

**ANNUAL CONTRACT  
WORKS / PUBLIC LIABILITY  
POLICY**

**POLICY NUMBER: ESK 2010/11 ACAR**

WHEREAS THE Insured named in the Schedule has applied to the Insurer hereon (hereinafter called "the Insurers") for the insurance herein contained and has paid or agreed to pay the Premium in consideration for such insurance.

THE INSURERS HEREBY AGREE to indemnify or compensate the Insured by payment or, at the option of the Insurer by replacement, reinstatement or repair in respect of the happening during the Period of Insurance of any of the contingencies or events specified in this Insurance up to the sums insured, limits of indemnity, compensation and other amounts specified.

**SIGNED AT JOHANNESBURG ON THIS            DAY OF            2010**

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**FOR AND BEHALF OF ESCAP LIMITED**

## THE SCHEDULE

### THE INSURED

- i) Eskom Holdings Limited )  
and its Affiliated, Subsidiary, and Associated Companies and / or Corporations ) hereinafter called  
as now exist or may exist or may hereafter be constituted or acquired including ) "The Employer"  
its interest as may appear in Partnerships and Joint Ventures in which Eskom )  
has an interest (including the interest of any other Parties in such Partnerships )  
or Joint Ventures) and including the Eskom Pension and Provident Fund )  
(including such other names used by Eskom since 1<sup>st</sup> July 1985) and / or other )  
Staff Welfare Associations for their respective rights and interests )
- It is understood and agreed that the Insured includes Associates, Subsidiaries )  
and Affiliates of all the above name Insured's )
- For whom they are authorised to insure )
- ii) All Contractors undertaking work for or on behalf of the Employer )  
in execution of the Insured Contract (it being understood that where ) hereinafter called  
the Employer undertakes the work he shall be deemed to be the ) "Contractor"  
Contractor provided that his rights hereunder shall not exceed the )  
rights of any independent Contractor working on behalf of the Employer) )
- iii) All Sub-Contractors employed by the Contractor and all other Sub-Contractors ) hereinafter called  
(whether nominated or otherwise engaged in fulfilment of the Insured Contract) ) "Sub-Contractors"
- iv) Any Local Provincial or Government Department with which the Employer  
enters into any contract or agreement for the performance of the Insured  
Contract(s) (it being understood that the rights of such parties under this  
insurance shall not exceed the rights of any independent Contractor  
working on behalf of the Employer).

## THE SCHEDULE (Continued)

### THE INSURED (Continued)

- v) To the extent required by or provided for in any Contract or Agreement.
  - i) Suppliers Manufacturers Vendors or other persons undertaking work at The Contract Site in respect of liability loss or damage arising out of their activities on The Contract Site including during the loading for transport to The Contract Site, transit thereto and offloading thereon.
  - ii) Transport Contractors and persons providing Storage Facilities, Plant Owners and/or Operators in respect of liability loss or damage arising out of the Contract.
  - iii) Project Managers and all other Engineering Consultants, Architects, Land Surveyors, Quantity Surveyors, Advisors or Consultants or any other Professional Party in respect of their involvement in the performance of the Contract at The Contract Site but excluding loss damage or liability arising out of neglect act error or omission in the professional service for which they are appointed.

For their respective rights and interests.

It is agreed that The Insured includes officers, employees and contract staff.

Subject always that the terms of General Memorandum No. 1 shall apply to i) ii) iii) iv) and v) above.

### THE PERIOD OF INSURANCE:

- a) From **01 April 2010** to **31 March 2011** and until the declared expiry of The Insured Contract(s) followed by a defects liability or maintenance period not exceeding 24 months.
- b) And any subsequent period for which the Insured shall pay and the Insurers shall agree to accept Renewal premium.
- c) Any subsequent period as provided for in terms of General memorandum 10 of this policy.
- d) Followed by a Contractual Defects Liability or Maintenance Period not exceeding 24 months.

## THE SCHEDULE (Continued)

### THE INSURED CONTRACT(S):

All contracts undertaken by the Insured (including any undertaking awarded or commenced prior to inception of the period of insurance) involving Design, Construction, Testing, Commissioning in respect of Capital works, capital expenditure or alteration and/or additions to existing administration / office buildings or facilities undertaken by the Insured or other Insured Parties acting on their behalf including work carried out by Eskom for purposes of generation, distribution or supply contracts for persons not being part of the Eskom organisation but **excluding**:

- a) individual Generation Division Projects which at award stage have a value in excess of **R350,000,000** and in respect of all other Divisions (consisting mainly of Transmission and Distribution) Individual Contracts which at award stage have a value in excess of **R500,000,000**;
- b) contracts with an estimated period exceeding **60 months** (excluding Defects Liability period);
- c) contracts involving the construction and/or erection of Petrochemical Plants, Fertiliser Plants, Waste incinerating Plants/black liquor boilers and construction and/or erection of Power Stations/Plants with capacity in excess of 100MW;
- d) on an existing airport runway or airstrip or in or on any aircraft;
- e) in or on waterborne vessels;
- f) involving harbours, jetties, piers, wharfs, viaducts, dams on rivers, canals, water channels, tunnelling, shaft-sinking, shaft equipping, underground mining work and bridges over water courses;
- g) any contracts or work carried out in the radiation zones of any Nuclear Power Station.

### THE CONTRACT SITE:

Any location upon which the Insured Contract(s) is to be executed or carried out as more fully defined in the Insured Contract(s) documents (if existing) together with so much of the surrounding area as may be designated and/or offsite fabrication yards, and/or fabrication premises, and/or storage sites, and/or lay down areas, and/or the premises as described in Memo 5, as may be designated for the performance of the Insured Contract(s) within the Territorial Limits.

### TERRITORIAL LIMITS:

The Republic of South Africa and, to the extent permitted by the applicable insurance acts, the territories of Lesotho, Namibia, Swaziland, Botswana, Zimbabwe, Malawi, Angola and Mozambique.

## THE SCHEDULE (Continued)

### LIMITS OF INDEMNITY:

Unless otherwise agreed the Insurers Liability at any one contract site, in any policy year of insurance shall not exceed:

### SECTION I - CONTRACT WORKS

**R350,000,000 any one contract** ) any occurrence or series of occurrences  
**R500, 000, 000 any one Transmission or**  
**Distribution** ) arising out of one event (exclusive of  
) limits provided elsewhere in the Policy)  
)

### SUB - LIMITS

Surrounding Property Extension	R25,000,000
Employers Existing Property Being Worked Upon	R15,000,000
Debris Removal	R 1,000,000
Debris Removal – No Damage	R 5,000,000
Fire Brigade/Public Authority	R 2,500,000
Documentation	R 250,000
Borrowing of Plant for Commissioning Purposes	R 1,000,000
Road Reserve and Servitude Indemnity Extension	R15,000,000
Claims Costs	R 1,000,000

### HOT TESTING AND COMMISSIONING PERIOD

**90 (Ninety) days** (not necessarily consecutive)

### Definitions of Cold Testing, Hot Testing & Commissioning

For the purposes of this Policy, Cold Testing, Hot Testing and Commissioning shall be understood as follows:-

#### Cold Testing

The checking of component parts of insured plant or machinery by mechanical, electrical, hydrostatic or other forms of testing under dry run conditions to ensure that the items work, but without firing of furnaces or the application of direct or indirect heat, the use of feedstock or other materials for processing or, in the case of electrical motors, electrical generating, transforming, converting, or rectifying plant or machinery, connection to a grid or other load circuit.

#### Hot Testing

The checking of component parts of insured plant or machinery or a component part thereof under load or operational conditions, including the use of feedstock or other materials for processing or other media to simulate working conditions and in the case of electrical motor, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit.

