

PRODUCT LIABILITY INSURANCE POLICY



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1. OPERATIVE CLAUSE:

WHEREAS the Insured named in the Schedule hereto and carrying on the business described in the said Schedule has applied to Magma HDI General Insurance Co. Ltd (hereinafter called "the Company") for the indemnity hereinafter contained and has made a written proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein and has paid the premium as consideration for or on account of such indemnity.

NOW THIS POLICY WITNESSETH that subject to the terms exceptions and conditions contained herein or endorsed hereon the Company will indemnify the Insured against their legal liability (other than liability under the Public Liability Insurance Act, 1991 or any other Statute that may come into force after the issue of this policy) to pay compensation including Claimant's costs, fees and expenses anywhere in India, in accordance with the law of the country but not in respect of any judgement, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement, award or settlement either in whole or in part) unless the Insured has requested that there shall be no such limitation and has accepted the terms of the North American Jurisdiction Extension Clause which forms part of this policy.

2. INDEMNITY:

The Indemnity only applies to claims arising out of accidents during the period of insurance first made in writing against the Insured during the policy period and the Insured is indemnified in accordance with the Operative Clause for and/or arising out of Injury and/or Damage but only against claims arising out of or in connection with the products specified in the Schedule.

For the purpose of determining the indemnity granted

- (a) 'Injury' means death, bodily injury, illness or disease of or to any person,
- (b) 'Damage' means actual and/or physical damage to tangible property;
- (c) 'Pollution' means pollution or contamination by solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, acids, alkalis, radioactive and/or nuclear material, chemical or waste materials (including but not limited to any material to be recycled, reconditioned or reclaimed) or otherwise of the atmosphere, water, soil, land or other tangible property;
- (d) 'Product' means any tangible property after it has left the possession, custody or control of the Insured, which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured but shall not mean food and beverages supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit;
- (e) 'Policy Period' means the period commencing from effective date and hour as shown in the Policy Schedule and terminating at midnight on the expiry date as shown in the Policy Schedule.
- (f) 'Period of Insurance' means the period commencing from the retroactive date and terminating on the expiry date as shown in the Policy Schedule.
- (g) 'Accident' means a fortuitous event or circumstance which is sudden, unexpected and unintentional including resultant continuous, intermittent or repeated exposure arising out of the same fortuitous event or circumstance.
- (h) 'Retroactive Date' is the date when the risk is first incepted under a Claims Made Policy and thereafter renewal without break in the period of insurance cover.
- (i) 'Claim' means the receipt by the Insured of any written or verbal notice of demand for compensation or rectification made by or on behalf of a third party against the Insured, any/or any suit, claim, petition, writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon the Insured.

3. (a) NOTIFICATION EXTENSION CLAUSE:

Should the Insured notify the Company during the Policy Period in accordance with General Condition 9.1 of any specific

event or circumstance which the Company accepts may give rise to a claim or claims which form the subject of indemnity by this policy, then the acceptance of such notification means that the Company will deal with such claim or claims as if they had first been made against the Insured during the Policy period. The extension under this Clause will be subject to the maximum time limit laid down under the Indian Limitation Act in force from time to time.

(b) EXTENDED CLAIM REPORTING CLAUSE:

In the event of non-renewal or cancellation of this Policy either by the Company or by the Insured, the Company will allow a time limit not exceeding 90 days from the date of expiry or cancellation of the policy provided no insurance is in force during this extended reporting period for the same interest, for notification of claims for accidents which had taken place during the period of insurance but could not be made during the policy period, provided, however, all claims made during the extended reporting period shall be handled as if they were made on the last day of the expiring Policy period and are subject to the limits of indemnity and the terms, conditions and exceptions of the policy.

This extended reporting period does not in any way reinstate or increase the limit of indemnity mentioned in the Schedule of the Policy.

4. INDEMNITY TO OTHERS:

The indemnity granted extends to;

- 4.1 officials of the Insured in their business capacity arising out of the performance of their business or in their private capacity arising out of their temporary engagement of the Insured's employees;
- 4.2 the Officers, Committees and members of the Insured's canteen, social, sports, medical, fire fighting and welfare organisations in their respective capacities as such;
- 4.3 the personal representatives of the estate of any person who would otherwise be indemnified by this Policy but only in respect of liability incurred by such person.

