

PRODUCTS LIABILITY POLICY

(CLAIMS MADE BASIS OF INDEMNITY)

"This is a claims made insurance policy. The Policy will only apply to claims first made against the insured during the Period of Insurance and reported to Raheja QBE General Insurance Company Limited in writing, during the Period of Insurance."

Whereas the Insured, carrying on the Business described in the Schedule and no other, for the purpose of this insurance by a proposal and declaration which shall be the basis of this contract and is deemed to be incorporated herein, has applied to Raheja QBE General Insurance Company Limited (hereinafter called "the Company") for the insurance hereinafter contained and has paid the Premium as consideration for such insurance.

The Company will, subject to the Limit of Indemnity and to terms, exceptions and conditions of this Policy, indemnify the Insured against

Products Liability

1. All sums which the Insured shall become legally liable to pay as Damages in respect of third party

(a) Personal Injury

(b) Property Damage

arising out of any Claim first made in writing against the Insured during the Period of Insurance and which is notified in writing to the Company during the Period of Insurance as a result of an Occurrence which is caused by the nature, condition or quality of any of the Insured's Products in connection with the Business and happening after the Retroactive Date shown in the Schedule anywhere within the Territorial Limits elsewhere than at premises owned or occupied by the Insured.

Defence Costs and Expenses

2. With respect to the indemnity afforded by this Policy, the Company will:

(a) defend in the name of and on behalf of the Insured any suit against the Insured alleging such Personal Injury or Property Damage and seeking Damages on account thereof even if such suit is groundless, false or fraudulent, and the Company may make such investigation, negotiation and settlement of any claim or suit as the Company may deem expedient;

(b) pay all expenses incurred by the Company, all costs taxed or awarded against the Insured in any suit and all interest accruing after entry of judgment until the Company has paid, tendered or deposited in court such part of such judgment as does not exceed the Limit of Indemnity specified in the Schedule;

(c) reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred with the consent of the Company;

Provided that:

- (i) the Company shall not be obliged to pay any claim or judgment or to defend any suit or to pay after the Limit of Indemnity specified in the Schedule has been exhausted by payment of judgments or settlements or the costs of investigating or defending a claim;
- (ii) if a payment exceeding the Limit of Indemnity has been made to dispose of a claim, the Company's liability to pay any Defence Costs

and Expenses in connection therewith shall be limited to such proportion of the Defence Costs and Expenses as the Limit of Indemnity bears to the amount paid to dispose of the claim.

The amounts thus incurred, except payments in settlement of claims, suits and all costs awarded against the Insured, are payable by the Company in addition to the Limit of Indemnity specified in the Schedule.

LIMITS OF INDEMNITY

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| Any One Occurrence | 1. The liability of the Company for all Damages and Defence Costs and Expenses in respect of any claim or series of claims arising out of one Occurrence shall not exceed the Limit of Indemnity specified in the Schedule. With respect to Personal Injury or Property Damage all such exposure to substantially the same general conditions will be deemed to be one Occurrence. |
| Any One Period | 2. The Company's total aggregate liability during any one Period of Insurance for all claims arising under this Policy shall not exceed the Limit of Indemnity specified in the Schedule. |

DEFINITIONS

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| Additional Persons Insured | 1. The Insured shall include in the event of the death of the Insured, any personal representative of the Insured in respect of liability incurred by the Insured. |
| Business | 2. The Business shall mean the business conducted by the Insured as specified in the Schedule. |
| Occurrence | 3. Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the Insured. |
| Claim | 4. Claim shall mean:
(a) the receipt by the Insured of any written or verbal demand for compensation or other relief made by a third party against the Insured; or
(b) any writ, statement of Claim, summons, application or other originating legal or arbitral process, cross-Claim, counter-Claim or third or similar party notice served upon the Insured. |
| Personal Injury | 5. Personal injury means third party bodily injury (which expression includes death and illness), disability, shock, fright, mental anguish or mental injury. |
| Property Damage | 6. Property Damage means third party physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom. |
| Products | 7. Products means any goods, products and property after they have ceased to be in the possession or under the control of the Insured, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container thereof other than a vehicle). |
| Pollutants | 8. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, |

including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

- Territorial Limits** 9. This Policy applies worldwide unless otherwise specified in the Schedule, subject to the provisions of Exception 21.
- Damages** 10. Any amount that an Insured shall become legally liable to pay to a third party in respect of judgments or awards rendered against an Insured or settlement to which the Company's prior written consent was obtained. "Damages" shall not mean or include the return or offset of, or damages measured by, fees, charges, or commissions for goods or services already provided or contracted to be provided; any amounts for which the Insured is not liable, or for which there is no legal recourse against the Insured.
- Defence Costs and Expenses** 11. The reasonable expenses necessarily incurred by or on behalf of the Insured (in excess of the deductible) only with the Company's prior written consent or the Company in the investigation, settlement or defense of a Claim and shall include legal costs and disbursements.
- Policy** shall mean:
- a) the Schedule, this policy wording; and
 - b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Insurance; and
 - c) the Insured's statements in the Proposal.
- Period of Insurance** 12. The period specified in the Schedule.
- Insured** 13. The person/entity named in the Schedule

