

# PRODUCTS LIABILITY POLICY WORDINGS

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## **PRODUCTS LIABILITY POLICY WORDINGS**

Whereas the Insured named in the Schedule hereto has made a proposal to Future Generali India Insurance Company Ltd (hereinafter referred to as the "Company") which is hereby agreed to be the basis of this Policy and has paid the premium specified in the Schedule, the Company agrees, subject to the following terms, exclusions, definitions, limitations, and conditions, to indemnify the Insured in terms of this Policy.

### **Operative Clause:**

The Company will indemnify the Insured in excess of the Insured's Deductible and subject to the Limit of Indemnity, against the Insured's legal liability (including claimant's costs, fees and expenses, and Defence Costs) to pay Damages for third party civil Claims arising out of Accidental Bodily Injury or Property Damage:

- a. caused by the sale or supply of the Insured's Products, and
- b. solely in the course of the Business, and
- c. during the Period of Insurance if notified during the Policy Period by the Insured in accordance with the terms of this Policy,

**Provided that the Company shall not be liable for and no indemnity is available hereunder for:**

- a) Any liability under the Public Liability Insurance Act 1991, any amendment thereto or any other statute or law which attaches liability on a no fault basis;
- b) any legal liability incurred pursuant to or under any form of legal (including arbitration) or regulatory proceedings brought in the United States of America or Canada or outside of the United States of America or Canada by a country applying the law of the United States of America or Canada, or to seek enforcement or upholding of a judgment, award or order made in the United States of America or Canada or pursuant to the law of the United States of America or Canada

### **1. Definitions**

The following words or terms shall have the meaning ascribed to them wherever they appear in this Policy, and references to the singular or to the masculine shall include references to the plural and references to the male gender shall include references to the female wherever the context so permits:

- 1.1) "Bodily Injury" means the death, physical bodily injury, sickness or disease of a third person.
- 1.2) "Property Damage" means actual physical damage to tangible material property belonging to a third person.
- 1.3) "Pollution" means and includes 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 materials to be recycled, reconditioned or (reclaimed) or otherwise of atmosphere, water, soil or other tangible material property.
- 1.4) "Product" means any tangible material property which has been designed, specified, formulated, tured, constructed, installed, sold, supplied, ad, treated, serviced, altered or repaired by or on behalf of the Insured and which has left his possession, custody or control. This shall not apply to food and beverages supplied by or on behalf of the Insured to his employees as a staff benefit.

- 1.5) "Policy Period" means the period between the commencement date and the expiry date shown in the Schedule.
  - 1.6) "Period of Insurance" means the period between the retroactive date and the expiry date shown in the Schedule, and if there is no retroactive date then shall mean the Policy Period.
  - 1.7) "Accident" or "Accidental" means a fortuitous event or circumstance which is sudden, unexpected and unintentional, external and visible and includes resultant continuous, intermittent or repeated exposure.
  - 1.8) "Premises" means the place or places named in the Schedule from which the Insured's Business is conducted, and shall be deemed to include pipelines owned by the Insured that run outside of the Premises for discharging treated effluents to a disposal point situated within a distance of not more than one kilometre from the Premises.
  - 1.9) "Policy" means the proposal, the Schedule, this policy document, and any endorsement attaching to or forming part hereof, either at inception or during the Period of Insurance.
  - 1.10) "Business" means the business of the Insured specified in the Schedule.
  - 1.11) "Deductible" means the amount stated in the Schedule, which shall be borne by the Insured in respect of each and every claim made under this Policy and which is also applicable against Defence Costs. The Company's liability to make any payment under this Policy is in excess of the Deductible.
  - 1.12) "Claim" means the receipt by the Insured of any written notice of demand for compensation or rectification made by or on behalf of a third party against the Insured, and/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.
- All Claims resulting from one and the same event or arising out of the same cause or event; or to the same fault in design, manufacture, instruction for use or labelling of Products; or to the supply of the same Products or to Products showing the same defect; or caused by continuous or repeated exposure to substantially the same harmful conditions, shall jointly constitute one Claim under this Policy and as having been made at the time when the first Claim was made in writing and only one Deductible shall be applicable to such Claim.
- There shall, however, be no coverage for notifications made 3 years after the date of the first Claim in the series.
- 1.13) "Damages" means monetary sums (including claimant's costs) payable pursuant to judgments or awards and/or settlements negotiated by or on behalf of the Insured, but shall not include fines, penalties, punitive damages, exemplary damages, non-pecuniary relief, taxes, or any other amount for which an Insured is not financially liable, or which is without legal recourse to the Insured, or any matter that may be or be deemed to be uninsurable under Indian law.
  - 1.14) "Limit of Indemnity" means the amount stated in the Schedule, which shall be the Company's total liability under this Policy (inclusive of Damages and/or Defence Costs, and regardless of the number of



Insureds or claimants or the total number or amount of Claims made against the Insured) for any one Claim and in the aggregate for all Claims made against the Insured during the Policy Period.

- 1.15) "Defence Costs" means the expenses incurred by or on behalf of the Insured or the Company in the investigation or settlement or defence of a Claim and shall include legal costs and disbursements.