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

5. CROSS LIABILITIES:

Each person or party indemnified is separately indemnified in respect of claims made against any of them by any other person or party (other than the named Insured) subject to Company's total liability not exceeding the limits of indemnity stated in the Schedule of the Policy.

6. DEFENCE COSTS:

The Company will pay all costs, fees and expenses incurred with their prior consent in the investigation, defence or settlement of any Claim made against the Insured and the costs of representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be made against the Insured, provided such claim or claims are the subject of indemnity by the Policy whether liability ultimately attaches to the policy or not. Such costs, fees and expenses are called 'Defence Costs'.

7. INDEMNITY LIMITS:

Company's total liability to pay compensation, Claimant's costs, fees and expenses and defence costs shall not exceed the Indemnity Limit stated in the Schedule. Indemnity Limit applies to any one claim or series of claims arising from one originating cause. Indemnity Limit shall represent the total amount of Company's Liability during the Policy Period.

7.1 CLAIMS SERIES CLAUSES:

A Claims Series Event as defined below shall be deemed to be one claim and date of loss shall be the date when the first claim of the Claims Series Event is made in writing against the Insured.

A Claims Series Event shall be defined as a series of two or more claims arising from one specific common cause which is attributable, e.g.

- to the same fault in design, manufacture, instructions for use or labelling of products
- or to the supply of the same products and/or services or to products and/or service showing the same defect.

There shall, however, be no coverage for claims arising from one specific cause which are made later than 3 years after the first claim of the series.

7.2 COMPULSORY EXCESS:

The Insured shall bear a Compulsory Excess the amount or percentage of the limit of indemnity per any one accident as stated in the Policy Schedule. This Compulsory Excess shall be applicable to both (a) death/bodily injury and (b) property damage, inclusive of defence costs arising out of any one accident. The Company's Liability shall attach for the claim in excess of such Compulsory Excess (and Voluntary Excess, if any, opted by the Insured).

7.3 VOLUNTARY EXCESS:

In the event of the Insured opting, the policy shall be subject to a Voluntary Excess as stated in the Policy Schedule. This voluntary excess shall be applicable to both (a) death/bodily injury claims and (b) property damage claims inclusive of defence costs arising out of any one accident. The Company's Liability shall attach for the claims in excess of such Compulsory and Voluntary Excess.

8. EXCLUSIONS

This Policy does not cover liability

- 8.1 for costs incurred in the repair, reconditioning, modification or replacement of any part of any product which is or is alleged to be defective;
- 8.2 for costs arising out of the recall of any product or part thereof;
- 8.3 arising out of any product which with the Insured's knowledge is intended for incorporation into the structure, machinery or control of any aircraft;
- 8.4 arising out of deliberate, willful or intentional non-compliance of any statutory provision;
- 8.5 arising out of Insured's consequential loss of any kind, be they by way of loss of profit, loss of opportunity, business interruption, market loss or otherwise, or claims arising out of loss of a pure financial nature such as loss of goodwill;
- 8.6 arising out of fines, penalties, punitive or exemplary damages or any other damages resulting from the multiplication of compensatory damages;
- 8.7 directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation or nationalization or requisition of or damage to property by or under the order of government or public local authority;
- 8.8 directly or indirectly caused by or contributed to by or arising from;
 - (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 8.9 for damage to property belonging to the Insured or held in trust or in custody or control of the Insured or a person in the service of the Insured;
- 8.10 arising out of Injury and/or Damage occurring prior to the Retroactive Date in the Policy Schedule.

