreement by Insurers), or any unintentional error, oversight or omission, shall not prejudice the Insured's right of recovery from Insurers.

### **Additional Insured**

This Policy shall also cover / include associated and/or affiliated and/or subsidiary and/or

interrelated companies and/or corporations as they now are or may hereinafter be created and/or constituted and/or where they have an insurable interest as their respective rights and interests may appear – herein known as the Insured.

It is further noted and agreed that Underwriters Liability under any and all contracts of

insurance evidenced or deemed to be evidenced by this Policy shall be the liability so specified in the Policy as applicable to any one such contract and shall not (save as so specified) be varied by virtue of the number or type of Insured's or claims under this policy.

### **Arbitration**

Any dispute regarding claim(s) between Insurers and the Insured which may arise may be

referred to the arbitration and decision of three arbitrators, each party choosing one arbitrator and the said arbitrators an umpire. The arbitrators and the umpire shall be the directors of Insurance companies and/or Brokers or hold responsible positions in such companies or Brokers. The arbitrators shall interpret the present agreement as an honourable engagement rather than merely as a legal obligation and the decision of the majority of them shall be final and binding upon the contracting parties without appeal. The arbitrators are relieved from all judicial formalities and may abstain from following the strict rule of law. The costs of the award shall be borne and paid as directed by the Arbitrators.

### **POLITICAL RISK, FINANCIAL GUARANTEE & CREDIT RISK EXCLUSION CLAUSE**

This (re)insurance excludes any loss or liability arising from the following:

1. Contract Frustration Business, including but not limited to, all forms of non-performance of contractual obligations, imports and/or export embargo, non-ratification of contracts, exchange transfer, calling of bonds and guarantees and force majeure indemnities.
2. Failure or delay to deliver or supply any form of property whatsoever, unless as a direct result of physical damage.
3. Any form of Financial Guarantee, Surety or Credit indemnity.

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### TERMINATION OF TRANSIT CLAUSE (TERRORISM) 2009

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

1. Notwithstanding any provision to the contrary contained in the contract of insurance or the Clauses referred to therein, it is agreed that in so far as the contract of insurance covers loss or damage to the subject-matter insured caused by

any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation that carries out activities directed towards the overthrowing or influencing, of any government whether or not legally constituted or

or any person acting from a political, ideological or religious motive,

such cover is conditional upon the subject-matter insured being in the ordinary course of transit and, in any event,

**SHALL TERMINATE:**

**either**

- 1.1 as per the transit clauses contained within the contract of insurance,

**or**

- 1.2 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,
- 1.3 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than the ordinary course of transit or for allocation or distribution, or
- 1.4 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit,

**or**

- 1.5 in respect of marine transits, on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge,
- 1.6 in respect of air transits, on the expiry of 30 days after unloading the subject-matter insured from the aircraft at the final place of discharge,

whichever shall first occur.

2. If the contract of insurance or the Clauses referred to therein specifically provide cover for inland or other further transits following on from storage, or termination as provided for above, cover will re-attach, and continues during the ordinary course of that transit terminating again in accordance with clause 1.



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### **U.S.A. & CANADA ENDORSEMENT FOR THE INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE 10/11/03 - CL370**

This policy is subject to the Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause 10/11/03 (RACCBE). The inclusion of RACCBE in this policy is material to underwriters' willingness to provide coverage at the quoted terms, conditions and rates.

It is the intent of the parties to give maximum effect to RACCBE as permitted by law.

In the event that any portion of RACCBE may be found to be unenforceable in whole or in part under the law of any state, territory, district, commonwealth or possession of the U.S.A., or any province or territory of Canada, the remainder shall remain in full force and effect under the laws of that state, territory, district, commonwealth or possession, province or territory. Further, any such finding shall not alter the enforceability of RACCBE under the laws of any other state, territory, district, commonwealth or possession of the U.S.A., or any province or territory of Canada, to the fullest extent permitted by applicable law.

### **INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE**

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith**

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
  - 1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
  - 1.2 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes
  - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

10/11/03  
CL370

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### CLAIMS PROCEDURE

It is agreed that in the event of a claim, or occurrence likely to give rise to a claim, immediate notice must be given to the Giles Russell and Associates, who shall appoint Loss Adjusters, arrange surveys, adjust claims, pursue recoveries, instruct or appoint third parties in relation thereto.

It is agreed that where original documents are unavailable, faxed or emailed copies shall be acceptable hereon.

### Claims contact information:

Giles Russell  
[ruskee@iafrica.com](mailto:ruskee@iafrica.com)  
00 27 (82) 859-5686

### Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)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 (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10  
LMA3100

### COMMUNICABLE DISEASE EXCLUSION (Cargo)

1. Notwithstanding any provision to the contrary within this insurance, this insurance does not insure any loss, damage, liability, claim, cost or expense of whatsoever nature caused by, contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto.
2. 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:
  - 2.1. 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
  - 2.2. 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
  - 2.3. the disease, substance or agent can cause or threaten bodily injury, illness, damage to human health, human welfare or property.

JC2020-011  
17 April 2020

## MARINE CYBER EXCLUSION

This clause shall be paramount and shall override anything in this insurance inconsistent therewith.

- 1 In no case shall this insurance cover any loss, damage, liability or expense directly or indirectly caused by, contributed to by or arising from:
  - 1.1 the failure, error or malfunction of any computer, computer system, computer software programme, code, or process or any other electronic system, or
  - 1.2 the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

LMA5402

11 November 2019

## Law and Jurisdiction

Any dispute concerning the interpretation of the terms, Conditions, Limitations, Exceptions and/or Exclusions of the policy are understood and agreed by both the Reinsured and the Reinsurers to be subject to the same law and the same jurisdiction as the primary policy. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within said territory and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.



## **THE TRANSPORT CLEAN UP POLICY ENVIRONMENTAL IMPAIRMENT POLLUTION WORDING**

### **1. OPERATIVE CLAUSE**

In consideration of the prior payment of the premium by the Insured named in the Policy Schedule and the receipt thereof by the Insurer, the Insurer agrees to indemnify the Insured for the Defined Event which occurred within the Territorial Limits and on or after the retroactive date shown in the Policy Schedule and which results in a claim first being made against the Insured during the period of insurance subject to:

- a) reliance upon the Insured's accurate and complete representations and statements made to the Insurer or in the Proposal Form;
- b) the limits of indemnity as stated in the Policy Schedule;
- c) the Deductibles as stated in the Policy Schedule;
- d) the Terms, Exclusions and Conditions of this Policy.

