

THE

PRODUCTS' LIABILITY

INSURANCE POLICY

COMPANY LOGO

| | |
|---------|-------|
| TO | _____ |
| P.O BOX | _____ |

PRODUCTS' LIABILITY INSURANCE POLICY

Policy Number: _____

Period of Insurance: From: _____ To _____

(Both dates inclusive) and any subsequent period for which the Insured shall pay and the Company shall accept a renewal premium.

IMPORTANT NOTES

1. Please read this Policy document carefully. If you find that the Policy does not meet your requirements please contact or write to us and return the document to the Company within 30 days with your suggestions for necessary consideration.
2. Any material change affecting the risk insured by this Policy must be advised to the Company immediately.
3. In case of any occurrence likely to give rise to a claim under this policy, immediate notice should be given to the Company. Prompt reporting of a loss is important for preserving evidence that may be critical in determining admissibility of the claim and amount payable. You shall comply with all the conditions of the policy and in the event of a claim you shall provide all facts, information and supporting documentary evidence to enable the Company to process your claim.
4. Should you be dissatisfied with the settlement of a claim, you may refer the matter to the Insurance Regulatory Authority who will assist in resolving your complaint with the Company.
5. This Policy is not transferable.

PRODUCTS' LIABILITY INSURANCE POLICY

THE INSURANCE AGREEMENT

WHEREAS the Insured has by a proposal and declaration, written application or statement which shall be the basis of this contract has applied to

Insurance Company (herein after called the 'Company') for insurance and has paid to the Company premium as consideration;

NOW THIS POLICY WITNESSES that the Company shall indemnify the Insured against all claims made during the Period of Insurance which the Insured shall become legally liable to pay in respect of :-

1. Accidental death of or bodily injury (including illness) to any person;
and/or
2. Accidental loss of or damage to tangible property arising from:
 - a) Anything harmful or defective in any products manufactured, assembled, processed, modified, repaired, serviced, altered, labelled, handled, sold or supplied by or through the Insured in the course of or in connection with the insured's business.
 - b) The defective condition of the containers of such products.

The Company will in addition pay;

- i) All litigation expenses incurred with the written consent of the Company recoverable by any claimant from the Insured and
- ii) All other costs and expenses incurred with the Company's written consent.

The liability of the Company for all compensation payable in any one period of Insurance shall not exceed the limit of liability stated in the Schedule.

In the event of death of the Insured the Company will in respect of the liability incurred by the Insured indemnify the Insured's legal personal representative(s) in the terms of and subject to the limitations of this Policy, provided that such legal representative(s) shall as if they were the Insured observe, fulfill and be subject to the terms, exclusions and conditions of this Policy in so far as they apply.

DEFINITIONS

Business

The occupation or trade of the Insured as described in the Schedule.

Material Facts

Every information which can influence the Company's decision in accepting the risk and determining the terms.

Terms

Terms include conditions, warranties and exceptions of this policy.

Employee

A person who is engaged under a contract of service with the Insured

Excess

The first amount of each claim or series of claims arising out of one occurrence for which the Insured is responsible.

Damage

Loss or physical destruction to tangible property.

Bodily Injury

Injury, sickness or disease.

‘Occurrence’

An event or series of events including the continuous exposure to the same general conditions causing bodily injury to any person and/or damage to property, that is neither expected nor intended by the Insured.

With respect to bodily injury and/or Property damage, all events or a series of events consequent upon or attributable to one source or original cause shall be deemed to be one occurrence.

‘Pollutant’

Any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemical or waste. Waste includes materials to be recycled reconditioned or reclaimed.

‘Product’

Any goods, items or articles (including containers, labeling instructions, advise or warnings provided therewith) sold, supplied, erected, processed, grown, altered, treated or installed in the course of the insured’s business as defined in the schedule after they have ceased to be in the possession or under the control of the Insured.

Provided the term ‘Products’ shall not be deemed to include food and beverages supplied by or on the Insured’s behalf primarily to employees.