#### Commissioning

The operation of an insured plant or machinery with feedstock or other materials for processing, or in the case of electrical motors, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit under production conditions to attempt to attain specification requirements and/or training operational personnel.

<b>THE SCHEDULE (Continued)</b>
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**SECTION II - PUBLIC LIABILITY**

**R20,000,000** ) any occurrence or series of  
 ) occurrences arising out of one event  
 ) but unlimited during the Period of Insurance  
 ) (exclusive of limits provided elsewhere in the  
 ) Policy)

**SUB-LIMITS**

Statutory Legal Defence Costs	R 500,000
Arrest/Assault/Defamation	R 500,000
Emergency Medical Expenses	R 250,000
Claims Costs	R1,000,000

**THE DEDUCTIBLES:**

Applicable in respect of each and every occurrence or series of occurrences arising out of or in connection with any one event at any one site giving rise to loss or damage or liability insured by this Policy.

**SECTION I - CONTRACT WORKS**

In respect of each and every loss – Distribution Division	R250,000
In respect of each and every loss – All Other Divisions	R 500,000
In respect of each and every loss – Debris Removal	R 50,000
In respect of each and every loss – Debris Removal – No Damage	R 50,000
In respect of each and every loss – Borrowing of Plant for Commissioning Purposes	R 25,000
In respect of each and every loss – Documentation	R 1,000

It is agreed that:-

- a) in the event of an occurrence or series of occurrences giving rise to loss or damage in circumstances where more than one of the Deductibles could reasonably be applied to a claim in terms of the Policy then only the largest applicable deductible shall be applied.
- b) any loss or damage caused by storm, including hail, rain, snow, tempest, water damage, flood, subsidence, collapse or earthquake
  - (i) during any one period of 72 consecutive hours
  - or**
  - (ii) notwithstanding (i) above arising as a result of one continuous uninterrupted occurrence
 shall be deemed as a single event and therefore constitute one occurrence.

**SECTION II - PUBLIC LIABILITY**

In respect of loss or damage to property:	<b>the first R20 000 each and every claim</b>
In respect of loss or damage to underground / overhead services	<b>the first R20 000 each and every claim</b>
In respect of loss or damage arising out of veld, grass and / or bush fires	<b>the first R50 000 each and every claim</b>
In respect of loss or damage arising out of accidental removal of support	<b>the first R20 000 each and every claim</b>

## SECTION I - CONTRACT WORKS

### THE INDEMNITY

The Insurer will indemnify The Insured subject to the terms, exceptions and conditions contained herein up to the Limits of Indemnity against physical loss of or damage to any part of The Property Insured occurring during the Period of Insurance, and which is due to any cause whatsoever, subject to:

- a) For Property Insured within the Territorial Limits whilst in transit to and from The Contract Site(s) including loading and unloading within the Territorial Limits provided that The Insured Property is suitably packed and/or prepared for transit which shall also be deemed to include stowage, the maximum liability payable shall not exceed R110,000,000 per conveyance.
- b) For storage of Property Insured at manufacturers, distributors or suppliers premises within the Territorial Limits subject to it being a requirement of conditions of purchase issued by the Employer, the maximum liability payable shall be R200 000 000 per location. This maximum liability payable in respect of storage at manufacturers, distributors or suppliers premises shall operate as a difference in conditions cover in the event more appropriate insurance has not been effected by the manufacturer/supplier/distributor.

It is understood that The Indemnity extend to include work during the Defects Liability or Maintenance Period (as may be described in The Insured Contract(s) pertaining to any part of the permanent works) in respect of:

- i) physical loss or damage caused by The Insured in the course of the operations carried out for the purpose of complying with The Insureds obligations under the defects liability and maintenance obligations of The Insured Contract(s);
- ii) physical loss or damage occurring during the Contractual Defects Liability and Maintenance Periods provided such loss or damage was caused on The Contract Site(s) during the construction period and before the issue of the relevant take over/performance certificate for the lost or damaged section was issued.

Without limiting The Indemnity provided, it is agreed that:

- a) Where Testing and Commissioning of The Property Insured is conducted by The Insured, completion for purposes of this insurance to occur only after successful completion of all Testing and Commissioning of the whole of the permanent works under The Insured Contract(s);
- b) Works uncompleted or outstanding in terms of any notice of completion certificate, or takeover/handover certificate/performance certificate, or similar document shall continue to be insured until its completion and the inception of the Defects Liability or Maintenance Period.

## SECTION I - CONTRACT WORKS (Continued)

### THE PROPERTY INSURED

The Contract Works (including "Free Issue Materials" or Materials supplied by the Employer or Contractor including equipment which has previously been operated under service conditions supplied the value of which has been included if applicable) to be undertaken in terms of the Insured Contract(s) including all Temporary Works erected or in the course of erection and all materials and other goods for incorporation therein.

"Temporary Works" shall mean all constructional aids, equipment, structures or works used or intended for use on the Insured Contract(s) (not being part of the permanent works) which are not intended to be removed from the Contract Site for re-use on another Site, the value of which has been included in the estimated Contract value, but excluding:-

- a) mobile plant; or
- b) shuttering, scaffolding, form work and moulds which are re-usable; or
- c) construction aids, equipment, structures or works, specifically designed, constructed or acquired for the Insured Contract which have a residual value in excess of the scrap value on completion of the Insured Contract(s).



## SECTION I - CONTRACT WORKS (Continued)

### BASIS OF LOSS SETTLEMENT - SECTION I

The Insurers may at their option repair, replace, reinstate or pay cash in lieu of repairs and the basis of loss settlement shall include:

- a) The cost necessarily incurred in the repair, reinstatement or replacement of The Property Insured at the time of reinstatement of the physical loss or damage including supplementary charges such as packing costs, freight, customs dues erection and profit to the extent that such charges have been included in the Limit of Indemnity.

In respect of The Property Insured which has operated under service conditions prior to attachment of cover hereunder being physically lost or damaged the basis upon which the loss shall be settled shall be the cost of repair reinstatement or replacement of The Property Insured except that in respect of such property exceeding three years of age the basis of loss settlement for total loss shall not exceed the market value of such property which shall be calculated on the basis of each year of life (or part thereof) the present day new replacement value of an identical machine or structure is reduced proportionately over a period of 20 (twenty) years subject to a residual indemnification of 20% (twenty percent).

For the purposes of the above the age of the Property Insured commences at the first commercial operation date.

Notwithstanding the above in respect of The Insured Property the basis of loss settlement for property which has operated under service conditions and not exceeding three years of age being physically lost or damaged and a minimum of twelve months manufacturer's warranty is secured from the Original Equipment Manufacturer (OEM), for all items, parts and components actually refurbished on The Property Insured. However, if the circumstances of a loss clearly and unequivocally show that the loss of or damage experienced arose from an item, part or component not refurbished on The Property Insured the insurers will indemnify the warranted refurbished items, parts and components so lost or damaged per the basis of settlement for property not exceeding three years. Subject to the reinstated warranty not applying to the un-refurbished sections of The Property Insured, the cost of repair reinstatement or replacement of such un-refurbished and unwarranted Property Insured will be settled on the basis of such Property Insured exceeding three years of age per clause b) above.

plus,

- b) The additional cost of express delivery (including airfreight), customs dues and charges (provided such customs dues and charges had been declared in the original contract value), overtime work, night-work or work on public holidays incurred subject to a limit of 200% of normal delivery charges and 150% of the normal day rate

plus,

- c) Establishment and supervisory charges incurred in connection with repair, reinstatement or replacement following indemnifiable loss or damage to The Property Insured;

plus,

- d) Any architects', surveyors', quantity surveyors', consulting engineers', legal and/or other professional fees in connection with the replacement or reinstatement of The Property Insured, but not in respect of any improvement or extension to The Property Insured;

all necessarily and reasonably incurred by The Insured.