It is declared and agreed that the Proposal Form, Policy Schedule, this Policy Wording and any statements made to the Insurer shall all form the basis of this contract of insurance (hereinafter referred to as this Policy). Notwithstanding anything contained to the contrary in this policy it is declared and agreed that nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim.

### **2. DEFINED EVENTS**

#### **2.1. Transportation – (If stated in the Policy Schedule)**

The Costs and Expenses reasonably incurred by the Insured, and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident, arising from and as a direct consequence of the Transportation of Dangerous Goods, in or on any Insured Vehicle, provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- b) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.

## **2.2 LDV Solution – (If stated in the Policy Schedule)**

This cover is specifically for LDV (vehicle mass under 3500kg) vehicle operators transporting limited quantities of dangerous goods which fall within the exempt quantities as stipulated in SANS10232 as amended in accordance with the National Road Traffic Act 1996 – as amended.

The Costs and Expenses reasonably incurred by the Insured, and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident, arising from and as a direct consequence of the Transportation of Dangerous Goods being transported by an LDV (vehicle mass under 3500kg), in or on any Insured Vehicle, provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- b) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.

## **2.3 Sub-Contractor Solution – (If stated in the Policy Schedule)**

The Costs and Expenses reasonably incurred by any contractor or sub-contractor appointed by the Insured, and listed on the Policy Schedule to be insured, for an Environmental Incident arising in the course of the Business of the Insured, and for which the Insured is legally liable to pay in terms of Law, and arising from and as a direct consequence of the Transportation of Dangerous Goods by such contractor or sub-contractor, and caused by or through or in connection with any vehicle not the property of nor provided by the Insured, subject thereto that such contractor or sub-contractor shall observe, fulfil and be subject to the Terms, Exclusions and Conditions of this Policy as though they were the Insured.

The Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) an Environmental Incident where insurance exists with any other insurers covering the Insured against the Environmental Incident (unless specifically agreed with the Insurer and noted on the Policy Schedule).
- b) an Environmental Incident where the transporting of the goods have been further sub-contracted out by the contractor or sub-contractor.
- c) an Environmental Incident for goods transported that is not owned by nor contracted to the Insured to transport.
- d) an Environmental Incident where the contractor or sub-contractor has not accepted liability, prior to the load transportation, by way of a written agreement with the Insured, for an Environmental Incident whilst the goods are under the custody and control of the contractor or subcontractor.
- e) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured or the contractor or sub-contractor to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- f) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.

## 2.4 Wholesale Solution – (If stated in the Policy Schedule)

Cover shall only apply where the Insured is not the owner of the vehicles being utilized to transport the dangerous goods or the premises where the product is stored. The Insured will not have custody of the dangerous goods and will utilise specified subcontractors listed in the Policy Schedule.

The Costs and Expenses reasonably incurred by the Insured in his capacity as the Wholesale License Holder and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident arising from and as a direct consequence of the Transportation of Dangerous Goods by specified sub-contractor listed on the Policy Schedule where the Insured holds a Wholesale license , in or on any Insured Vehicle provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- b) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.

## 2.5 Dry Non-Haz Solution – (If stated in the Policy Schedule)

The Clean-up costs reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident arising from and as a direct consequence of the Transportation of Dry Non-Hazardous Goods that are deemed to be potential pollutants, in or on any Insured Vehicle provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) Any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- b) Any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.
- c) Rehabilitation, restoration and liability
- d) Any vehicles transporting any UN Listed products
- e) Any vehicles transporting any liquid non-hazardous products

For the purpose of this cover the following terms shall be defined as:

- i. **“Dry Non-Hazardous Goods”** means products or substances that
  - a. are classified as solid i.e. powders, flakes, granules and kibbles;
  - b. do not have a UN number;
  - c. are not listed in the dangerous goods listing in the SANS code 10228.
- ii. **“UN Listed product”** means the United Nations (UN) number, a serial number that consists of four digits, that is assigned to dangerous goods by the United Nations' Committee of Experts on the Transport of Dangerous Goods and the numerical list of dangerous goods, which provides the information required for their identification and classification.

## **2.6 Side Tank Solution – Petrol/Diesel Tank of the Vehicle (If stated in the Policy Schedule)**

The Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of any Law, in respect of an Environmental Incident arising from a direct consequence of the leakage or loss of fuel from the vehicle's own fuel tank (which is used to propel the vehicle) and not in respect the load of any Insured Vehicle,

Side tank cover will also be inclusive of a fuel reimbursement voucher to the maximum value of R5000 (five thousand rand) per claim subject to 1 claim per every 5 vehicles on cover on the Policy Schedule within a 12 month period of insurance. EnviroSure reserves the right to stipulate the manner in which the reimbursement is issued. Reimbursements of fuel costs are limited to *bona fide*/valid side tank claims.

The Insurer shall however not be liable for Costs and Expenses incurred in respect of:

- a) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured which is known by the Insured to have occurred prior to the inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- b) Any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.

## **2.7 Contingency Solution – (If stated in the Policy Schedule)**

The Costs and Expenses reasonably incurred by any contractor or sub-contractor appointed by the Insured and listed on the Policy Schedule to be insured, for an Environmental Incident arising in the course of the Business of the Insured, and for which the Insured is legally liable to pay in terms of Law, and arising from and as a direct consequence of the Transportation of Dangerous Goods by such contractor or sub-contractor, and caused by or through or in connection with any vehicle not the property of nor provided by the Insured, subject thereto that:

- a) cover is limited to incidents where such contractor or sub-contractors underlying environmental insurance policy has not responded as a result of the non-payment of premium.
- b) such contractor or sub-contractor shall observe, fulfil and be subject to the Terms, Exclusions and Conditions of this Policy as though they were the Insured.
- c) the Insured obtained written confirmation of details of the contractor or subcontractor's own insurance cover, before any load transportation is subcontracted to that subcontractor.
- d) the Insured shall notify the Insurer within 90 days of any non-payment of premium to the contractor or subcontractor's insurance cover.
- e) within a period not exceeding 90 days from the date of loss the Insured must inform EnviroSure of any claims or potential claims that contractors or subcontractors may have incurred. The Insured has 31 days to submit the claim to EnviroSure once they have become aware of the claim or potential claim.

The Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) an Environmental Incident where insurance exists with any other insurers covering the Insured against the Environmental Incident (unless specifically agreed with the Insurer and noted on the Policy Schedule).
- b) an Environmental Incident where the transporting of the goods have been further sub-contracted out by the contractor or sub-contractor.
- c) an Environmental Incident for goods transported by the contractor or sub-contractor that is not owned by nor contracted to the Insured
- d) o transport.
- e) an Environmental Incident where the contractor or sub-contractor has not accepted liability, prior to the load transportation, by way of a written agreement with the Insured, for an Environmental Incident whilst the goods are under the custody and control of the contractor or subcontractor.
- f) any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured or the contractor or sub-contractor to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made, or events known to the Insured likely to give rise to a claim;
- g) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.

### 3. DEFINITIONS

- 3.1 “Annual Aggregate Limit”** means the Insurer’s total liability under this Policy shall not exceed the Annual Aggregate limit shown in the Policy Schedule. This means a limitation of the amount of coverage available to the Insured over a stipulated 12-month policy period.
- 3.2 “Business”** means the business of the Insured as described in the Policy Schedule.
- 3.3 “Clean-up”** means deactivation, removal, neutralisation, nullification and/or remediation of soil, surface water, groundwater, or any other pollution or contamination resulting from an Environmental Incident.
- 3.4 “Costs and Expenses”** means all reasonable costs and expenses, incurred by the Insured with the Insurer’s consent in respect of:
- a) Clean-up;
  - b) Rehabilitation;
  - c) the investigation and/or monitoring costs, containment and/or maintenance costs and all legal costs associated therewith including reasonable and necessary legal fees, costs and expenses incurred by or on behalf of the Insured, with the prior written consent of the Insurer in the investigation, defence, adjustment, settlement or appeal of any claim or legal proceeding (other than the Insured’s internal expenses).
  - d) fees charged by any specialists as designated by the Insurer in the investigation of any incident which may give rise to indemnity in terms of this Policy;
  - e) representation at any Inquest or Accident Inquiry in respect of an Environmental Incident, which may form part of the subject of indemnity by this Policy and/or defending any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of indemnity by this Policy;

Provided such expenses:



- i. are specifically mandated by any government or statutory body, agency or entity duly acting under the authority of the Environmental Laws; or
- ii. have actually been incurred by a government or statutory body, agency or entity or by a third party.

but excluding:

- i. the salaries of the Insured's employees; and
- ii. costs, charges or other expenses incurred by the Insured for goods supplied or services performed by or on behalf of the staff or salaried employees of the Insured, or its parent, subsidiary or affiliate.

- 3.5 “Decanting”** means to pour or transfer, tap, drain, draw out, draw off or let flow from one container into another suitable container.
- 3.6 “Dangerous Goods”** means goods, substances, products or waste as specified in the standard specifications in the relevant SANS codes including but not limited to SANS 10228 (“The identification and classification of dangerous substances and goods”) and carried on or within a vehicle that is properly licensed to carry such goods, products or waste excluding asbestos, lead, and creosote.
- 3.7 “Deductible/First Amount Payable”** means the first amount stated as such in the Policy Schedule for which the Insurer is not liable to indemnify the Insured in respect of each claim (or series of claims arising out of one originating cause).
- 3.8 “Employee”** means any person employed under a contract of service or apprenticeship with the Insured while working for the Insured in connection with the Business.
- 3.9 “Environmental Laws”** means any stated, statutory instrument, by law, regulation, guidance of standard having the force of law, or any notice, ruling, judgment, order or instructions of any governmental or statutory body or agency or court concerning health and safety or environmental matters that are applicable to the Environmental Incident.
- 3.10 “Environmental Incident”** means the sudden, unintended and unforeseen discharge, dispersal, migration, including, but not limited to vapours, fumes, alkalis, toxic chemicals, medical waste and waste material into and upon land or any water course or body of water including groundwater, provided such conditions are not naturally present in the environments in the amounts or concentrations discovered.
- 3.11 “Environmental Impairment”** means damage to the environment in respect of which the Insured is held legally liable under the National Environmental Management Act 107 of 1998 (N.E.M.A.), as amended from time to time.
- 3.12 “Hazcall24”** means Envirosure’s 24-hour toll free call centre, who will immediately authorise and mobilise response units to the incident scene. The call centre number is 0860 44 44 11. The alternative and cross border contact number for Hazcall24 is +27 604 402 810.
- 3.13 “Hazchem Certificate”** means drivers of the Insured vehicle need to complete an accredited HAZCHEM training course that is in accordance with the National Road Traffic Act 93/1996, as amended, at a recognised Transport Education and Training Authority (TETA). Drivers need to be in possession of a valid HAZCHEM certificate within the expiry

date, serving as a driving permit that is in accordance with the National Road Traffic Act.