EXCESS

The Company shall not be liable for the first amount specified in the Schedule under the heading Excess which is to be borne by the Insured in respect of each and every Claim arising under this Policy.

RETROACTIVE DATE

The Company shall not be liable for Claims made as a result of an Occurrence which happened prior to the Retroactive Date specified in the Schedule.

GENERAL EXCEPTIONS APPLICABLE TO THIS INSURANCE

This Policy shall not apply to

- Radioactive Contamination** 1. Any liability of whatsoever nature 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.

War Clause

2. Any liability for any consequence whether direct or indirect of war, invasion, act of foreign enemy hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

**Terrorism
Exclusion**

3. Loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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

This exclusion also applies to loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

**Absolute
Asbestos
Exclusion**

4. Any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

Pollution

5. (a) Personal Injury or Property Damage caused by or arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water. Provided this exclusion 5 (a) does not apply if such discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at one specific time and place.
- (b) Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution. Provided this exclusion 5 (b) does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury or Property Damage.
- (c) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any product that has been discarded, dumped, abandoned or thrown away.
- (d) The actual alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants in the United States of America or Canada or in any country to which the laws of the United States of America or Canada apply.

Our liability under clauses 5 (a) and 5 (b) above in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of pollutants during any one Period of Insurance will not exceed the Limit of Indemnity.

**Information
Technology**

6. (a) Personal Injury or Property Damage arising, directly or indirectly, out of, or in any way involving the Insured's "Internet Operations".

**Hazards,
Computer Data,
Program and
Storage Media
Exclusion**

This exclusion does not apply to Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.

“Internet Operations” means the following :

- (i) Use of electronic mail systems by the Insured or the Insured’s employees, including part-time and temporary staff, contractors and others within the Insured’s organisation;
- (ii) Access through the Insured’s network to the World Wide Web or a public internet site by the Insured’s employees. Including part-time and temporary staff, contractors and others within the Insured’s organisation;
- (iii) Access to the Insured’s intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the Insured or others outside the Insured’s organisation; and
- (iv) The operation and maintenance of the Insured’s website.

Nothing in this exclusion shall be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

(b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:

- (i) the use of any computer hardware or software;
- (ii) the provision of computer or telecommunication services by the Insured or on the Insured’s behalf;
- (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

**Employer’s
Liability**

7. Any liability in respect of injury to any person in the service of or under a contract of service or apprenticeship with the Insured where the injury arises out of and in the course of such person’s employment with the Insured.

**Contractual
Liability**

8. Any liability assumed by the Insured under agreement including product guarantee unless and only to the extent that such liability would have attached in the absence of such agreement.

**Property in
Custody or
Control**

9. Any liability in respect of loss of or damage to property
(a) belonging to the Insured;
(b) in the charge, custody or under the control of the Insured or any employee or agent of the Insured.

**Damage
to Goods
Supplied**

10. Any liability in respect of loss of or damage to any commodity, article or thing supplied, installed or erected by the Insured if such loss or damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

**Professional
Liability**

11. Any liability in respect of injury, loss or damage caused by or through or in connection with remedial or professional or other advice or treatment given or administered or omitted by the Insured.