## 2. Insured Persons

- 2.1) Subject to the Limit of Indemnity, their compliance with the terms and conditions of this Policy and without prejudice to the Insured's obligations under this Policy, in the event of a Claim indemnifiable under the Policy the indemnity provided hereunder shall also extend in respect of such Claim to:
- 2.2) the directors and officers of the Insured and/or the Insured's legal representatives solely arising out of their conduct of the Insured's Business;
- 2.3) the Insured's employees (permanent or temporary) solely arising out of their conduct of the Insured's Business;
- 2.4) the officers, committees and members of the Insured's social institutions (i.e. canteen, welfare, sport or medical facilities, fire fighting brigade), if any, in their respective capacities;
- 2.5) 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.
- 2.6) The rights of any person named under Clause 2.1 may only be exercised by and through the Insured named in the Schedule, who shall act on behalf of all other Insureds with respect to the giving and receiving of notice under this Policy, including but not limited to the giving of notice of any Claim and the receipt and acceptance of any endorsements attaching to and forming part of this Policy.

## 3. Defence Costs

The Company will, subject to the Limit of Indemnity, pay all costs, fees and expenses incurred with their prior written consent in the investigation, defence or settlement of any Claim and the Insured's costs of representation at any civil inquest, inquiry, or other proceedings in respect of matters which have a direct relevance to an actual or anticipated Claim against the Insured falling within the terms of this Policy.

## 4. Notification Extension Clause:

Should the Insured notify the Company during the Policy period in accordance with General condition 8.2 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.

## 5. 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 shall be subject to the Limit of indemnity, 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.

## 6. Claims Series Clause:

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.

- a) to the same fault in design, manufacture, instructions for use or labelling of products
- b) 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. Exclusions

Save as expressly stated to the contrary, the Company is not liable for and no indemnity is available under this Policy for any Claim arising out of or howsoever connected to the following:

- 7.1) Costs of Remedying Defective Product.: - The policy excludes liability for costs in the repair, reconditioning, modification or replacement of any part of any product which is or is alleged to be defective.
- 7.2) The recall of any Product or any part thereof.
- 7.3) Any Product which the Insured knew or ought to have known was intended for incorporation into the structure, machinery or control of any aircraft.
- 7.4) Product guarantee.
- 7.5) The failure of Products to fulfil the purpose for which they were intended.
- 7.6) Any agreed assumption of risk by the Insured, save to the extent that liability would have attached in the absence of such agreement.
- 7.7) Any Accident arising out of the deliberate, wilful or intentional non-compliance with any statutory provision.
- 7.8) Any Bodily Injury of any person under a contract of employment or apprenticeship with the Insured, or the Insured's contractors or sub-contractors, if such Bodily Injury was contracted and/or arose out of and in the course of his employment.
- 7.9) The Insured's consequential losses of any kind, be they by way of loss of profit, loss of opportunity, business interruption, market loss or otherwise, or any claims arising out of loss of a pure financial nature such as loss of goodwill.
- 7.10) The infringement of plans, copyrights, patents, trade names, trade marks or registered designs.

- 7.11) Libel, slander, false arrest, wrongful eviction, wrongful detention, defamation including mental injury, anguish or shock resulting therefrom.
- 7.12) Deliberate, Willful or Intentional Non-Compliance of Any Statutory Provision(s)
- 7.13) Any Claim directly or indirectly caused by or contributed to by:
- a. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - b. the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 7.14) 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.
- 7.15) 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.
- 7.16) The deliberate, conscious or intentional disregard by the Insured's management of the need to take all reasonable steps to prevent Bodily Injury and/or Property Damage.
- 7.17) Bodily Injury and/or Property Damage occurring prior to the retroactive date (if any) specified in the Schedule.
- 7.18) Pollution of any kind.
- 7.19) Any Claim made, threatened or intimated against the Insured prior to the Period of Insurance/ Retroactive date
- 7.20) Any Claim directly or indirectly arising out of, or in any way involving any fact or circumstance 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 became 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.
- 7.21) Directly or indirectly arising out of, or in any way involving war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition of or damage to property by or under the order of any government or public local authority.
- 7.22) Liability more specifically insured elsewhere.

Claim made against the Insured, and/or any circumstance which might reasonably be expected to give rise to a Claim. Any circumstance notified hereunder and any subsequent Claim arising out of the circumstance so notified shall be deemed to have been made during the Policy Period;

- b. shall not admit liability for or settle or compromise or make or promise any payment in respect of any Claim which may be the subject of an indemnity hereunder or incur any costs or expenses in connection therewith without the prior written consent of the Company, which shall be entitled (but in no case obliged) to take over and conduct in the name of the Insured the investigation, defence and/or settlement of any Claim, for which purpose the Insured shall give all the information, documentation, records and other assistance that the Company and/or its representatives may reasonably require. Having taken over the defence of any Claim, the Company may in its sole and absolute discretion relinquish the same.
- c. The Company will not settle any Claim without the consent of the Insured. If, however, the Insured refuses to consent to any settlement recommended by the Company and elects to contest or continue any legal proceedings then the liability of the Company shall not exceed the amount for which the Claim could have been so settled plus the costs and expenses incurred with their consent up to the date of such refusal.
- d. In respect of any Claim, the Company may in its sole and absolute discretion make a payment to the Insured (inclusive of Defence Costs) of the amount available under the \ Limit of Indemnity or of any lesser amount for which the Claim may in fact be settled (whichever is the lesser) in full and final settlement of all liability of the Company to the Insured under this Policy in respect of that Claim.
- e. All amounts expended by the Company in the payment of any Claim or in Defence Costs will reduce the Limit of Indemnity.