- 3.14 “Inception Date”** means the first date stated in the Policy Schedule to the Policy.
- 3.15 “Insured”** means the person or persons named in the Policy Schedule and or their duly authorised and properly trained employees.
- 3.16 “Insured Vehicle”** means a self-propelled land motor vehicle, trailer or semitrailer (including any machinery or apparatus attached thereto) licensed to travel on public roads, owned, hired, leased or in the control of the Insured and as stated on the Policy Schedule.
- 3.17 “Law”** means any environmental law, national or local statute, statutory instrument, proclamation by-law, regulation or subordinate legislation with which the Insured is legally required to comply in respect of an Environmental Incident.
- 3.18 “Microbial Matter”** means fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including but not limited to, mould, mildew and viruses, whether or not such Microbial Matter is living.
- 3.19 “Period of Insurance”** means the period set out in the Policy Schedule, or any shorter period arising as a result of cancellation of this Policy.
- 3.20 “Policy Schedule”** means the Policy Schedule attached to and forming part of this policy.
- 3.21 “Pollutants”** means solid, liquid, gaseous or thermal contaminants or irritants, including vapours, smell, odours, humidity, fumes, smoke, soot or other airborne particulates, acids, alkalis, chemicals, effluent or other noxious substances including medical, infectious and pathological waste.
- 3.22 “Remediation Costs”** mean reasonable and necessary expenses for the investigation, removal and restoration of damage in complying with primary, compensatory and complimentary remediation:
- a) to the extent required by Environmental Laws; or,
  - b) that have been actually incurred by any Governmental or Statutory Body or agency
- 3.22 “Restoration Costs”** means reasonable and necessary costs incurred by the Insured with the Insurer’s written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property to substantially the same condition it was prior to it being damaged during work performed in the course of incurring Clean-Up costs. Such Restoration Costs shall be the cost of replacing or reinstating on the same site property of the same kind or type but not superior to or more extensive than the property when new provided that the Insurer’s limit of indemnity shall not exceed R50 000 per Environmental Incident.
- 3.23 “Rehabilitation”** means the rehabilitation of Environmental Impairment arising from the occurrence of an Environmental Incident.
- 3.25 “Territorial Limits”** means Africa, south of the Equator.

**3.26 “Transportation”** means the conveyance of the Dangerous Goods and/or any other goods that may cause an Environmental Incident by an Insured Vehicle from the place where they are first received by the Insured to their final destination, and includes the handling, loading and offloading by the Insured onto or from the Insured Vehicle that is properly licensed to convey such goods.

**3.27 “Wholesale License Holder”** means any person or business that purchases and sells prescribed petroleum products / hazardous goods in bulk (1500 litres or more, per transaction or petroleum products / hazardous goods) from or to a licensed manufacturer, from or to a licensed retailer or also sells prescribed petroleum products / hazardous goods to end consumer for own use in accordance with Section 2A b) of The Petroleum Product Amendment Act, 2003 (Act No 58 of 2003).

## **4. GENERAL CONDITIONS**

### **4.1 Entire Policy**

This Policy and the Schedule/s 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 the Schedule/s shall bear such specific meaning wherever it may appear. These general conditions apply to the entire Policy.

### **4.2 Limit of Indemnity**

**4.2.1** Insurer’s total liability to pay damages and the claimant’s costs and expenses shall not exceed the sum stated in the Policy Schedule under Limit of Indemnity for each section in respect of any one of the current claims as stated in each section of the Policy and, where stated, in the Annual Aggregate. The limits of indemnity are in excess of the deductible.

**4.2.2** Should any limit of indemnity in respect of any section of the policy be altered during the period of insurance, then the previous limit of indemnity shall apply to all claims made or deemed to have been made or arising out of any claims prior to the date such alteration.

**4.2.3** Insurer’s liability to pay damages, costs or expenses to Municipalities or any Governmental or Statutory Body or agency shall be limited to the sum of R 100 000 any one incident in respect of the reasonable and necessary expenses incurred by the Municipal and Governmental or Statutory Body or agency for the investigation, removal and remediation and associated monitoring of the Environmental Incident. The Insured accepts liability for any amount claimed by the Municipality, Governmental or Statutory Body or agency in excess of the aforementioned amount. Costs need to be as a direct result of an accident spillage or release into the environment, for which the Insured is liable for.

### **4.3 Indemnity to Others**

The Indemnity granted by this policy shall extend at the Insured’s option to:

**4.3.1.** officials of the Insured in their business capacity arising out of the conduct of the Business;

**4.3.2.**the personal representatives of any person indemnified by reason of this Clause 4 in respect of liability incurred by such person;

#### **4.4 Change of Risk**

The Insured must inform the Insurer if there are any changes to the circumstances affecting any subject matter Insured by this Policy as soon as practicable and until accepted in writing by the Insurer no increased liability will attach to the Insurer and the Insurer reserves the right to withdraw the cover provided under this Policy with effect from the date on which the change in the circumstances occurred.

#### **4.5 Prevention of Loss**

- a) The Insured shall at all times take all reasonable precautions to prevent any circumstance, matter or thing which may give rise to a claim under this Policy and further shall not do, suffer or permit anything whereby the risk of the Insurer shall be increased.
- b) The Insured shall give notice to the Insurer as soon as reasonably practicable of any circumstance, matter or thing which occurred subsequent to the inception date and which the Insured may reasonably be expected to suppose may give rise to claim against the Insurer. Such notice having been given, any claim arising out of any such circumstance, matter or thing shall be deemed to have been made during the Period of Insurance.
- c) The Insured shall take all reasonable steps to properly maintain any Insured Vehicle in its fleet.
- d) Should investigations after an environmental incident reveal that any aspect of the vehicle was not in a fully operational condition or contributed to the cause of the incident for which indemnity is claimed, the insurer is entitled to reject the claim on the basis of the vehicle not being in a road worthy state.
- e) The Insured has a duty to have such insured vehicle assessed by competent private assessors at their own expense.
- f) The Insured shall notify the insurer of all actions and measures taken in respect of vehicles and to supply the insurer with assessment reports and road worthy certificates.
- g) Vehicles are to be in compliance with current legislation regard road worthiness and must have valid road worthiness certificate (COR) issued in terms of the provisions of the Road Traffic Act of 93 of 1996 as amended and/or by any other appropriate authority in accordance with current legislation of the territory in which such vehicles is operating.

#### **4.6 Premiums**

The premium is payable annually, quarterly, half yearly or monthly as stated in the Policy Schedule, and payable by the Insured to the Insurer strictly in advance, on or before the Inception Date or renewal date for each period (the due date), failing which, this Policy shall be cancelled and all cover under this Policy shall cease as from midnight on the last day of the period for which the Insurer received payment.

In the event of a policy being cancelled due to non-payment, the Insurer shall not be liable for any Defined Event that may have occurred during the period of non-payment of premium. The Insurer will have sole discretion in the reinstatement of the Policy and/or acceptance of the claim arising from the Defined Event and if so accepted, will require the Insured to pay all outstanding premiums.

