



General Liability Policy

Nuku'alofa: Patco Building, Tafua'ahau Road

Phone: (676) 21105

Fax: (676) 25143

We would like to make sure You are aware of all Your entitlements under this policy, so please read the document carefully. After You have read it, please contact Our Office if You would like further information.

Index

Page

Introduction and agreement -----	1
Definitions -----	1
The Indemnity -----	4
What We will pay for-----	4
Additional benefits-----	4
Exclusions-----	5
Extensions -----	6
Deductibles and sub limits -----	7
Conditions -----	7

Introduction and agreement

We agree to provide the cover set out in this policy during the period of cover provided You have paid the premium and subject to the policy's terms, limits, conditions and exceptions.

Your insurance contract consists of three parts:

1. this printed policy document;
2. the personalised schedule, with details of the cover which applies to You. (The policy schedule is updated from time to time as changes are made to Your cover. Any changes to the standard cover in this policy will be noted on the schedule or other specification); and
3. the proposal or application form or brokers submission

Definitions

Definitions explain words frequently used in the policy. Defined words are shown in **bold style** paragraphs 1 to 25

1. **The Company, Insurer, Dominion, We, Us or Our** means Dominion Insurance (Tonga) Limited.
2. **The Insured, You or Your** means the insured named in the schedule, including
 - 2.1 all subsidiary companies of the Insured domiciled in Tonga; and
 - 2.2 any director, executive officer, employee, or partner of the named Insured, or of a company designated in 2.1 above, but only while acting within the scope of their duties in such capacity; and
 - 2.3 any office bearer or member of social clubs or sporting clubs or pension funds formed in relation to the Insured, but only while acting within the scope of their duties in such capacity, or in connection with activities of any such club or fund.
3. **Period of cover** means the "period" or "period of insurance" specified in the schedule.
4. **Schedule** is the latest current policy schedule, expiry notice or insurance renewal issued to You.
5. **Other specification** is the amended or additional terms and clauses agreed to by Us and confirmed in writing.

6. **Premium** is the consideration for this contract. This may mean the first premium or any subsequent renewal or endorsement premium and includes any government levies and charges.
7. **Tongan Dollar** is the currency in which this policy is issued.
8. **Deductible or Excess** is the first amount of any claim that You must pay. You must contribute the amounts shown in the policy and/or schedule under the heading "deductible and or excesses" as the first amount of any claim. It is the amount which will be deducted from the adjusted loss (net of salvage and other recoveries) in respect to each loss/each location arising out of any one event or occurrence. All occurrences of a series consequent on, or attributed to, one source or original cause, will be deemed to be a single occurrence and to constitute one claim for the purposes of this clause.
9. **Sub Limit** means the maximum amount that can be claimed in respect to any loss to which the sub limit refers irrespective of the total sum insured.
10. **The business** means the Business specified in the Schedule above and any social or sporting clubs formed in relation to the Insured.
11. **Occurrence** means an event, including a continuous or repeated exposure to conditions, which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.
12. **Property damage** means accidental physical loss of, or damage to, any property.
13. **Personal injury** means accidental physical injury or death to any person.
14. **Products** means any property, goods, food, drink, or their containers which are sold, supplied, distributed, manufactured, repaired, altered, renovated, serviced, treated, constructed, erected or installed, by the Insured.
15. **Civil Commotion** is an act of a large number of people acting together disrupting public peace and disturbance tumultuously with violence and a chain of destruction of a large number of properties, indicated by the cessation of more than one half of the normal activity of commercial/shopping or business areas or schools or public transportation in one city or town for at least 12 (twelve) hours consecutively commencing immediately before, during or after the event.
16. **Insurrection/Popular Rising** is an uprising of a majority of the people in the capital city of the country, or in three or more of the towns in the country within 12 (twelve) days, demanding a change in the government de jure or de facto, or open resistance against the government de jure or de facto, not amounting to a rebellion
17. **Usurped Power** is a situation where the established order has been overthrown and replaced by some illegal authority which is in a position to lay down rules of conduct and also ensure that the rules are obeyed.
18. **Revolution** is an uprising of the people with force to make a radical change to the current public administration system of the country or to overthrow the established government de jure or de facto, not amounting to a Rebellion.
19. **Rebellion** is a state of organised resistance against the established authority with the object of supplanting or overthrowing it with force using firearms which threatens the existence of such authority.
20. **Military Rising** is an act by a group of home or foreign armed forces personnel consisting of at least 30 (thirty) persons using force with the intention to overthrow the established authority or to cause public disorder and disturbance.
21. **Invasion** is an act by the military power of one country to penetrate or invade the territory of another with the object of permanently or temporarily occupying and taking control over such territory.
22. **Civil War** is an armed conflict between regions or political factions within the territorial limits of a country with the object of gaining legitimate power.
23. **War and Hostilities** is a widespread armed conflict (whether or not war has been declared) or a warlike situation between two or more countries, including military exercises of a country or joint-military exercises between countries.
24. **Subversive Acts** is an act by any person on behalf of or in connection with any organisation with activities directed towards the overthrow by force of the government de jure or de facto, or to the influencing of it by terrorism or sabotage or violence.