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| Fines | 12. Any liability for fines, penalties or liquidated damages. |
| Punitive Damages | 13. Any liability for punitive damages and/or exemplary damages and/or aggravated and/or any additional damages resulting from the multiplication of compensatory damages. |
| Design Formula and Advice | 14. Any liability in respect of injury, loss or damage as a result of
(a) any defect in or the harmful nature of any commodity, article or thing intended to be supplied and supplied if it is in accordance with the design, plan, drawing, specification or formula intended to be used and used by the Insured.
(b) any defect in the directions or advice intended to be given and given by the Insured concerning the use or storage of any commodity, article or thing supplied by the Insured. |
| Loss of Use | 15. Loss of use of tangible property which has not been physically injured or destroyed resulting from the failure of the Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured, but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Insured's Products after such products have been put to use by any person or organisation other than the Insured. |
| Products Recall | 16. Any liability in respect of the cost of recalling, repairing, altering or replacing any of the products or making any refund on the price paid for any product. |
| Aircraft or Aerial Device | 17. Any liability in respect of injury, loss or damage caused by or arising out of the Products manufactured specifically for and installed in an aircraft or other aerial device or caused by or arising out of products which the Insured knew would be so installed. |
| Known Defects | 18. Any liability in respect of injury, loss or damage arising from any defect or deficiency in any of the Insured's products which defect or deficiency the Insured himself or his employees (other than employees below a supervisory level) or agents has knowledge of or has reason to suspect at the time when the said product passes from the actual physical custody of the Insured or of any person under the control of the Insured. |
| Pharmaceutical Manufacturers and Importers | 19. Any liability in respect of bodily injury or property damage arising from the sale or distribution of pharmaceuticals imported or manufactured by the Insured. Provided that this exception does not apply to those vitamins available without a prescription. |
| Vendor's Liability | 20. Any liability in respect of any vendor of the named Insured's products. |
| Territorial and Jurisdictional Limits | 21. (a) Claims made and actions instituted within the United States of America or the Dominion of Canada or any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada
(b) Claims and actions to which the laws of the United States of America or the Dominion of Canada apply |
| Known Exports | 22. Any liability for claims in respect of bodily injury or property damage caused by or arising out of the Insured's products knowingly exported by the Insured, his |

agents or servants to the United States of America or Canada.

**Data
Recognition**

23. Any Claim in respect of losses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by:
- (a) the failure of a computer, data processing equipment, microprocessor, integrated circuit or similar device (hereinafter referred to as Hardware), operation systems or computer software (hereinafter referred to as Software) loss, should the faulty operation of the Hardware or Software result from the ability or inability to:
 - (i) correctly recognise or interpret the date or time as the true date or time;
 - (ii) capture, save, retain or correctly manipulate, interpret, process data, command or instruction as a result of incorrect recognition of date or time;
 - (iii) capture, save, retain or correctly process data following a command, which formed part of the computer programme and resulted in the loss of data or in the inability to capture, save, retain or properly process data in the date of faulty operation or on a later date;
 - (b) directly or indirectly caused by repairs or modifications of any part of the hardware or software carried out in order to rectify deficiencies or correct features of logic or operation, notwithstanding the fact that these repairs or modifications were performed in accordance with professional knowledge and practice or not.

**Prior and
pending claims**

24. Any claim made, threatened or intimated against the Insured of which the Insured was aware or should reasonably have been aware of prior to the Period of Insurance.

**No Fault
Liability**

25. Any liability under the Public Liability Insurance Act 1991 or any other law which imposes liability on a no fault basis.

**Non-Compliance
with statutory or
regulatory
provisions**

26. Any Personal Injury or Property Damage arising out of deliberate non-compliance with any statutory or regulatory provision.

**Non-fulfillment
of intended use**

27. The failure of Products to fulfil the purpose for which they were intended.

CLAIMS PROVISIONS AND PROCEDURES

**Notice
of Claims**

1. It is a condition precedent to the Company's liability under the Policy that:
- a) written notice of any Occurrence which might give rise to a Claim under this Policy given to the Company as soon as possible and in any event within [x] days and as far as is practicable, no alteration or repair shall be carried out until the Company has had an opportunity of inspecting.
 - b) written notice of of any impending prosecution inquest, fatal inquiry or civil proceeding in connection with the Occurrence shall be given to the Company within [x] days and all relevant documents shall be given immediately to the Company.

- Notification of Circumstances** 2. If during the Period of Insurance, the Insured becomes aware of any fact or circumstance that may give rise to a Claim under this Policy and elects to give notice in writing to the Company of such fact or circumstance, then any Claim which may subsequently arise out of such fact or circumstance shall be deemed to be a Claim made during the Period of Insurance. PROVIDED ALWAYS THAT such written notice is given to the Company during the Period of Insurance.
- Control of Claims** 3. It is a condition precedent to the Company's liability that no admission of liability or offer, promise or payment shall be made without the Company's prior written consent; and that the Company shall be entitled at its discretion to take over and conduct in the name of the Insured the investigation, defence or settlement of any Claim and the Insured shall give all information and assistance required.
- Discharge of Liability** 4. The Company may pay to the Insured the Limit of Indemnity after deduction of any sum or sums already paid as compensation or any less amount for which such claim or 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 respect of such Claim or Claims except the payment of costs and expenses of litigation recoverable or incurred in respect of matters prior to the date of such payment and the Company shall not be responsible for any losses alleged to have been sustained by the Insured in consequence of any action or omission of the Company in connection with such claim or proceedings.
- Other Insurance** 5. As soon as is reasonably practical but within 15 days after entering into any other contract of insurance, the Insured shall notify the Company of, and shall give the Company full details of, any such other insurance which provides indemnity, in full or in part, for any of the liabilities insured hereunder.
- To the extent that the Insured has any other insurance in force in respect of the liabilities insured hereunder, the Company shall only be liable under this Policy for the excess beyond any amount insured by such other insurance in respect of that liability, whether or not such insurance is valid or collectible.
- Subrogation** 6. In the event of a payment under this Policy to or on behalf of the Insured, the Company shall be subrogated to all the Insured's rights of recovery against all persons and organizations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist the Company in the exercise of such rights.