The Insurer is not obliged to accept premium tendered after cancellation due to non-payment and will not be liable for any claim arising from a Defined Event occurring during the period of non-payment.

#### **4.7 Adjustment to Premium**

The Insurer reserves the right to adjust premiums mid-term provided that 31 days' notice of the intention to do so has been afforded to the Insured. Any such premium adjustment shall be effected after midnight on the day on which such notice expires. In the event of a claim becoming payable, the Insurer reserves the right to off-set any outstanding premium payable for the Period of Insurance against claims payable.

#### **4.8 Deductible**

The Insurer shall not be liable in respect of any claim under this Policy unless and until the Insured has paid the Deductible set out in the Policy Schedule. The amount payable under this Policy for each and every loss, damage or liability shall be reduced by the amount of the Deductible.

#### **4.9 Jurisdiction and Governing Law**

This Policy shall be governed and interpreted in accordance with the laws of the Republic of South Africa. Any dispute or difference arising under or in respect of this Policy shall be subject to and determined within the explicit jurisdiction of the courts of the Republic of South Africa.

#### **4.10 Address**

Any summons, notice, or process to be served upon the Insurer for the purpose of instituting any legal proceedings against them in connection with this insurance may be served upon EnviroSure Underwriting Managers (Pty) Ltd.

EnviroSure Underwriting Managers (Pty) Ltd

580 Umbilo Road  
Durban  
4001

And all process, notices and documents shall be served upon the Insured at its last known address recorded in the Policy Schedule.

#### **4.11 Claims**

Upon the occurrence of any event giving rise to a claim in terms of this Policy, the Insured shall:

- a) give notice to the Insurer immediately and within 24 (twenty-four) hours of the Environmental Incident taking place. Such notice having been given, any claim arising out of any such circumstance matter or thing shall be deemed to have been made during the Period of Insurance;
- b) give notice to the Insurer regardless of whether the claim would exceed the Deductible amount stated in the Policy Schedule, following an Environmental Incident;

- c) immediately call the Hazcall24 call centre on 0860 44 44 11 / +27 60 440 2810 for assistance, who in return will appoint an Insurer approved spillage Clean-up specialist, irrespective of the Deductible/First Amounts payable applicable; Failing to do so may result in an additional Deductible payable of 10% of the claim;
- d) as soon as reasonably practicable after the event, but not for a period exceeding 7 (seven) calendar days, submit to the Insurer full details in writing of any claim;
- e) give the Insurer such proof, information and sworn declarations as the Insurer may require within 7 (seven) calendar days of issue of the claim number.
- f) furnish the Insurer with all technical reports, service and or maintenance reports, proof of repairs following a maintenance failure, laboratory data, field notes or any other documents generated by persons hired by the Insured to investigate the claim and all expert reports, investigations and data collected by experts retained by the Insured, whether or not the Insured intends to use the material for any purpose;
- g) furnish the Insurer with any other information developed or discovered by the Insured pertaining to the claim, whether or not deemed by the Insured to be relevant to the claim;
- h) furnish the Insurer with all demands, summons, notices or other legal process or papers filed with a court of law, administrative agency or investigative body which may be issued or commenced against the Insured in connection with the event giving rise to the claim; and
- i) furnish all and any other information and documentation that the Insurer may require.
- j) The Insurer shall not pay nor be liable for any claim: -
  - i. unless the Insured complies with the above conditions; and
  - ii. which is made after the expiry or cancellation of the policy.
- k) No Insured shall admit or assume any liability, enter into any settlement agreement, consent to any judgment or incur any defence costs without the prior written consent of the Insurer. Only those settlements, judgments, and defence costs consented to by the Insurer and judgments resulting from claims defended in accordance with this Policy, shall be recoverable under this Policy.
- l) The Insurer's consent shall not be unreasonably withheld provided that the Insurer shall be entitled to exercise all of its rights in this Policy.
- m) The Insurer may make any settlement of any claim or loss subject to such Insured's written consent. If any Insured withholds consent to such settlement, the Insurer's liability for all loss on account for such claim or loss shall not exceed the amount for which the Insurer could have settled such claim or loss incurred as at the date such settlement was first proposed in writing by the Insurer, less the applicable Deductible.
- n) If the Insurer rejects any claim, or disputes the quantum of a claim, the Insured has ninety (90) days to make representation to the Insurer, challenging this decision. If the Insurer persist in rejecting the claim or disputing the quantum, the Insured has to have summons issued and served on the Insurer, within six (6) months (180 days) after the expiry of the ninety (90) days period; failing which, the Insured will forfeit his claim and the Insurer will have no further claim in terms of this Policy.

#### **4.12 Insurer'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 Insurer and every person authorised by the Insurer may, without thereby incurring any liability and without diminishing the right of the Insurer to rely upon any conditions of this Policy, 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 prior written consent of the Insurer.

- b) The Insured shall, at the expense of the Insurer, do and permit to be done all such things as may be necessary or reasonably required by the Insurer for the purpose of enforcing any rights to which the Insurer shall be or would become subrogated upon indemnification of the Insured whether such things shall be required before or after such indemnification.
- c) The Insurer 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 Insured shall thereafter not be under further liability in respect of such event.
- d) The Insurer reserves the right to make a full recovery against the Insured for the costs incurred by authorising the claim in good faith, should the claim be rejected in terms of the Policy.

#### **4.13 Other Insurance**

Where other insurance may be available for claims and loss covered under this Policy, the Insured shall promptly upon request of the Insurer provide the Insurer with copies of all such policies. If other valid or collectable insurance, self-insured programme or any equivalent policy irrespective of the amount thereof is available to the Insured for claims or loss covered by this Policy, the Insurer's obligations are limited as follows:

- a) This Policy is primary, and the Insurer's obligations are not reflected unless any of the other insurance is also primary. In that case, the Insurer will share with all such insurance by the method described in b) below;
- b) If all of the other insurance permits contribution by equal shares, the Insurer will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Insurer will contribute by limits. Under this method, each insurers share is based on the ratio of its applicable limit of insurance to the total of applicable limits of insurance of all insurers.

#### **4.14 Observance of Policy Terms**

The Insurer will only provide the insurance offered under this Policy if:

- a) any person claiming indemnity has complied with the Terms, Exclusions and Conditions thereof;
- b) the information given in the proposal form, application and declaration is to the best of the Insured's knowledge and belief complete and correct.