### 8.3) Other Insurance

If, at the time of any Claim, there is, or but for the existence of this Policy, would be any other policy of indemnity or insurance in favor of or effected by or on behalf of the Insured applicable to such Claim, the then the Company shall not be liable to pay or contribute more than its ratable proportion of any loss or damage.

### 8.4) Fraud

The company shall not be liable and this Policy shall be void and all Claims or payments hereunder shall be forfeited, if such claim shall be in manner be 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.

### 8.5) Records

The Insured shall keep accurate records of its annual turnover, including all taxes and duties paid by it, and will provide the Company with access to such records as requested.

### 8.6) Assessment of Time

If, in the case of continual and continuous inhalation, ingestion or application of any substance resulting from an insured event, the Insured and the Company should disagree as to when the Bodily Injury or the Property Damage happened:

## 8. General Conditions

### 8.1) Due Observance

The due observance and fulfilment of the terms, provisions and conditions of this Policy in so far as they relate to anything to be done or complied with by the Insured shall be conditions precedent to any liability of the Company.

### 8.2) Duties and Obligations of the Insured in the event of a Claim

It is a condition precedent to the Company's liability hereunder that the Insured:

- a. shall immediately and in any event within 7 days give the Company written notice, to the address specified in the Schedule for this purpose, of: any

the Bodily Injury shall be deemed to have occurred when the claimant first consulted a qualified medical practitioner in respect of the same;

Property Damage shall be deemed to have occurred when it first became physically evident to the claimant, even if the cause itself was unknown.

#### 8.7) Cancellation

This Policy may be cancelled by or on behalf of the Company by giving the Insured at least 15 days written notice and in such event the Company shall refund to the Insured pro-rata premium for the unexpired Policy Period. For the avoidance of doubt, the Company shall remain liable for any Claim which was made prior to the date upon which this insurance is cancelled.

This Policy may be cancelled by the Insured at any time by giving at least 15 days written notice to the Company. The Company will refund premium according to the Company's Short Period Rates set out below:

#### Short Period Scale

Period of Risk	% of annual premium to be retained by the Company
Upto 1 month	15%
More than 1 month upto 3 months	40%
More than 3 month upto 6 months	70%
More than 6 months upto 9 months	90%
More than 9 months	100%

No refund of premium shall be due if the Insured has made a Claim under this Policy.

#### 8.8) Notifications and Declarations

Any and all notices and declarations for the attention of the Company shall be in writing and shall be delivered to the address specified in the Schedule.

All notices and declarations for the attention of the Insured shall be posted and addressed to the Insured's address stated in the Schedule.

#### 8.9) Arbitration

Any and all disputes or differences, which may arise under or in relation to the quantum of any Claim shall be referred to arbitration and to a sole arbitrator to be appointed in accordance with the Arbitration and Conciliation Act 1996, as amended from time to time, within a period of 30 days of either the Company or the Insured party giving notice of a dispute or difference.

The applicable law in and of the arbitration shall be the law of India.

The expenses of the arbitrator(s) shall be shared equally between the parties and such expenses, along with all reasonable costs in the conduct of the arbitration, shall be awarded by the arbitrator(s) to the successful party or, where no party can be said to have been wholly successful, to such party as has substantially succeeded.

It is agreed a condition precedent to any right of action or suit upon this Policy that an award by such arbitrator or arbitrators shall be first obtained.

In the event that these arbitration provisions shall be held to be invalid then all such disputes shall be

referred to the exclusive jurisdiction of the Indian Courts.

#### 8.10) Governing Law

The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the laws of India. The section headings of this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation. The terms of this Policy shall not be waived or changed except by endorsement issued by the Company.

#### 8.11) Subrogation

In the event of a 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 provide whatever assistance cooperation is required by the Company to enforce those rights and ensure that nothing is done to prejudice the same.

The Company will not exercise its rights of subrogation against an employee of the Insured in the absence of the fraud or dishonesty or malicious intent of any such employee.

#### 8.12) Territorial Limits & Currency of Payment of Claims

The indemnity provided under this Policy is restricted to Accidents occurring and Claims brought in India and determined according to Indian law (unless specifically stated to the contrary), and the obligation of the Company to make payment shall be to make payment in Indian Rupees only.

#### Policy Disputes Clause

Any dispute concerning the interpretation of the terms, conditions, limitations and/or exclusions contained herein is understood and agreed to by both the Insured and the Company to be subject to Indian Law. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction within India and to comply with all requirements necessary to give such Court of Jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such Court.