## SECTION I - CONTRACT WORKS (Continued)

### EXCEPTIONS TO SECTION I ONLY

The Insurers will not be liable for:

1. The amount of the Deductible stated in The Schedule hereto.
2.
  - a) loss or damage due to defective material workmanship design plan or specification. This exception shall be limited to that part which is the immediate cause of such loss or damage and shall not extend to any other Property Insured;
  - b) the costs of re-design, improvement or alteration on the occasion of repair, replacement or reinstatement of the loss or damage.
3. The additional cost of any alterations, additions or improvements, modifications or overhaul carried out at the time of any repair or replacement of the Property Insured.
4. Loss or damage arising during air transit (other than air transit undertaken entirely within the Territorial Limits), or any ocean voyage or whilst in storage thereafter where, unless the property has been examined for damage and found to be in good order before onward transshipment, such loss or damage is discovered only on unpacking and examination of the property and cannot be related to a specific event occurring during the land transit or storage.
5. Loss of or damage to the permanent works or part thereof occurring during any Defects Liability or Maintenance Period other than from:
  - a) a cause occurring prior to commencement of such period;
  - b) any act or omission of The Contractor and/or Sub-Contractor, his servants or agents in the course of the work carried out in pursuance of their obligations with regard to maintenance under the Contract.
6. Liquidated damages or penalties for delay in connection with guarantees of performance or efficiency.
7. Loss of or damage to cash, banknotes, treasury notes, cheques, postal orders, money orders, stamps or securities.

## SECTION I - CONTRACT WORKS (Continued)

### EXCEPTIONS TO SECTION I ONLY (Continued)

8. Loss of any Property Insured by disappearance or by shortage where such loss is revealed only by the taking of a routine inventory or periodic stocktaking.
9. Consequential loss of any nature whatsoever unless otherwise provided for elsewhere in this Policy.
10. The cost of replacing or rectifying normal wasting, wearing away or wearing out, gradual deterioration rust corrosion or oxidisation and normal up-keep or making good (unless caused as a direct result of a peril which is otherwise insured by this Policy). This exception shall not apply to other costs resulting from such normal wasting, wearing away or wearing out, gradual deterioration and normal up-keep or making good.
11. The cost of continuous dewatering to maintain working conditions following ingress into the Property Insured of the normally expected inflow of water from naturally occurring underground sources.
12. Loss or damage to:
  - a) any property insured due to its own electrical or mechanical breakdown or explosion after **90 days** (not necessarily consecutive) on which that part of The Property Insured is operated under load conditions (whether partial or full load) prior to the commencement of any maintenance period (whether before or after the introduction of feed stock or other raw materials if applicable). The **90 day** limit shall be exclusive of any period during which hydraulic tests, pneumatic test, non energised electrical or mechanical test, continuity tests, insulation tests and individual operation of auxiliaries have been carried out.
  - b) any property insured or part thereof which has operated under load conditions prior to the commencement of The Insured Contract due to electrical or mechanical breakdown, explosion or derangement. This exception shall not apply to loss or damage:
    - i) originating extraneous to such property insured unless such extraneous cause results in electrical or mechanical breakdown or explosion;
    - ii) to other parts of the property insured arising as a consequence of such electrical or mechanical breakdown or explosion;
    - iii) to property insured which has been refurbished "as new" operating specifications or unless otherwise agreed by the Insurer.

## SECTION I - CONTRACT WORKS

### MEMORANDA TO SECTION I ONLY

#### MEMO 1 - SURROUNDING PROPERTY EXTENSION

Subject otherwise to the Exceptions and Conditions of the Policy, the Policy is extended to indemnify the Insured against loss of or damage to property not otherwise insured by this Section of the Policy which is in the custody or control of the Insured and arising directly from the performance of the Insured Contract.

Provided that:

- a) This indemnity shall not apply to loss or damage for which indemnity is provided for under Section II of this Policy, nor to any constructional plant, machinery or equipment used or intended for use on the Contract.
- b) The liability of the Insurers under this Extension shall not exceed the sum of **R25,000,000** any one occurrence.
- c) The Insurers shall not be liable to indemnify The Employer for any loss or damage for which indemnity is provided under any other Policy in excess of the applicable deductible under the other Policy.

#### MEMO 2 – EMPLOYER’S EXISTING PROPERTY BEING WORKED UPON

Subject otherwise to the Exceptions and Conditions of the Policy, the Policy is extended to indemnify The Insured against physical loss of or damage to Employer’s existing Property not otherwise insured by this Section of the Policy which is in the custody or control of The Insured and caused by or arising directly from the performance of The Insured Contract(s).

Provided that:

- a) this indemnity shall not apply to physical loss or damage for which indemnity is provided for under Section II of this Policy, nor to any constructional plant, machinery or equipment used or intended for use on The Insured Contract(s);
- b) the liability of the Insurer under this Extension shall not exceed the sum of **R15,000,000** any one occurrence;
- c) this Extension provides primary cover to The Insured as per General Memo 6 – Primary Insurance clause;
- d) this Extension will also apply at any premises within the Territorial Limits for the purpose of repair, modification, treatment or further work of construction.

## SECTION I - CONTRACT WORKS (Continued)

### MEMORANDA TO SECTION I ONLY (Continued)

#### MEMO 3 – DEBRIS REMOVAL

Subject otherwise to the Exceptions and Conditions of the Policy, The Insurer will indemnify the Insured in respect of all costs necessarily or reasonably incurred by The Insured in respect of provision of hoarding, shoring, propping, covering and protection of property, recovery, demolition and removal of property, removal and disposal of wreckage, detritus, debris, water and other matter, restoring the Contract Site, regaining access to the Contract Site or the works and restoring normal working conditions, complying with the requirements of the Insured Contract or any statutory body, professional fees, removing property to suitable premises for repair, delivering repaired or replacement property to the situation where the loss or damage occurred or to premises as directed by the Insured, establishment supervision and overhead charges.

Provided that:-

- a) the liability of the Insurer shall not exceed the sum of **R5,000,000** in respect of any one occurrence;
- b) in respect of a claim and every occurrence or series of occurrences arising from one original cause, claims under this Extension shall be subject to a deductible of **R50,000**.

#### MEMO 4 – DEBRIS REMOVAL – NO DAMAGE

The Insurer will indemnify the Insured in respect of all costs necessarily or reasonably incurred by The Insured in respect of the removal or clearance or disposal of debris, detritus and water and other matter in providing erection and maintaining any hoarding required during demolition site clearing or reconstruction or in protecting the property insured against further loss or damage regaining access to the Works or in restoring normal working conditions, complying with the requirements of the Insured Contract or any Statutory Body following an occurrence insured by this Policy notwithstanding that no physical loss or damage to the Insured Property has occurred.

Provided that:-

- a) the liability of the Insurer shall not exceed the sum of **R5,000,000** in respect of any one occurrence;
- b) in respect of a claim and every occurrence or series of occurrences arising from one original cause, claims under this Extension shall be subject to a deductible of **R50,000**.

#### MEMO 5 - WORK AWAY

Subject otherwise to the Exceptions and Conditions of the Policy, the Policy is extended to indemnify the Insured against physical loss of or damage to the Property Insured whilst it is situated at any premises within the Territorial Limits for the purpose of repair, manufacture, modification, treatment or further work of construction, other than loss or damage caused by the misapplication of tools or resulting from any manufacturing processes.