GENERAL CONDITIONS

- Identification** 1. The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or Schedule shall bear the meaning wherever it may appear.
- Observance of Conditions** 2. The due observance and fulfillment of the terms, conditions and endorsements of this Policy insofar as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company under this Policy.

- Reasonable Care**
3. The Insured shall
- a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
 - b) take all reasonable precautions to
 - i) prevent bodily injury and damage to property,
 - ii) prevent the manufacture, sale and supply of defective products, and
 - iii) comply and ensure that his employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any Public Authority thereof for the safety of persons or property;
 - c) at his own expense take reasonable action to trace, recall or modify any of the Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.
- Suspension of Cover**
4. The Company may at any reasonable time inspect any property and in the event of any defect or danger being apparent, the Company may give written notice to the Insured when liability of the Company arising from such defect or danger shall be suspended.
- Alteration of Risk**
5. If at any time anything shall occur materially affecting the risk insured, the Insured shall within seven days give notice in writing to the Company and shall pay such additional premium as the Company may require.
- Cancellation**
6. This Policy may be cancelled at any time
- (a) by the Company on 30 days' notice to that effect being given in writing to the Insured's last known address and in such event the Company will return a pro rata portion of the premium (after adjustment in accordance with Condition 7 if necessary) for the unexpired part of the Period of Insurance;
 - (b) by the Insured on 7 days' notice and provided no claim has arisen during the current Period of Insurance, the Insured shall be entitled to the difference if any (after adjustment in accordance with Condition 7 if necessary) between the premium paid and the premium calculated at the Company's short period rate for the time the policy had been in force.
- Additional Notification Period**
- Any Claim first made during the Period of Insurance may be given by the Insured in accordance with the Claims and Notice Provisions in the Claims Provisions and Procedures Section of this Policy within forty-five (45) days of the expiry of the Period of Insurance provided that this Policy is cancelled or not renewed (provided no insurance cover provided by the Company or by any other insurer for third party coverage is in force during this additional notification period for the same interest)
- Premium Adjustment**
7. If the premium for this Policy has been calculated on any estimates given by the Insured, the Insured shall keep an accurate record containing all relevant particulars and shall at any reasonable time allow the Company to inspect such record and following the expiry of each Period of Insurance shall supply to the Company a correct statement so that the premium for that period shall be calculated and the difference paid by or allowed to the Insured as the case may be.

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| Statutory Requirements | 8. This Policy does not cover liability in respect of claims made or actions instituted within any country state or territory outside India that require the Insured to be insured or secured with an insurer or organisation licensed in that country state or territory to grant such insurance. |
| Arbitration | <p>9. If any dispute or difference shall arise as to the quantum to be paid under this Policy (liability being otherwise admitted) such difference shall independently of all other questions be referred to the decision of a sole arbitrator to be appointed in writing by the parties thereto 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 three arbitrators, comprising of two arbitrators, one to be appointed by each of the parties to the dispute/difference and the third arbitrator to be appointed by such two arbitrators and arbitration shall be conducted under and in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996.</p> <p>It is clearly agreed and understood that no dispute or difference 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.</p> <p>It is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this Policy that the award by such arbitrator/arbitrators of the amount of the loss or damage shall be first obtained.</p> |
| False & Fraudulent Claims | 10. If any claim is in any manner false, dishonest or fraudulent, or is supported by any false, dishonest or fraudulent means or devices, whether by any Insured or anyone acting on behalf of an Insured or with the Insured's knowledge, then this Policy shall be void and all benefits paid or potentially payable under it shall be forfeited. |
| Governing Law | 11. Any and all disputes or differences arising under or in relation with this Policy shall be governed and construed in accordance with Indian law. |