#### **4.15 Misrepresentation and Non-Disclosure**

Misrepresentation, mis-description or non-disclosure of any material particular shall render this Policy voidable at the sole discretion of the Insurer.

#### **4.16 Fraud**

If any claim under this Policy is in any respect:

- a) fraudulent; or

- b) if any fraudulent means or devices are used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy; or
- c) if any loss, destruction, damage or liability is occasioned by any wilful act on the part of the Insured or with the Insured's connivance; or
- d) if material information in connection with the claim provided by the Insured is not true, then all benefits under this Policy shall be forfeited and the Insured shall be obliged to refund to the Insurer any amount paid to the Insured or any other person prior to the discovery of the fraudulent event in respect of the specific claim. The Insurer shall not be obliged to pay any claim lodged after such fraudulent event.

#### **4.17 Fraudulent Claims**

If the Insured has given notice of claims under this Policy knowing such notice to be false or fraudulent as regard to amounts otherwise, such claims or loss shall be excluded from cover under the Policy and the Insurer shall have the right at its sole and absolute discretion to avoid its obligation or void the Policy in its entirety and in such case, all cover for loss and claims under the Policy shall be forfeited and all premium redeemed fully earned shall be refundable.

#### **4.18 Cancellation**

This Policy or any section thereof may be cancelled immediately by the Insured at any time or by the Insurer on giving 31 days' notice of cancellation in writing to the Insured at the address stated in the Policy Schedule.

If the Insured gives notice of cancellation the Insurer shall refund the pro-rata proportion of the premium for the unexpired Period of Insurance.

If this Policy is cancelled the onus shall be on the Insured to immediately cancel any automatic means of payment that may have been used to pay the premium prior to cancellation.

#### **4.19 Subrogation**

In the event of any payment under this Policy, the Insurer shall be subrogated to all the Insured's rights of recovery therefore against any person or organisation and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice the Insurer's rights of subrogation. Any recovery in excess of the Insurer's total payment shall be restored to the Insured less the costs of such recovery.

#### **4.20 Changes**

This Policy can be changed only by written endorsement that the Insurer makes to the Policy.

#### **4.21 Access to Information**

The Insured agrees to provide the Insurer with access to any information produced and / or discovered by the Insured relating to Claims or Loss covered under this Policy, whether or not deemed by the Insured to be relevant to such loss.



#### **4.22 Action against the Insured**

No action shall lie against the Insurer, unless as a condition precedent thereto there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurer.

Any person or organisation or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organisation shall have any right under this Policy to join the Insurer as a party to any action against the Insured to determine the Insured's liability, nor shall the Insurer be impleaded by the Insured or his/her legal representative.

#### **4.23 Cross Liabilities**

When the Insured comprises more than one legal entity then each legal entity indemnified shall be indemnified separately in respect of claims made against any of them as if a separate policy has been issued to each and the Insurer waives all rights of subrogation or action it may have or acquire arising from this special extension provided that the Insurer's liability in aggregate shall not exceed the limit of indemnity stated in the Policy Schedule for any one Defined Event;

#### **4.24 Special Provision**

Wherever this Policy provides that notice be given to the insurers, such notice shall be given to: -

Envirosure Underwriting Managers (Pty) Ltd

580 Umbilo Road  
Durban  
4001

Telephone No: (031) 205 4918  
Email: Sjanine@envirosure.co.za  
P O Box 17104  
Congella Kwa-Zulu Natal  
4013

#### **4.25 Separation of Insureds**

Misrepresentation, concealment, breach of any term or condition, or violation of any duty under this Policy by one named Insured shall not prejudice the interest of coverage for another named Insured under this Policy.

#### **4.26 Assignment**

This Policy may not be assigned without the Insurer's prior written consent.

## **5. EXTENSIONS**

### **5.1 Excess Solution RSA– (If stated in the Policy Schedule)**

In return for an additional premium as stated in the Policy Schedule, this Policy is extended to cover the Deductible payable by the Insured for an incident occurring within the Republic of South Africa subject to the following:

- a) Cover in respect of minor leakages, drips and spillages from the vehicle, load and/or mechanical enhancements to the vehicle such as hydraulic pumps and lifts will be covered under this extension, provided that the claim does not exceed R50 000 per incident and forms part of the Annual Aggregate limit listed on the Policy Schedule.
- b) Cover will extend to include load transfers related to claim prevention and must be authorized by the insurer.
- c) Cover will only be applicable for claims occurring within South African borders.

### **5.2 Excess Solution Cross Border – (If stated in the Policy Schedule)**

In return for an additional premium as stated in the Policy Schedule, the Policy is extended to cover the cross border Deductible payable by the Insured. Cover in respect of 5.2 a) and b) above is not covered in terms of this Cross Border Excess extension.

### **5.3 Excess Solutions Transfer Assist – (If stated in the Policy Schedule)**

In return for an additional premium as stated in the Policy Schedule, the Policy is extended to cover load transfers not related to claim prevention.

The transfers must be authorized by the Insurer and will be limited to the incident and annual aggregate limits listed in the Policy Schedule. Cover will only be applicable to transfers occurring within South African borders. Transfer will be limited to vehicles listed on the Policy Schedule and will not apply to other receiving receptacles already off loaded into.

### **5.4 Harbour Solution – (If stated in the Policy Schedule)**

In return for an additional premium as stated in the Policy Schedule, this Policy is extended to cover the insured against environmental impairment caused by spillages as a direct result of the loading / off-loading activities from a vessel to the Insured vehicle whilst in the harbour / port. Cover will extend to clean up costs only in accordance with the warranties and limits set out in the Policy Schedule.

### **5.5 Riot & Strike Solution – (If stated in the Policy Schedule)**

This Riot & Strike Solution offering is in no way affiliated to Sasria, nor Nasria nor does it follow the Sasria/Nasria policy wording. The terms and conditions of the Riot & Strike Solution is detailed below.