## **SECTION I - CONTRACT WORKS (Continued)**

### **MEMORANDA TO SECTION I ONLY (Continued)**

#### **MEMO 6 - BENEFICIAL OCCUPATION**

Subject otherwise to the Exceptions and Conditions of the Policy, the Policy is extended to indemnify The Insured for loss of or damage to parts of the Insured Contract Works taken over or put into service by the Employer prior to the whole of the Property Insured being taken over.

#### **MEMO 7 - FIRE BRIGADE/PUBLIC AUTHORITY**

Subject otherwise to the Exceptions and Conditions of the Policy, The Policy is extended to indemnify The Insured if any public authority empowered to do so shall charge The Insured with any costs arising from their activities in dealing with the consequences of an insured peril having operated such costs shall be deemed to be damage to the Insured Property and will be payable in addition to any other payment for which the Insurer may be liable in terms of this insurance.

Provided that the liability of the Insurer shall not exceed the sum of **R2,500,000** any one occurrence.

#### **MEMO 8 - TEMPORARY REPAIRS**

Subject otherwise to the Exceptions and Conditions of the Policy, the Policy is extended to indemnify The Insured for temporary repairs. The Insurer shall not be liable for temporary repairs carried out without their consent or any consequence thereof unless such temporary repairs are necessary in the interests of safety or with the object of avoiding further loss or damage.

#### **MEMO 9 - CONTRIBUTION CLAUSE – MARINE 50/50**

Notwithstanding Exception 4 to this Policy in the event of loss or damage to The Property Insured due to a peril insured against being discovered after cover under an applicable Marine Insurance policy has terminated and if after investigation it is not possible to ascertain whether the cause of such loss or damage happened prior to the termination of the marine venture or subsequently, it is understood and agreed that Insurers hereon shall make every effort where the relevant Marine Insurance Policy does not contain a similar provision to agree with the relevant Marine Insurers that the Insurers hereon shall contribute 50 percent of the properly adjusted claim less 50 percent of the applicable Deductible hereunder with the Marine Insurers similarly contributing 50 percent less 50 percent of the applicable Marine deductible. Such contributions to be without prejudice and adjusted subsequently in accordance with final apportionment of the claims as may be agreed between the Insurers hereon and the Marine Insurers.

The Insured shall make reasonable effort to ensure that the Property Insured be visually examined as soon as reasonably possible after arrival at the Contract Site.

## SECTION I - CONTRACT WORKS (Continued)

### MEMORANDA TO SECTION I ONLY (Continued)

#### MEMO 10 - AUTOMATIC REINSTATEMENT

Subject otherwise to the Exceptions and Conditions of the Policy, it is agreed that the Limit of Indemnity shall not be reduced by the amount of any claim paid or payable.

#### MEMO 11 - ESCALATION DURING REINSTATEMENT

Notwithstanding the limit of indemnity in respect of Section I should the cost of reinstating the Property Insured following loss or damage as herein provided exceed the value stated the said limit of indemnity shall be deemed to be increased by an amount not exceeding **30%** thereof.

#### MEMO 12 - EMPLOYER'S MAINTENANCE

Notwithstanding anything contained herein to the contrary it is agreed that in respect of works undertaken by the Employer the Insurer will indemnify the Employer under Section I of this Policy against loss of or damage to the Property Insured which arises within 12 months from the time the works are taken into commercial use (other than for the purpose of testing and commissioning) from a cause occurring prior to such taking into commercial use.

#### MEMO 13 - ESCALATION DUE TO CURRENCY FLUCTUATION

In the event of Fluctuation of South African Currency against the country of origin the completed value of any part of the Contract uncompleted at the date of such fluctuation in currency shall be increased or reduced accordingly provided always that the Limit of Indemnity so adjusted shall not exceed **30%** per Annum thereof.

#### MEMO 14 - PROPERTY TAKEN OVER

Notwithstanding anything contained herein to the contrary it is agreed that in the event that any part of The Property Insured under Section 1 of this Policy is taken over by the Employer and/or access/occupation to/of any part of The Property Insured is granted to another Contractor therein / thereon in performance of The Insured Contract then such part aforesaid shall continue to be insured by Section I until such work is complete and The Insured Employer takes over The Property Insured as a whole (other than for the purpose of testing or commissioning) provided always that:

- a) where The Property Insured consists of two or more physically separate entities the cover shall apply separately to each;
- b) insofar as The Contractor who handed over the aforesaid part of The Property Insured is concerned cover shall be limited to the provisions relating to any Defects Liability or Maintenance Conditions of Contract;
- c) in respect of The Employer and The Contractor who have been granted access / occupation the cover by The Policy shall apply as if no Completion Certificate or other evidence of Legal Transfer has been issued.

## SECTION I - CONTRACT WORKS (Continued)

### MEMORANDA TO SECTION I ONLY (Continued)

#### MEMO 15 - MANUFACTURER'S GUARANTEES

Subject otherwise to the Exceptions and Conditions of the Policy, it is agreed that, notwithstanding the Insurer's rights to repair, replace or reinstate, in the event of indemnifiable loss or damage to property which is the subject of a supplier's or manufacturers guarantee or warranty, the repair, replacement, rectification or reinstatement of such property shall include everything necessary to preserve without limitation, reduction or prejudice all benefit under such guarantee or warranty.

#### MEMO 16 - REMOVAL TO GAIN ACCESS

Subject otherwise to the Exceptions and Conditions of the Policy, it is agreed that the indemnity granted hereunder includes the costs of demolition, dismantling, removal or destruction and thereafter the costs of reinstalling and/or replacing any part of The Property Insured which is free of physical damage and which has of necessity had to be demolished or destroyed in order to gain access to that part of the Works which has been damaged.

#### MEMO 17 - DOCUMENTATION

Subject otherwise to the Exceptions and Conditions of the Policy, the Policy is extended to indemnify the Insured against physical loss or damage to Contract Documentation pertaining to the contract.

The term Contract Documentation shall be deemed to include but shall not be limited to:

- a) written or printed or otherwise inscribed documents and records of every kind and description and whether made of or upon paper, wood, metal, glass, plastic or other material or synthetic material;
- b) maps, drawings, photographs, tracing film, blue-prints, photostats (and other duplications), plans, specifications, tenders, estimates, addressograph-plates, stencils, templates, deeds, mortgages, books, manuscripts, account-records;
- c) models;
- d) tapes and memory banks and business machine cards; and
- e) engineering and other reports and data,

provided that:

- 1. cover will not be provided in respect of corruption and/or accidental erasure of such records;
- 2. cover will not be provided in respect of loss or damage caused by vermin.

Provided that the liability of the Insurers shall not exceed the sum of **R250,000** in respect of any one occurrence.

In respect of each and every occurrence or series of occurrences arising from one agreed cause, claims under this Extension shall be subject to deductible of **R1,000**.



## SECTION I - CONTRACT WORKS (Continued)

### MEMORANDA TO SECTION I ONLY (Continued)

#### MEMO 18 - REMOVAL TO PLACE OF SAFETY

Subject otherwise to the Exclusions and Conditions of the Policy, the Policy includes loss of or damage to the Property Insured whilst temporarily removed to any other situation in order to avoid possible destruction or damage by any of the perils insured.