Provided always that in the event of any Injury or Damage arising from continuous or continual inhalation, ingestion or application of any substance following the covered accident and where the Insured and the Company cannot agree when

the Injury or Damage occurred, then:

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

- 8.11 arising out of deliberate, conscious or intentional disregard of the Insured's technical or administrative management of the need to take all reasonable steps to prevent claims;
- 8.12 arising out of Injury to any person under a contract of employment or apprenticeship with the Insured where such Injury arises out of the execution of such contract;
- 8.13 arising out of contractual liability unless liability would have existed in the absence of the specific contract;
- 8.14 arising out of any product guarantee;
- 8.15 arising out of claims for failure of the goods or products to fulfill the purpose for which they were intended;
- 8.16 for liabilities arising out of products which have left the custody and control of the insured prior to Retroactive Date specified in the Policy Schedule;
- 8.17 infringement of plans, copy-right, patent, trade name, trade mark, or registered design;
- 8.18 arising out of all personal injuries such as libel, slander, false arrest, wrongful eviction, wrongful detention, defamation etc. and mental injury, anguish, or shock resulting therefrom;
- 8.19 arising out of damage to property belonging to third parties that is rented, leased or hired or under hire-purchase or on loan to the Insured or in the Insured's custody, care or control;
- 8.20 arising out of damage to property belonging to third parties handled by the Insured by way of his trade or worked upon by or in the care, custody or control of the Insured or any person employed by or working for the Insured;
- 8.21 any liability under the Public Liability Insurance Act 1991 or other law which attaches liability on a no fault basis;
- 8.22 arising out of pollution of any kind;
- 8.23 liability more specifically insured elsewhere;
- 8.24 any claim made where the circumstances that exist are materially different to the circumstances represented by the Insured in the proposal;
- 8.25 any claim made, threatened or intimated against the Insured prior to the Policy Period;
- 8.26 any claim directly or indirectly arising out of, or in any way involving any fact or circumstances of which written notice has been given, or ought reasonably to have been given, under any previous policy (whether insured by the Company or not); or of which the Insured first become aware prior to the Period of Insurance and which the Insured knew or ought reasonably to have known had the potential to give rise to a claim;

9. GENERAL CONDITIONS

- 9.1 The Insured shall give written notice to the Company as soon as reasonably practicable of any claim made against the Insured (or any specific event or circumstance that may give rise to a claim being made against the Insured) and which forms the subject of indemnity under this policy and shall give all such additional information as the Company may require. Every claim, writ, summons or process and all documents relating to the event shall be forwarded to the Company immediately they are received by the Insured.
- 9.2 No admission, offer, promise or payment shall be made or given by or on behalf of the Insured without the written consent of the Company.
- 9.3 The Company will have the right, but in no case the obligation, to take over and conduct in the name of the insured the

defence of any claim and will have full discretion in the conduct of any proceedings and in the settlement of any claim and having taken over the defence of any claim may relinquish the same. All amounts expended by the Company in the defence settlement or payment of any claim will reduce the limits of indemnity specified in the Schedule of the Policy.

In the event the Company, in its sole discretion, chooses to exercise its right pursuant to this condition, no action taken by the Company in the exercise of such right will serve to modify or expand in any manner, the Company's liability or obligations under this policy beyond what the Company's liability or obligations would have been had it not exercised its rights under this condition.

- 9.4 The Insured shall give all such information and assistance as the Company may reasonably require.
- 9.5 The Insured shall give notice as soon as reasonably practicable of any fact, event or circumstance which materially changes the information supplied to the Company at the time when this policy was effected, and the Company may amend the terms of this Policy according to the materiality of such change.
- 9.6 The Company may at any time pay to the Insured in connection with any claim or series of claims under this Policy to which an Indemnity Limit applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the Company shall relinquish the conduct and control of and be under no further liability in connection with such claims.
- 9.7 The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear. The terms, conditions and exclusions of this Policy (and any phrase or word contained therein) shall be interpreted in accordance with Indian Law.
- 9.8 The Insured shall keep accurate records of annual turnover which term shall include all leviable duties and at the time of renewal of Insurances declare such details as the Company may require. The Company shall at all reasonable time have free access to inspect such records.

The premium stated in the Schedule of this Policy is to be regulated by the final turnover pertaining to the Policy Period as borne out by the accurate record of the annual turnover to be maintained as above. Within one month from the expiry of each Policy Period, the Insured shall furnish the Company with the correct turnover recorded as aforesaid, pertaining to the previous Policy Period, based on which the Company shall arrive at the final premium, by further payment to the Company or a refund to the Insured as the case may be, but in no case shall the refund of premium be more than 25% of the premium stated in the Schedule.