In return for an additional premium as stated in the Policy Schedule, this Policy is extended to cover the insured against environmental impairment caused by a release of environmental contaminates from a vehicle listed in the Policy Schedule directly related to or caused by:

- a) Any Riot, Strike or any act or activity which is calculated or directed to bring about a Riot, Strike or Civil Commotion;
- b) Any attempt to perform any act referred to in clause a) above;

- c) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause a) or b). above;

provided that this extension does not cover:

- i. claims occurring outside of South Africa.
- ii. Public Disorder.

For the purpose of this extension the following terms shall be defined as:

- i. "Civil Commotion" means an outbreak of lawlessness of a fairly considerable scale amongst the citizens of a state which is something between a Riot and total insurrection and is deemed to include labour disturbances or Lockouts.
- ii. "Lockouts" means a situation when an employer refuses to allow workers into their place of work until they agree to various conditions.
- iii. "Public Disorder" means an outbreak of lawlessness of a fairly considerable scale amongst citizens of a state, and is something of a greater degree than riot and of a lesser degree than anarchy.
- iv. "Riot" means a violent disturbance of the peace involving three or more persons which includes protests in furtherance of a political aim, objective or cause.
- v. "Strike" means a period of time when an organized group of employees of a company stops working because of a disagreement over pay or working conditions.

## **6. EXCLUSIONS**

The Insurer shall not be liable to indemnify the Insured for:

### **6.1 Non-Compliance**

any claim that arises from any Environmental Incident, directly or indirectly caused by the deliberate instructions of the Insured, or any liability for loss, injury or damage arising from the Insured's intentional, wilful or deliberate non-compliance with any laws, statutory instruments, by-laws, regulations, guidelines or standards having the force of law and which apply to such Environmental Incident and/or the handling, storage or dealing, in any manner, with Dangerous Goods.

### **6.2 Material Change in Use**

a material change of use arising from material change in the Business during the policy period.

A change in use is considered material if amongst other things:

- a) It results in more stringent remediation standards than those imposed on the Insured as at the Inception Date;
- b) Such information would have materially altered the terms and conditions applied by the Insurer prior to the Inception Date.
- c) A change in the declared commodities transported as per information provided by the Insured and listed on the Policy Schedule.

### **6.3 Prior Knowledge**

any claim arising from an Environmental Incident existing prior to the Inception Date of this Policy and not disclosed in the application for this Policy, if any, and/or which the Insured knew or could reasonably have been expected to know, that such Environmental Incident could give rise to a claim under this Policy.

### **6.4 Vehicles**

an Environmental Incident arising from any accident, loss, damage or liability to any Insured Vehicle:

- a) while the Insured Vehicle is being used in contravention of the provisions of the National Road Traffic Act 93 of 1996 as amended, the National Road Traffic Regulations 2000 and/or any other applicable or subsequent legislation and/or regulations providing for the use of motor vehicles on a public roadway;
- b) incurred while the Insured Vehicle is being driven by the Insured or any Employee of the Insured:
  - i. while under the influence of intoxicating liquor or drugs (unless administered by or prescribed by and taken in accordance with the instructions of a member of the medical profession other than himself) or while not licensed to drive such vehicle;
  - ii. or any other person with the general consent of the Insured who to the Insured's knowledge is under the influence of intoxicating liquor or drugs (unless administered by or prescribed by and taken in accordance with the instructions of a member of the medical profession other than himself) or is not licensed to drive such Insured Vehicle or the vehicle specifications or the driver thereof does not comply with the provisions of the National Road Traffic Act 193 of 1996 as amended, the National Road Traffic Regulations 2000 and/or any other applicable or subsequent legislation and/or regulations providing for the use of motor vehicles on a public roadway; provided that any driver shall be deemed to be licensed to drive the Insured Vehicle if he is complying with the licensing laws relating to any of the territories referred to in the Territorial Limits or if a non-compliance with any licensing law is solely because of a failure to renew any licence subject to periodic renewal or if a licence is not required by law or while such driver is learning to drive and is complying with the laws relating to learner drivers.
- c) while the Insured Vehicle is used in any professional or organised racing or demolition contest or stunting activity, or while practicing for such contest or activity or Insured Vehicles being prepared for such a contest or activity.

### **6.5 Non-Conveyance – At Rest Cargo**

any claim arising from a pollution condition or environmental impairment that commences:

- a) after the cargo is considered to have reached its final destination; or,
- b) while the cargo is in storage having been off loaded from the vehicle that was transporting it; or
- c) while the cargo is unsecured and at rest (including but not limited to any rests or stops) in excess of 72 hours in total at any one time; or
- d) is no longer in the control of the Insured or the entity conducting the transportation of the cargo on the Insured's behalf or has been relinquished to a third party whom for the purpose of this policy, shall mean any person other than the Insured.

## **6.6 Historic Contamination**

any claim arising from an Environmental Incident to the receiving environment, where the Environmental Incident occurred or commenced prior to the date of inception of this policy.

## **6.7 Pre-existing Contamination**

any claim arising from a Pre-existing contamination incident prior to the occurrence of the Environmental Incident.

## **6.8 Gradual Pollution**

any claim directly or indirectly arising from seepage, pollution or contamination provided that this exclusion shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended and unforeseen Environmental Incident.

## **6.9 Reasonable Precautions**

any Environmental Incident arising from the gross negligence or the deliberate, conscious and intentional disregard by the Insured's technical or administrative management of the need to take reasonable precautions to prevent any event of circumstance which may give rise to a claim.

## **6.10 Wrongful Delivery**

any claim resulting from Injury, Damage or Environmental Impairment arising out of wrongful delivery of goods, products or wastes into an incorrect receptacle, to the wrong address or incorrect goods or products delivered.

## **6.11 Expected or Intended Loss**

any Environmental Incident that is expected or intended from the standpoint of the Insured, as well as the failure of the Insured to:

- a) remedy any defect or danger or take such additional precautions as may be required as soon as possible after the discovery of an Environmental Incident;
- b) take reasonable steps to use, maintain and upgrade their facility operations;

## **6.12 Wilful Actions**

any Environmental Incident that is as a result of the wilful and intended actions of the insured.

## **6.13 Wear and Tear**

any Environmental Incident arising, originating or resulting from wear and tear or gradual maintenance deterioration of the vehicle or tanker/trailer but not limited to the equipment's parts or components as a result of rust, oxidization, corrosion, decay or deterioration over time.