#### MEMO 19 - PUBLIC AUTHORITIES REINSTATEMENT

Subject otherwise to the Exclusions and Conditions of the Policy, the Policy includes such additional cost of reinstatement of the Property lost, destroyed or damaged as may be incurred solely by reason of the necessity to comply with building or other regulations under or framed in pursuance of any Act of Parliament or other legislation or with Bye-Laws or any Municipal or Local Authority provided that:-

- (1) the amount recoverable under this extension shall not include:
  - (a) The cost incurred in complying with any of the aforesaid regulations or bye-laws:
    - i) in respect of loss not insured by this Section;
    - ii) under which notice has been served on the Insured prior to the occurrence of the loss;
    - iii) in respect of undamaged Property Insured or undamaged portions of Property Insured other than foundations of that portion of the Property Insured lost or damaged.
  - (b) the amount of any rate, tax, duty, development or other charge or assessment arising out of capital appreciation which may be payable in respect of the property by the owner thereof by reason of compliance with any of the aforesaid Act of Parliament or other legislation or with Bye-Laws or any Municipal or Local Authority.
- (2) the work of reinstatement must be commenced and carried out with reasonable despatch and may be carried out wholly or partially upon another site subject to the liability of Insurer under this extension not being increased;
- (3) the total amount recoverable shall not exceed the Limit of Indemnity as stated in the Schedule;
- (4) the conditions of the Policy except insofar as they may be hereby expressly varied shall apply as if they had been incorporated herein.

#### MEMO 20 - UNSEALED BASE COURSE WARRANTY

Subject otherwise to the Exceptions and Conditions of the Policy, it is declared and agreed that, in respect of loss or damage to exposed unsealed base course exceeding 5,000m in length, the Insurer shall only be liable for amounts associated with a maximum of 5,000m of such exposed base course

In the event of damage to unsealed base course and the Insured has more than the maximum limit unsealed, the total damage will be quantified and the claim shall be settled on the basis of the average repairs per metre to a maximum of 5,000m.

## SECTION I - CONTRACT WORKS (Continued)

### MEMORANDA TO SECTION I ONLY (Continued)

#### MEMO 21 – BORROWING OF PLANT FOR COMMISSIONING PURPOSES

Subject otherwise to the Exclusions and Conditions of the Policy, the Policy, it is agreed that in the event of The Insured borrowing non mobile plant or equipment with the intention of utilising such borrowed plant or equipment into or for the execution of the works solely for the purpose of testing or commissioning the works or any portion thereof it is agreed that such plant or equipment shall be insured hereunder subject otherwise to the Exceptions and Conditions contained herein.

Any Exception relating to damage due to electrical or mechanical breakdown or explosion shall not apply to this extension.

The Insurers liability in respect of this extension shall not exceed **R1,000,000** any one occurrence or series of occurrences attributable to any cause and shall be in addition to the Sum Insured.

The Insured shall bear the first **R25,000** of each and every claim hereunder.

#### MEMO 22 – ROAD RESERVE AND SERVITUDE INDEMNITY EXTENSION

Notwithstanding anything to the contrary it is hereby agreed that this insurance shall extend to indemnify The Insured in respect of the costs to replace repair or rectify physical loss or damage due to storm, rain, flood, inundation, erosion, collapse and floating up of pipes to any road reserve or any pipeline / electrical cable servitude directly attributable to a peril indemnifiable in terms of Section I of this Policy provided always that:

- a) In respect of each and every occurrence or series of occurrences arising out of or in connection with any one event giving rise to a claim under this Extension.

The Indemnity hereby shall not exceed **R15,000,000**.

Claims under this extension will be subject to the deductible as reflected in the policy Schedule.

- b) The Indemnity hereby provided shall not apply to nor include any costs directly or indirectly incurred in normal maintenance upkeep or repair.
- c) Damage to the road reserve or pipeline / electrical cable servitude occasioned by or in connection with vehicle traffic shall not be indemnified hereby.
- d) Cover will be limited to a distance of not exceeding 5 metres either side of the trench lip in respect of pipeline / electrical cable and not exceeding 10 metres either side of the road prism.

## SECTION I - CONTRACT WORKS (Continued)

### MEMORANDA TO SECTION I ONLY (Continued)

#### MEMO 23 – MUNITIONS OF WAR

Subject otherwise to the Exceptions and Conditions of the Policy, it is agreed that General Exception 1 applicable to Section I will not apply to physical loss of or damage to The Property Insured arising from or occasioned by the detonation of munitions of war or parts thereof in or about the vicinity of The Contract Site(s). Providing that the presence of such munitions does not result from a state of war current at the time of such physical loss or damage.

This extension does not however extend to cover physical loss of or damage to The Insured Property as covered by the South African Special Risks Insurance Association (SASRIA).

#### MEMO 24 - MALICIOUS DAMAGE EXTENSION

Subject otherwise to the Exceptions and Conditions of the Policy therein, the Policy is extended to cover loss or damage directly occasioned by or through or the consequence of deliberate or wilful or wanton act of any person committed with the intention of causing such loss or damage but excluding loss or damage caused by or arising from theft or any attempt thereat.

Provided that this extension does not cover:

- a) consequential or indirect loss or damage of any kind or description whatsoever, other than loss of rent if specifically insured;
- b) loss or damage resulting from total or partial cessation of work, or the retarding or interruption or cessation of any process or operation;
- c) loss or damage related to or caused by permanent or temporary dispossession resulting from confiscation, commandeering or requisitions by any lawfully constituted authority;
- d) loss or damage related to or caused by any occurrence referred to in General Exception 1. (A) (i), (ii), (iii), (iv), (v) or (vi) of this Policy or the act of any lawfully established authority in controlling, suppressing or in any other way dealing with any such occurrence.

If the Insurers alleged that by reason of proviso (a), (b), (c) or (d) loss or damage is not covered by this extension, the burden of proving the contrary shall rest on the Insured.

#### MEMO 25 – MALICIOUS DAMAGE (THEFT) EXTENSION

It is agreed, notwithstanding anything in the Policy to the contrary, this Policy includes loss or damage directly occasioned by or through or in consequence of the deliberate or wilful or wanton act of any person committed with the intention of causing such loss or damage and arising from theft or any attempt thereat.

## SECTION I - CONTRACT WORKS (Continued)

### GENERAL EXCEPTIONS TO SECTION I ONLY

This Policy does not cover

1. (A) Loss of or damage to property related to or caused by:-
  - i) civil commotion, labour disturbances, riot, strike or lockout, public disorder or any act or activity which is calculated or directed to bring about any of the above;
  - ii) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) or civil war;
  - iii) (a) mutiny, military rising, military or usurped power, martial law or state of siege, or any other event or cause which determines the proclamation or maintenance of martial law or state of siege;  
(b) insurrection, rebellion or revolution;
  - iv) any act (whether on behalf of any organisation, body or person, or group of persons) calculated or directed to overthrow or influence any State or Government, or any provincial, local or tribal authority with force or by means of fear, terrorism or violence;
  - v) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any State or Government, or any provincial, local or tribal authority, or for the purpose of inspiring fear in the public, or any section thereof;
  - vi) any attempt to perform any act referred to in Clause (iv) or (v) above;
  - vii) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in Clause (A) (i), (ii), (iii), (iv), (v) or (vi) above.

If the Insurers allege that by reason of Clause (A) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this Exception, loss or damage is not covered by this Policy, the burden of proving the contrary shall rest on the Insured.

- (B) Loss or damage caused directly or indirectly by or through or in consequence of any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act, 1976 (Number 85 of 1976).

## SECTION I - CONTRACT WORKS (Continued)

### GENERAL EXCEPTIONS TO SECTION I ONLY (Continued)

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

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

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

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

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

## SECTION I - CONTRACT WORKS (Continued)

### GENERAL EXCEPTIONS TO SECTION I ONLY (Continued)

#### MEMORANDUM TO EXCEPTION 1

#### MEMO 1 — RIOT STRIKE EXTENSION

Subject otherwise to the terms, conditions, exclusions, exceptions and warranties contained therein, this insurance is extended to cover loss or damage directly occasioned by or through or in consequence of:-

- i) civil commotion, labour disturbances, riot, strike or lockout;
- ii) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in (i) above;
- iii) the deliberate or wilful or wanton act of any person committed with the intention of causing such loss or damage but excluding loss or damage caused by or arising from theft or any attempt thereat.