- 9.9 If at the time of happening of any event resulting into a liability under this Policy, there be any other Products Liability Insurance or Insurances effected by the Insured or by any other person covering the same liability, then the Company shall not be liable to pay or contribute more than its rateable proportion of such liability.

This Policy does not cover liability which at the time of happening of any event resulting into such liability, be insured by or would, but for the existence of this policy, be insured, by any other Policy or Policies, except in respect of any excess beyond the amount which could have been payable under such Policy/Policies, had this Insurance not been effected.

- 9.10 The Company may cancel this Policy by giving fifteen days' notice in writing of such cancellation to the Insured's last known address and in such an event the Company will return a pro-rata portion of the premium (subject to a minimum retention of 25 per cent of the annual premium) for the unexpired part of the Insurance.

The Policy may also be cancelled by the Insured by giving notice in writing to the Company, in which event the Company will retain premium according to the Company's Short Period Rates set out below provided there is no claim under the Policy during the period of Insurance. In case of any claim under the Policy, no refund of premium shall be allowed.

Table of Short Period Rates	
Period of Risk	Amount of Premium to be Retained by Company
Upto 1 month	25% of Annual Premium
Above 1 month and upto 3 months	50% of Annual Premium
Above 3 months and upto 6 months	75% of Annual Premium
Above 6 months	100% of Annual Premium

- 9.11 In the event of liability arising under the policy or the payment of claim under the policy, the Limit of Indemnity per any one year under the Policy shall get reduced by the extent of quantum of liability to be paid or actual payment of such claim. Under no circumstances, it shall be permissible to reinstate the limit of indemnity to the original level, even on payment of extra premiums.
- 9.12 It is also hereby further expressly agreed and declared that if the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within 12 calendar months from the date of such disclaimer have been made the subject matter of a suit in a court of law then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
- 9.13 The Company shall not be liable to make any payment under this Policy in respect of any claim if such claim shall be in any manner fraudulent or supported by any statement or device whether by Insured or by any person on behalf of the Insured and/or if the insurance has been continued in consequence of any material mis-statement or the non-disclosure of any material information by or on behalf of the Insured.
- 9.14 No claim shall be payable under this Policy unless the cause of action arises in India and the liability to pay claim is established against the insured in an Indian court, except for the claims in respect of exports of products covered under the Policy. It is further agreed and understood that only Indian Law shall be applicable to actions brought in India.

10. Arbitration

If any dispute or difference shall arise as to the quantum to be paid under the policy (liability) being otherwise admitted) such difference shall independently of all other questions be referred to the decision of the sole arbitrator to be appointed in writing by the parties to or if they cannot agree upon a single arbitrator within 30 days of any party invoking arbitration the same shall be referred to a panel of 3 arbitrators, comprising of 2 arbitrators, 1 to be appointed by each of the parties to the dispute/difference and the 3rd arbitrator to be appointed by 2 such arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. It is clearly agreed and understood that no difference or dispute shall be referable to arbitration as herein before provided, if the company has disputed or not accepted liability under or in respect of this policy. It is understood, however, that the Insured shall have the right at all times during currency of the Policy to communicate only, with the leading or issuing office in all matters pertaining to this insurance. Subject otherwise to the terms, exceptions, conditions and limitations of this policy.

11. Subrogation

In the event of any payment under this Policy, the Company shall be subrogated to all of the Insured's rights of recovery to the extent of such payments against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights and ensure that nothing is done to prejudice such rights and provide the Insurers with whatever reasonable co-operation and assistance they might require.

However, it is specifically agreed that the Insurer will not exercise its rights of subrogation against any employee of the Insured unless the aforesaid payment has been caused by or contributed to in any way by the fraud, dishonesty or malicious intent of any such employee.

In the event of any recovery being made, it is specifically understood that the recovered funds shall be applied in the following order:

- 11.1 the Company shall be reimbursed to the extent of any payment it has made under this Policy.
11.2 the Company shall be reimbursed for the actual costs and expenses it has incurred in perusing the recovery.
11.3 the Insured shall be entitled to reimbursement in respect of its losses only after the payment of 11.1 and 11.2 and only to the extent of any recovered funds that might remain.