## **6.14 Costs of the Halting of Business Operations**

any costs or loss of revenue resulting from the halting of the business operations of the Insured during the period of Rehabilitation, if required after the occurrence of an Environmental Incident.

## **6.15 Property Damage Exclusions**

any physical damage or destruction of any tangible property owned, occupied, leased or third-party property, including any result in loss of use and diminution in value of the property other than as provided for under Restoration Costs.

## **6.16 On-site Exclusion**

any Clean-Up Costs on, in or under property owned, leased or rented by the Insured or in the Insured's care, custody or control unless as a direct result of spillage from vehicles listed on the Policy Schedule during loading and offloading.

## **6.17 Consequential Loss**

consequential loss from any cause whatsoever, depreciation of any nature which shall also mean diminution in value howsoever arising of the insured property consequent upon its having sustained damage insured against the continuing of the repair of such damage wear and tear and mechanical or electrical breakdown failure or breakage.

## **6.18 Confiscation and Dispossession**

loss or damage occasioned by permanent or temporary dispossession resulting from confiscation commandeering or requisitioning by any lawful constituted authority.

## **6.19 Bodily Injury**

any bodily injury, death, illness or disease of or to any person.

## **6.20 Injury, Damage, Claims, Expenses or Clean Up costs;**

- a) where the Insured is entitled to indemnity under any other insurance policy;
- b) whilst the State or other Governmental Authority has accepted responsibility;
- c) where the Insured Vehicles are driven by or in the control of any person not in possession of a valid, legitimate and suitable licence and/or driving permit as may be required by law for that type of vehicle and/or load at that time of loss;
- d) where the Insured Vehicle is carrying any load, the weight or volume of which is in excess of that which is legally permissible for a vehicle of that type in accordance with current legislation at the time of loss;
- e) where the cargo is being transported and or handled outside of the legislative requirements relating to transportation of such cargo;
- f) where the Insured Vehicle is not in compliance with current legislation regarding road worthiness or does not have a valid certificate of fitness issued by an appropriate authority in accordance with current legislation of the territory in which the Insured Vehicle is operating.

## **6.21 Harbour and Ports Off-loading and On-Loading**

spillages as a direct result from loading and off-loading in a harbour or port not originating from a land surface are excluded from cover unless stated to be included on the Policy Schedule.

## **6.22 Sub-contractors – specifically excluded unless included on the Policy Schedule**

### **6.23 Fines & Penalties**

any fines, penalties, punitive, multiple, vindictive or exemplary damages.

### **6.24 Ransom**

any ransom requests payable due to the surrender of property as a result of a threat of harm to the named insured or an employee of the insured.

### **6.25 Contractual Liability**

any claim arising from liability assumed under any contractual agreement, unless such liability would have attached to the Insured notwithstanding such contractual agreement or as specifically insured in terms of this Policy.

### **6.26 Territorial Limits**

any claim that arises outside the Territorial Limits as defined.

### **6.27 Insured vs. Insured**

any Insured against any other person or entity who is also an Insured under this Policy.

### **6.28 Employers Liability**

any claim by:

- a) an Employee of the Insured in respect of injury to and/or loss of life of the Employee, arising out of and in the course of employment by the Insured; or
- b) the spouse, child, parent, brother or sister of that employee as a consequence of paragraph a.) above; or
- c) any fellow Employee of the Insured arising out of and in the course of the fellow Employee's employment.

### **6.29 Microbial Matter**

any claim alleged to be caused by Microbial Matter unless such has been used in the Clean Up and Rehabilitation process.

### **6.30 Sasria/Nasria**

loss of or damage directly related to or caused by:

- a) any riot, strike, public disorder, civil commotion, labour disturbances or lockouts or any act or activity which is calculated or directed to bring about any of the aforesaid;
- b) 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;
- c) 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;
- d) any attempt to perform any act referred to in clause a), b) or c) above;

- e) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause a), b), c) or d) above.

### **6.31 Terrorism**

any liability, loss, damage 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 sequence to the loss, damage or expense.

For the purpose of this exclusion, terrorism means an act of violence or an act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

In any action suit or other proceedings where the Insurer allege that by reason of this definition a loss, damage or expense is not covered by this Policy, the burden of proving that such loss, damage or expense is covered shall be upon the Insured.

### **6.32 War**

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

- a) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, civil commotion, mutiny, military or popular rising, insurrection, rebellion, revolution, military or usurped power;
- b) Any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of any government de jure or de facto or to the influencing of it by terrorism or violence;
- c) Martial law or state of siege or any events or causes which determine the proclamation or maintenance of martial law or state of siege;
- d) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clauses a), b) and c) are excluded from the protection of this Policy.

If the Insurer alleges that, by reason of a), b), c) or d) of this exclusion, loss or damage is not covered by this Policy, the burden of proving the contrary shall rest on the Insured.

### **6.33 War Fund**

which a fund has been established in terms of any war damage insurance and compensation legislation.

### **6.34 Nuclear**

any legal liability, loss (including consequential loss), damage, cost or expense caused directly or indirectly by any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

Nuclear material, nuclear fission or fusion, nuclear radiation, nuclear waste from the use of nuclear fuels or nuclear explosives or any nuclear weapon.



### 6.35 Nuclear/chemical/biological terrorism

loss(es), regardless of any contributory cause(s), in any way caused or contributed to by an act of terrorism involving the use or release or the threat thereof any nuclear weapon or device or chemical or biological agent.

For the purpose of this exclusion an act of terrorism means an act including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or personal purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public in fear.

If it is alleged that by reason of this exclusion any loss(es) is not covered by this extension the burden of providing the contrary shall be upon the insured.

### 6.36 Economic and Trade Sanctions

coverage for a **claim** under this policy is in violation of any economic or trade sanctions by the United States of America, the United Nations (UN), the European Union (EU)/ European Economic Area (EEA) or any other applicable national economic or trade sanction law or regulations, then coverage for that **claim** will be null and void.

**Underwritten by Centriq Insurance Company Limited**

**Registration number: 1998/007558/06**

**FSP: 3417**