Provided that this extension does not cover:-

- a) loss or damage occurring in the Republic of South Africa and Namibia;
- b) consequential or indirect loss or damage of any kind or description whatsoever, other than loss of rent if specifically insured;
- c) loss or damage resulting from total or partial cessation of work, or the retarding or interruption or cessation of any process or operation;
- d) loss or damage occasioned by permanent or temporary dispossession resulting from confiscation, commandeering or requisition by any lawfully constituted authority;
- e) loss or damage related to or caused by any occurrence referred to in General Exception 1. (A) (ii), (iii), (iv), (v) or (vi) of this Policy or the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any such occurrence.

If the Insurers allege that by reason of provisos (a), (b), (c), (d) or (e) loss or damage is not covered by this extension, the burden of proving the contrary shall rest on The Insured.

## **SECTION II - PUBLIC LIABILITY**

The Insurers will indemnify the Insured against all sums which the Insured shall become legally liable to pay as compensation for and in consequence of:

- i) accidental death of or injury to or illness or disease contracted by any person;
- ii) accidental loss of or damage to property,

occurring during the Period of Insurance and arising out of or in connection with the performance of The Insured Contract(s).

### **LIMIT OF INDEMNITY - SECTION II**

The liability of the Insurers under this Section for all compensation payable shall not exceed in respect of or arising out of one claim or in respect of or arising out of all claims of a series consequent on or attributable to one source or original cause the sum stated in the Schedule as the Limit of Indemnity. The Insurers will also pay legal costs recoverable by any claimant from the Insured and costs and expenses incurred with the written consent of the Insurers.

### **EXCEPTIONS TO SECTION II ONLY**

The Insurers will not indemnify the Insured in respect of:

1. death of, bodily injury to or illness or disease contracted by any person in the employment of the Insured arising out of and in the course of his employment by such Insured;
2. liability compulsorily insurable under any legislation governing the use of any motor vehicle or trailer;
3. the ownership, possession or use by the Insured of any motor vehicle as defined in the Multilateral Motor Vehicles Accident Fund No. 93 of 1989 or any amendment or substitution thereof. This Exception shall not apply to:
  - i) mechanical plant except for liability against which the Insured is required to take out insurance under any legislation covering the use of such mechanical plant;
  - ii) claims caused by the use as a tool of trade of any vehicle or trailer constructed primarily for use on contract sites as a tool of trade;
  - iii) claims arising beyond the limits of any carriageway or thoroughfare in connection with the loading and/or unloading of any vehicle or trailer.

## SECTION II - PUBLIC LIABILITY (Continued)

### EXCEPTIONS TO SECTION II ONLY (Continued)

4. loss of or damage to property:
  - a) belonging to the Insured or in their custody or control;
  - b) for which indemnity would be provided under Section I but for the application of Exception 1 to Section I;
  - c) caused by the intentional removal of lateral support or the weakening of or interference with support to such property.

This Exception shall not apply to liability arising out of:

    - i) the negligence of the Insured; or
    - ii) shock or vibration.
- For the purpose of this Exception the term "custody or control" shall not apply to:
  - i) premises and structures (including contents) fixed plant and machinery or other property temporarily occupied or used by the Insured for the purpose of the Insured Contracts;
  - ii) property not hired by or on loan to the Insured but for which the Insured has agreed to provide storage facilities;
  - iii) property of employees or visitors;
  - iv) vehicles (including the contents thereof) under the custody or control of the Insured for the purpose of parking.
5. liability attaching to the Insured under the terms of any contract or agreement whether written, verbal or implied unless such liability would have attached to the Insured notwithstanding any such contract or agreement, but this exception shall not apply to;
  - a) the Insured Contract(s)
  - b) any other specific agreements
  - c) agreements with Transnet
  - d) agreements with the Public Supply Authorities
6. liquidated damages and time penalties;
7. the amount of the deductible stated in the Schedule;
8. the cost of making good faulty workmanship materials or design in any part of The Property Insured;
9. the ownership possession or use of any aircraft or watercraft (other than watercraft which are not self propelled or are less than 3 tons nett mass whilst on or about inland waterways);



## SECTION II - PUBLIC LIABILITY (Continued)

### EXCEPTIONS TO SECTION II ONLY (Continued)

10. liability directly or indirectly or proximately or remotely occasioned by or constituted to by or arising out of or attributable to war, civil war, invasion, act of foreign enemy hostilities (whether war be declared or not) rebellion, insurrection or military or usurped power;
11.
  - a) liability in respect of injury, damage or loss of use of property directly or indirectly caused by seepage pollution or contamination provided always that this exception shall not apply where such seepage pollution or contamination is caused by a sudden unintended and unforeseen occurrence.
  - b) the cost of removing nullifying or cleaning up seeping polluting or contaminating substances unless the seepage pollution or contamination is caused by a sudden unintended and unforeseen occurrence.
12. any loss of revenue suffered by the Employer as a result of their inability to generate electricity or any reduction in electrical generating output;
13. notwithstanding any provision of this Policy including any exclusion, exception or extension or other provision which would otherwise override a general exception, this Section does not cover any legal liability, loss, damage, cost or expense whatsoever or any consequential loss directly or indirectly caused by, arising out of resulting from, in consequence of, in any way involving or to the extent contributed to by, the hazardous nature of asbestos in whatever form or quantity.

### CLAUSES TO SECTION II

#### 1. JOINT INSURED CLAUSE

The Insurers will treat as the Insured:

- a) any person or body (including any owner of plant or other property hired by or on loan to the Insured) with whom the Insured enters into an agreement for the purposes of the Contract but only to the extent that it is a requirement of such agreement,

and at the discretion of the Insured:

- b) any officer or employee of the Insured in respect of liability for which the Insured would have been entitled to indemnity if the claim had been made against the Insured;
- c) the personal representatives of the Insured and any person or party treated as the Insured in respect of liability incurred by the Insured or by such person or party.

Provided always that all persons and parties so treated as the Insured shall as though they were the Insured, observe, fulfil and be subject to the Terms, Exceptions and Conditions so far as they can apply.

## SECTION II - PUBLIC LIABILITY (Continued)

### CLAUSES TO SECTION II (Continued)

#### 2. COVER FOR CROSS LIABILITY

It is agreed and understood that otherwise subject to the, Exclusions and Conditions contained in the Policy, the Section II public liability cover of the Policy shall apply to The Insured parties named in the Schedule as if a separate policy had been issued to each party, provided that The Insurers shall not indemnify The Insured in respect of liability for:

- a) Physical loss of or damage to items insured or insurable under Section 1 of the Policy, even if not recoverable due to an excess or any limit;
- b) Fatal or non fatal injury or illness of employees or workmen who are or could have been insured under COIDA (workman's compensation) and/or employers liability insurance.

The Insurer's total liability in respect of The Insured parties shall not however exceed in the aggregate for any one accident or series of accidents arising out of one event the Limit of Indemnity stated in the Schedule.

#### 3. STATUTORY LEGAL DEFENCE COSTS

It is hereby agreed that notwithstanding the Exceptions or anything else herein contained to the contrary the Insurers shall indemnify the Insured against costs and expenses incurred with the consent of the Insurers in the defence of any legal action brought against the Insured arising from an alleged contravention of any statute or duty at common law provided that:-

- a. in the case of an appeal the Insurers will not indemnify the Insured unless a Senior Council approved by the Insurers advises that such appeal should in his opinion succeed;
- b. the Insurers will not indemnify the Insured in respect of any fine or penalty imposed by any magistrate or judge nor any loss consequent thereto;
- c. the liability of the Insurers in respect of any one occurrence shall not exceed **R500,000**.