EXCEPTIONS

The Company shall not be liable to make any payment under this Policy in respect of:

1. Liability assumed under contract unless such liability would have attached to the Insured in the absence of such contract.
2. Liability in respect of Bodily Injury or disease of any person arising out of and in the course of employment by the Insured in the Business.
3. Costs of withdrawal, recall, inspection, reconditioning, modification, , reinstallation, repair, replacement, disposal or loss of use of the Insured's products or any property of which such products form a part, if such products or property are withdrawn from the market or from use by the Insured because of any known, alleged or suspected defect or deficiency in such products.
4. Damage to the product(s) insured.
5. Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to any legislation with respect to Product safety and information.
6. Any Product which is incorporated into the structure, machinery, controls of any aircraft, aerial device, watercraft or hovercraft.
7. The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured.
8. The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants.
9. Fines, penalties, punitive damages, exemplary damages, liquidated damages and or aggravated damages.
10. Any alleged or actual fraudulent, dishonest, malicious, willful or criminal act or omission of the Insured.

11. For bodily injury, loss or damage to property suffered by the Insured resulting from use of the product.
12. Any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or 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 fusion; or nuclear weapons material.
13. Any liability, loss, damage or expense of whatsoever nature directly or indirectly caused by, resulting from, happening through, or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to loss, damage or expenses.
14. Any loss or damage occasioned by or through or in consequence directly or indirectly ,of any of the following occurrences namely;
 - a) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) and civil war
 - b) Abandonment and/or permanent or temporary dispossession resulting from confiscation, seizure, restraint, commandeering, nationalization, appropriation destruction or requisition by order of any government de jure or de facto or by any lawfully constituted authority.
 - c) Mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion. Revolution, military or usurped power, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or siege.
 - d) Any liability, loss, damage or expense of whatsoever nature directly or indirectly caused by, resulting from, happening through, or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to loss, damage or expense;

15. The excess amount applicable for each and every loss as stated in the Schedule.

In any action, suit or other proceeding in which the Company alleges that by reason of these provisions, any loss or damage is not covered by this Policy, the burden of proving that such loss or damage is covered shall be upon the Insured.

PRODUCTS' LIABILITY POLICY SCHEDULE

Agency: _____ Account Number _____

Policy Number _____

Insured's Name: _____

Postal Address: _____ Postal Code _____ Town _____

Trade /Business / Occupation _____

Product Line(s) _____

Period of Insurance (a) From: _____ To: _____ (both dates inclusive)

And any subsequent period for which the Insured shall pay and the Company shall accept renewal premium.

Renewal Date _____

Premium KES. _____ T/Levy _____ PCHF _____ S/Duty _____

Total Premium: KES. _____

Territorial Limits: _____

Limit of Indemnity

a. In respect of any one claim KES. _____

b. In respect of all claims arising out of one event KES. _____

c. In respect of all claims during the Period of Insurance KES. _____

Estimated Annual Turnover _____ KES.

Clauses and Endorsements applicable: _____

Excess _____

Date of signature of proposal and declaration _____

Date policy examined : _____

Signed for and on behalf of _____

The Insurance Company

Date _____

CONDITIONS

1. Interpretation

This Policy, Schedule and endorsements 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 of its Schedule such word or expression shall bear the same meaning whenever it may appear

2. Other Insurances

If at the time of the occurrence of any accident there shall be any other insurance covering the same risk or any part thereof, whether effected by the Insured or not, the Company shall not be liable to pay or contribute more than a ratable proportion of any sum/s payable in respect of such liability, costs, expenses, loss or damage.

3. Reasonable due care

- a) The Insured shall take reasonable precautions to ensure the products and containers are fit for the intended purposes.
- b) The Insured shall at their own expense take all reasonable action to trace, recall, or modify any products containing any defect or deficiency or alleged defect or deficiency which the Insured has knowledge of or has reason to believe could give rise to a claim under this Policy.

4. Claims Procedures

Upon the happening of an occurrence which may give rise to a claim or legal proceedings under this Policy the Insured or their representative shall;

- ii) Notify the Company as soon as reasonably practicable of such occurrence.
- iii) Deliver to the Company in the format required a statement of the event with relevant information and other particulars of the loss including date and circumstances of the event so far as the same is known.
- iv) Preserve all property, products, appliances, plant and all other things which may assist in the investigation or defence of the claim or suit or in the exercise of rights of subrogation.