#### 4. ARREST/ ASSAULT /DEFAMATION

It is hereby agreed that notwithstanding the Exceptions or anything else herein contained to the contrary this Policy is extended to include any legal liability of the Insured (not necessarily consequent upon death or injury to any person or loss or damage to any property);

- i). arising from malicious or wrongful arrest or alleged malicious or wrongful arrest of any person;
- ii) arising from malicious or wrongful assault or alleged malicious or wrongful assault on any person;
- iii) in respect of defamation or alleged defamation whether negligence is imputed or not.

The liability of the Insurers in respect of any one occurrence shall not exceed **R500,000** for each of (i) (ii) and (iii) above.

## SECTION II - PUBLIC LIABILITY (Continued)

### CLAUSES TO SECTION II (Continued)

5. **EMERGENCY MEDICAL EXPENSES**

It is hereby agreed that the Insurers shall indemnify the Insured in respect of costs and expenses incurred by the Insured for such medical treatment as may be reasonable at the time of an occurrence causing injury to any person who may be connected with a claim for indemnity in terms of this insurance. The liability of the Insurers for such costs in respect of any one claim shall not exceed **R250,000**.

6. **TENANTS LIABILITY**

It is hereby agreed that Exceptions 4(a) shall not apply to premises occupied by the Insured as tenant thereof.

7. **PREVENTION OF ACCESS**

The indemnity granted under this Section shall extend to indemnify the Insured against all amounts for which the insured is or may become legally liable to pay compensation or damage or costs and expenses arising out or in connection with prevention of access resulting in the interruption or interference with any business.

8. **TRESPASS / NUISANCE**

The indemnity granted under this Section shall extend to indemnify the insured against all amounts which the Insured is or may become legally liable to pay as compensation or damage or costs and expenses arising out of or in connection with obstruction loss of amenities trespass nuisance or any like cause which results in interference with the property or right of any person or their enjoyment or use thereof.

## GENERAL MEMORANDA APPLICABLE TO ALL SECTIONS

### MEMO 1 - INDEMNITY TO INSURED PARTIES

Subject to the terms, Exceptions and Conditions of the Policy it is hereby declared and agreed that :-

- a) Other than work performed or undertaken by The Employer on his own behalf the Contract(s) entered into between the Employer and/or the Contractor(s) and/or Sub-Contractor(s) shall form the basis on which this Insurance is arranged;
- b) In respect of Manufacturers or Suppliers or Independent Project Managers, Engineering Consultants, Architects, Land Surveyors, Quantity Surveyors, Advisors or Consultants or any other professional party who may be deemed to be included as an Insured Party under this Policy, the Insurance by this Policy shall not apply in respect of loss, damage or liability arising from any professional activity or off-site manufacturing.

### MEMO 2 - PAYMENTS ON ACCOUNT

In the event of loss as insured by this Policy, payments on account will be made to the Insured if necessary.

### MEMO 3 - CLAIMS COSTS

The insurance by this policy extends to include necessary and reasonable costs and expenses incurred by the Insured in producing and certifying any particulars or details contained in their books of account or other business books or documents or other such proofs, information or evidence as may be required by the Insurer subject to a limit of **R1,000,000** any one occurrence.

### MEMO 4 - VALUE ADDED TAX

All Limits, Sums Insured, claims amounts, underlying deductibles, or any other amounts stated in the Policy are agreed to be inclusive of Value Added Tax and to the extent that the Insured is accountable to the authorities for Value Added Tax in respect of any payment in terms of this Policy the Insurers will include the amount of such tax in the settlement of any claim under this Policy.

### MEMO 5 – APPREHENSIVE CLAUSE

If the discovery of a defect in any part of the Property Insured suggests that a similar defect or defects exist or may exist in any other part of the Property Insured, the Insured shall forthwith investigate and if necessary rectify the defect in such other part or parts at his own expense or alternatively bear all losses arising out of the said defect or defects, unless the Insured can comprehensively substantiate that all necessary precautions and repairs were indeed undertaken to all other defective part or parts.

## **GENERAL MEMORANDA APPLICABLE TO ALL SECTIONS (Continued)**

### **MEMO 6 – PRIMARY INSURANCE**

It is expressly understood and agreed and this Policy provides primary cover for the Insured and that in the event of loss, damage or liability covered by the Policy which is also covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the parties comprising the Insured, the Insurers will indemnify the Insured as if such policy or policies of insurance were not in force and the Insurer waive their rights of recourse against the Insurers of other such policy or policies of insurance.

### **MEMO 7 – MULTIPLE INSURED CLAUSE**

- a) It is noted and agreed that if The Insured described in the Schedule comprises more than one Insured Party each operating as a separate and distinct entity then (save as provided in this Multiple Insured' Clause) cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such Insured Party provided that the total liability of the Insurer to all of The Insured parties collectively shall not exceed the sums insured and limits of indemnity including any inner limits set by memorandum or endorsement stated in the Policy.
- b) It is understood and agreed that any payment or payments by Insurer to any one or more such Insured parties shall reduce to the extent of that payment Insurers liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- c) It is further understood that The Insured parties will at all times preserve and enforce the various contractual agreements entered into by The Insured parties and the contractual remedies of such parties in the event of loss or damage.
- d) It is further understood and agreed that Insurer shall be entitled to avoid liability to or (as may be appropriate) claim damages from any of The Insured parties in circumstances of fraud, misrepresentation, non-disclosure or breach of any warranty or condition of this policy committed by that Insured party each referred to in this clause as a Vitiating Act.
- e) It is however agreed that (save as provided in this Multiple Insured's Clause) a Vitiating Act committed by one Insured party shall not prejudice the right to indemnity of any other Insured party who has an insurable interest and who has not committed a Vitiating Act.
- f) Insurers hereby agree to waive all rights of subrogation which they may have or acquire against any Insured party except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act in which circumstances Insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as an Insured.

### **MEMO 8 – WAIVER OF RIGHTS**

The Insurers agreed to waive rights of subrogation which they have or may acquire against any persons in whose respect The Insured relinquishes such rights in connection with any agreement entered into by The Insured; provided that such waiver of subrogation shall not operate in favour of any insured person guilty of breach of or non-compliance with anything to be done under this insurance.

### **MEMO 9 – PREVIOUS INSURANCE**

It is expressly understood and agreed that in respect of contracts which fall to be insured in terms of this Policy and awarded prior to the inception of this Policy, this Policy shall provide cover in accordance with the cover (including deductible) applicable under the Employers Policy in force at the time of award of such contract.

## GENERAL MEMORANDA APPLICABLE TO ALL SECTIONS (Continued)

### MEMO 10 – RUN-OFF

Upon cancellation or non renewal of this Policy and unless otherwise agreed with The Insurers this Policy shall continue in force for any Insured Contract awarded or for which tenders have been invited prior to the renewal date or the expiry of the period of notice and shall continue in force until completion (including maintenance) of such Insured Contract, provided that such Insured Contract shall be in progress or be commenced within **90 days** of cancellation or non-renewal.

### MEMO 11 – CONTINGENCY COVER

In respect of any undertaking where the Contractor is required to arrange this insurance, it is agreed that, notwithstanding anything herein contained (but subject to the proviso that such undertaking is subject to the maximum Estimated Contract Value and/or Limit of Liability) this Policy is restricted to indemnify the Employer to the extent of any liability, loss or damage against which the Employer is not indemnified by the more specific insurance. Subject otherwise to the terms of this Policy and subject to the liability of Insurers not exceeding the limits as set out under the relevant Sums Insured.

### MEMO 12 – CONTRACTS HELD COVERED

Notwithstanding the provisions of the limitation in contract value contained in part (a) of The Insured Contract(s) in The Schedule of this Policy, such contracts with a tender value in excess of the amounts stipulated will be held covered in terms of this policy for **60 (sixty) days** from the time work shall have commenced at any relevant contract site. Provided that such contracts are not excluded contracts as per Item g) as stated under the heading THE INSURED CONTRACT(S): in THE SCHEDULE.

It is however a condition precedent to Insurer's liability under this Memorandum that full details of such work together with such further information as the Insurer may reasonably require shall be provided by the Insured within **30 (thirty) days** of the commencement of such work.

On receipt of such information the Insurer shall advise the Insured of the required rate and Deductibles and any additional Terms, Exceptions and Conditions which shall apply to such work and shall issue an endorsement to extend this Policy to include such Contract or shall issue a separate policy accordingly. If the Insured declines to accept the rate and/or Deductibles and/or additional Terms, Exceptions and Conditions then such declinature must be notified to the Insurer within **30 (thirty) days** of the receipt of such details from the Insurer or otherwise they shall be held to apply mutatis mutandis. If such declinature is notified within the prescribed period the Insurer shall be entitled (if required) to a pro rata premium for the period held covered.

### MEMO 13 - DEPOSIT PREMIUM/DECLARATION ADJUSTMENT

The premium under this Policy will be calculated by applying the agreed premium rate to the estimated turnover figures including free issue materials supplied by the Employer or Contractor the value of which has been included if applicable. The resultant amount will be paid at inception of the policy and shall be regarded as a deposit.

On expiry of each period of insurance the premium charged shall be adjusted by applying the agreed rate to the final declared turnover figures.

## **GENERAL MEMORANDA APPLICABLE TO ALL SECTIONS (Continued)**

### **MEMO 14 - CANCELLATION CLAUSE**

This Policy shall continue unless terminated by **30 (thirty) days** notice in writing given by the Insurer to the Contractor at its registered address or by the Contractor to the Insurer as the case may be.

Notwithstanding the aforementioned Cancellation at the option of the Insured the insurance provided by this policy shall continue to apply to any Contract in respect of which tenders have a closing date prior to the expiry of such period of notice. In relation to any such Contract the cover granted under this Policy shall continue and all the Terms, Exceptions and Conditions of this Policy shall mutatis mutandis apply until completion of such Contracts and the maintenance period stipulated in the Contract documents. In the event of the Insured exercising this option The Insurer shall be notified of such intention at the time of notice of Cancellation is given and the premium shall be adjusted proportionately at the rates applicable under the Policy and any additional premium due paid to the Insurer.

The foregoing provisions shall also apply in the event of the Policy being lapsed.

### **MEMO 15 – SA JURISDICTION**

This insurance is governed by the laws of The Republic of South Africa and the courts of The Republic of South Africa shall have jurisdiction in all matters arising hereunder.

### **MEMO 16 – ABANDONMENT**

In the event of stoppage or work on any contract site from any cause for a period of three consecutive months cover under this Policy shall be suspended in respect of that contract site unless its continuance shall be agreed in writing with the Insurers.

## **NUCLEAR EXCLUSION - APPLICABLE TO ALL SECTIONS**

This Policy does not cover:

- i) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- ii) any legal liability of whatsoever nature,

directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Solely for the purpose of this exclusion combustion shall include any self-sustaining process of nuclear fission.

The Indemnity provided by this Policy shall not apply to nor include any loss destruction or legal liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.



## THE CONDITIONS

1. The due observance and fulfilment of the terms and conditions of this Policy insofar as they relate to anything to be done or complied with by the Insured shall be conditions precedent to any liability of the Insurer to make any payment under this Policy.
2. If there is any material change in the risk insured during the Period of Insurance or if any defects or conditions of working are discovered which render the risk more than usually hazardous the Insured shall forthwith notify the Insurer and take precautions as circumstances may require. In the event of stoppage of work on the Contract Site from any cause for a period of three consecutive months cover under this Policy shall be suspended unless its continuance be agreed to in writing by the Insurer.
3. The Insured shall exercise all reasonable care in the selection employment and supervision of all employees and in the prevention of any injury, disease, illness or damage against which the policy indemnifies the Insured and in compliance with any statutory regulation.
4. On the happening of any event giving rise or likely to give rise to a claim under this Policy coming to the knowledge of the Insured the Insured shall:
  - a) as soon as possible give notice thereof to the Lead Insurer, and shall give all such additional information as the Insurer may reasonably require;
  - b) take all practical steps to recover any Insured Property including in the event of property lost or stolen or wilfully damaged the giving of immediate notice to the police;
  - c) where possible preserve any things which might prove necessary or useful by way of evidence in connection with any claim;
  - d) send to the Insurer as soon as possible any writ, summons or notice of other proceedings which may be commenced against the Insured.
5. The Insured shall at the expense of the Insurers do or permit to be done all such acts and things as may be necessary or reasonably required by the Insurers for the purpose of enforcing any rights or remedies or obtaining relief or indemnity from other Parties to which the Insurers shall or would become entitled or subrogated upon their paying for or making good any loss or damaged under this Policy whether such acts and things shall be or become necessary or required before or after indemnification by the Insurers.
6. No admission offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Insurer who shall be entitled in the name of the Insured but at its own expense to take over conduct the defence and settlement of any claim or to prosecute for its own benefit any claim for indemnity or damage or otherwise. The Insurer shall have the full discretion in all such matters as aforesaid and the Insured shall give all such information and assistance as the Insurer may reasonably require.

## THE CONDITIONS (Continued)

7. If the Insurer shall disclaim liability for any claim for indemnity made by the Insured and the Insured does not institute proceedings for an action or suit at law within twelve months of the date of such disclaimer, the Insurer shall be entitled to assume that the claim has been abandoned and shall not thereafter be liable for any payment whatsoever in connection therewith. An extension of this period will not be unreasonably withheld.
8. If a claim or any part thereof made by or on behalf of any of the parties to the Contract shall be in any respect fraudulent then the entire claim by such party shall not be recoverable by the party making the Claim.
9. It is hereby declared and agreed that notwithstanding anything to the contrary stated in the Policy, if any claim or claims thereunder lodged with the Insurers by any party or parties described as the Insured is or are repudiated in whole or in part by reason of a breach of Conditions applicable to the within Policy either expressed or implied, such repudiation or repudiations shall not in any way affect or diminish the rights of the other parties described as the Insured to recover the entire value of such claim or claims as if they were claiming as the party who perpetrated the breach of Conditions and such breach(es) of Conditions as aforesaid had not occurred. Provided always that:
  - a) The other parties described as the Insured had not knowingly in respect of the whole or part thereof of the aforesaid breach(es) of Condition(s) been a party thereto in which event they shall be in no better position in regard to such repudiated claim(s) than is the party committing the breach(es);
  - b) The party(ies) who were not in breach shall have exercised reasonable means to recover the amount of such losses from the Contractor/Sub-Contractor(s) who perpetrated the breach of Condition(s).
10. It is hereby declared that notwithstanding anything to the contrary stated in the Policy this Policy shall take precedence over any other insurance arranged by or on behalf of the Insured. In the event of loss or damage which may be insured under any other policy of insurance effected by any of the parties comprising the Insured the Insurers shall indemnify the Insured as if such insurance did not exist.
11. If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference may be referred to an Arbitrator (or Arbitrators) to be appointed by the parties concerned in accordance with the applicable statutory provisions in force. The making of an Award shall be a condition precedent to any right of action against the Insurer to recover such amount in dispute.
12. It is hereby declared and agreed that the inadvertent failure by the Insured to declare specific information required in respect of the Insured Contract shall not invalidate the cover of this Policy, provided that any such failure shall be rectified as soon as practicable after it shall have come to the Insured's knowledge.