- v) The Insured shall not without the prior consent of the Company:
 - a) Admit liability or make any offer or promise of payment;
 - b) Take any action which may be construed as an admission of liability;
 - c) Repudiate or settle any claim;
 - d) Waive any rights of recovery.
- vi) The Insured shall immediately on receipt forward to the Company every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or event for which there may be liability under this policy.

The Company may pay to the Insured in respect of all claims arising directly or indirectly from one source or original cause to the limit of liability specified in the Schedule.

Upon making such payment, the Company shall be under no further liability under the policy in connection with such claim(s) except for legal costs and expenses:

- a) Recoverable from the Insured in respect of the period prior to the date of such payment(whether or not pursuant to an order made subsequently):or
- b) Incurred by the Insured with the company's written consent, prior to the date of such payment.

5. Subrogation

The Company may at its own expense take and retain the absolute conduct and control of any proceedings and may use legal means in any defence or settlement of any claim or to prosecute in the name of the Insured for any claim for indemnity or damages.

6. Contribution

If at the time any claim arises under this Policy , there be any other insurance covering the same risk against loss or damage the Company shall not be liable for more than its proportionate share of such a claim.

7. Communication

Every written communication on this Policy to the Insured shall be sent to the Insured's last known address or delivered personally.

Notices and information to the Company must be in writing and sent to the registered office of the Company or its branch office.

8. Alteration of Risk

The Insured shall give notice to the Company of any material alteration or change in the circumstances that may affect the nature of the risk covered and that are likely to increase the risk of injury or damage. Until the Company be advised of such alteration and expressly agrees in writing to accept liability for such altered risk, the Company shall not be liable in respect of any injury or damage due to any such alteration or change in circumstances.

9. Cancellation

This Policy may be cancelled at any time at the request of the Insured in which case the Company will retain a premium calculated on pro rata basis for the time this Policy has been in force and provided no claim has arisen during the current Period of Insurance.

The Policy may also be cancelled at the option of the Company on fourteen (14) days notice being given in writing to the Insured, in which case the Company shall be liable to return a proportionate part of the premium for the unexpired term of the Policy from the date of such cancellation.

10. Premium Adjustment

Whenever the premium charged on this policy is based on estimates of turnover, the Insured shall supply the Company within one month of expiry of each Period of Insurance with an accurate statement of turnover (expressed in Kenya shillings) during the preceding Period of Insurance and if the amount shall vary from the amount upon which premium has been paid the premium shall be adjusted accordingly and the difference paid by or allowed to the Insured as the case may be, subject to the Company retaining a minimum of not less than 75% of the deposit premium for any one Period of Insurance.

Should the Insured fail to supply such a declaration within one month of the expiry of the period of insurance, the Company shall be entitled to charge additional premium in respect of the expired period of insurance and in any case not less than 25% of the deposit/provisional premium.

11. Dispute Resolution

- a. For any disputes arising out of this Policy the Insured shall endeavor to resolve the matter by negotiation with the Company.
- b. Any disputes or issues not resolved by negotiation 30 days after the dispute arising may be resolved through a sole mediator jointly appointed by the parties in writing.
- c. Disputes that remain unresolved 60 days after the dispute arose (unless the parties extend that period in writing) shall be resolved by a sole arbitrator appointed either by the parties in writing or, in the absence of an agreement on the choice of arbitrator, by the Chairperson of the Chartered Institute of Arbitrators (Kenya Branch) upon the request of any of the parties.

12. Due Observance

Compliance, observance and fulfillment of the terms of this Policy by the Insured shall be a condition precedent to any liability attaching under this Policy.

13. Jurisdiction Clause

The indemnity provided by this Policy shall apply only in respect of judgments which are in the first instance delivered by or obtained from a court of competent jurisdiction within the Republic of Kenya.

14. Applicable Law

This policy shall be governed by Laws of Kenya.

PRODUCTS' LIABILITY INSURANCE PROPOSAL FORM

This proposal form should be completed and signed by the proposer. All questions must be answered. Use BLOCK letters or tick as appropriate.

Agency _____ Account Number: _____

1. Particulars of Proposer:

Name of Proposer (In full) _____

Postal Address:-

P.O Box _____ Code _____ Town _____

E-mail Address: _____ Fax Number _____

Contact Telephone: _____ Mobile Number _____

Physical Location/s: _____

PIN Certificate Number: _____

Period of Insurance: From _____ To _____

2. **Business/Trade/ Occupation** (Give full description)

3. Explain what your business entails:

Manufacturing Yes/No

Processing Yes/No

Packaging Yes/No

Assembling Yes/No

Wholesaling Yes/No

Retailing Yes/No

Importing Yes/No

Exporting Yes/No

Any other _____

4. Give details of products subdivided into different categories (range) if more than one type of product is involved _____

5. Describe the purpose or use of the product (s) . _____

Note: Brochures or leaflets describing the products can be enclosed if available.

6. If you incorporate parts manufactured elsewhere for any of the above listed products, wholly or partly, including raw materials, state the part or component and from where they are sourced _____

7. Are the products used as a component? _____ Yes/No

If so, with what type of products and by which industry?

8. Are any of your products assembled by another firm (or persons)?

If so, give details: _____

9. Are any of your products sourced locally or abroad? Please give details.

10. Are any of your products exported? If so please list the countries to which you export:

Note: This cover excludes exports to the USA and Canada.

11. State the estimated turnover for each country. _____

12. Are any of the products supplied for use in connection with:

Aircraft, aerospace equipment or aerial devices of any kind? Yes/No

Pharmaceuticals?

Yes/No

Offshore platforms and rigs?

Yes/No

13.How long you have engaged in manufacturing/supplying these products?

14.Do you enter into any agreement or undertaking to indemnify or compensate suppliers of materials or components or subcontractors or processors in respect of any injury or damage?_____

Yes/No

15.If so, please provide a copy of such agreement or undertaking.

16.What type of packaging do you use ? _____

17.Do you manufacture the packaging materials?

Yes/No

If not, where are the packaging/containers acquired?

18.Do you give any written guarantee or conditions of sale with or in respect of any of your products by:

i) Printing on the package /product; _____ or

ii) By a separate leaflet or brochure?

If so, please supply sample wordings.

19. Are there any quality control measures in place with regard to the product (s) ?

Yes/No

If yes, please explain. _____

20.State the Statutes, Laws or Bylaws that govern your operations with regard to the product proposed for insurance?

21.Do you operate in compliance with these Laws?

Yes/No

If No, please explain._____

22. Limits of liability required:

Any one claim KES. _____
All claims arising out of one event KES. _____
All claims arising during the Period of Insurance KES. _____
Estimated Annual Turnover KES. _____

Insurance and Loss History

1. Are you now or have you been Insured against liabilities for which this proposal relates?.....Yes/No
If yes, please give name of Insurer and Policy Number
.....

2. Have any incidents occurred during the last 5 years resulting to injury to any person or damage to property in connection with the type of Insurance now proposed? Yes/No
If yes, please give details here below:-

Year
Cause of Accident
Brief details of each incident
Amount Paid

3. Are there any claims pending against you or do you have reason to expect any? Yes/No
If so, give details:

4. Has any insurance Company
a) Cancelled your Policy? Yes/No
b) Declined to insure you?...Yes/No
c) Declined to renew your Policy?Yes/No
d) Imposed any special terms?Yes/No
e) Repudiated any claim?Yes/No

If the answer to any of the above is yes, please give details.

Declaration

I/We hereby declare that the above answers are true to the best of my/our knowledge and that I/We have not withheld any material information whatsoever regarding the proposal. I/We also agree that this proposal shall be the basis of the contract between me/us and the _____ Insurance Company.

Name of Proposer: _____

Signature: _____ Date: _____

The liability of the Company does not commence until the proposal has been accepted and the premium paid to the Company.