25. **Terrorism** is an act by any person using force to create public fear in an attempt to achieve a goal that according to public opinion has a political background.

The Indemnity

1. We will indemnify You for all amounts which You shall become legally liable to pay as compensation in respect of

- 1.1 Personal Injury or
- 1.2 Property Damage

caused by an Occurrence happening within Tonga during the Period of Insurance and arising from the Business of the Insured and subject to all Terms and Conditions of this Policy.

2. In respect of any valid claim under this policy, we will:

- 2.1 defend You against any suit for damages, including meeting the costs of any investigations or negotiations as We deems necessary, provided that the Limit of Indemnity under the policy has not previously been exhausted;
- 2.2 pay all defence costs incurred by Us, or by You with Our prior written consent, including costs, taxes and judgment interest incurred in any suit until We have paid the amount of any judgment not exceeding the Limit of Indemnity of the policy;
- 2.3 pay the Insured's expenses for first aid to others.

Our Liability shall not exceed the sum insured in respect of the any one claim or the aggregate of all claims during any one period of Insurance.

Subject always to the terms and conditions of this policy.

What we will pay for

1. Item 1 General Liability

1.1 We will indemnify You in respect of all sums which You shall become legally liable to pay consequent upon Property Damage or Personal Injury occurring in Tonga during the period of Insurance and in connection with the business.

2. Item 2 Tenant's Liability

2.1 We will indemnify You in respect of all sums which You shall become legally liable to pay consequent upon Property Damage or Personal Injury occurring in Tonga during the Period of Insurance to any premises occupied by, in the charge or under the control of, but not owned by, You. Exclusion 3.1 does not apply to this item.

3. Item 3 Landlord's Liability

3.1 We will Indemnify You in respect of all sums which You shall become legally liable to pay consequent upon Property damage or Personal Injury occurring in Tonga during the Period of Insurance and arising from the legal ownership or occupation, but not physical occupation, of any premises.

4. Item 4 Products Liability

4.1 We will indemnify You in respect of all sums which You shall become legally liable to pay consequent upon Property Damage or Personal Injury occurring anywhere in the World during the Period of Insurance and caused by, or in connection with, or arising from the Products.

4.2 Provided that for this Item

4.1.1 cover will not apply until the Products have left Your control and actual physical custody, or any of Your employees;

4.1.2 You shall take all reasonable precautions to prevent the sale, or supply, of Products which are not in good condition, or free from defect or contamination, or fit for the purpose required.

4.1.3 We will not indemnify You for liability in respect of Property Damage or Personal Injury occurring in any country (other than Tonga) where You, or the company controlling You, is domiciled, or where You are represented by a branch;

4.2.1 Exclusion 4.5 is replaced by the following Products' Exclusions

We will not indemnify You for liability in respect of:-

- a Property Damage or Personal injury caused by, or in connection with, or arising from:-
 - i faulty or defective design, formula, specification, plan or pattern of the products;
 - ii error or omission in advice or treatment, given, administered or prepared by You, or any other person acting on Your behalf.
 - iii Products manufactured specifically for, and installed, (or which You knew would be so installed) in any aircraft, or other aerial device or thing, made or intended to travel through air or space;
 - iv Products in the United States of America or Canada or their territories or possessions;
 - v motor vehicles, internal combustion engines, watercraft, or the accessories or fittings of each, which have been repaired, altered, renovated, serviced or installed by You;
- b Property Damage to the Products themselves
- c costs and damages arising from the recall, withdrawal, inspection, repair, replacement or loss of use, of Products, or of any property of which the Products form part, or making any refund of the price paid for Products, where the Products have known or suspected defects or deficiencies;
- d any sum which You would have been entitled to recover from any party but for an agreement between You and that party;
- e any fine or penalty imposed upon You, or any punitive or exemplary damages awarded against You.

Additional benefits

1. Overseas Visits

1.1 The indemnity expressed in this policy extends (subject to its terms exceptions and conditions insofar as they can apply and are not inconsistent with anything herein contained) to include liability in respect of accidental death or bodily injury including illness of any person or accidental loss of or damage to property arising during and in connection with the performance of the duties beyond Tonga during any period of indemnity but not prior to the date of this extension of any person (including You) employed in the business and who is normally resident or domiciled in Tonga.

2. Cross Liabilities

2.1 This insurance indemnifies each of the Insured's separately in the same manner and to a like extent as though separate policies had been issued in their separate names. In particular (but without limiting the generality of the foregoing) the Policy will indemnify each of the Insured's in respect of claims made by the other, or by employees or agents of the other. Each Insured shall be separately subject to the terms, exclusions and conditions of the Policy in the same manner and to a like extent as though separate policies had been issued.

2.2 Provided that Our liability will not exceed Limit of Liability in respect of the aggregate of all sums for which all Insureds are liable.

3. Liability By Agreement

3.1 Exclusion 1 does not apply to liability taken on by You by agreement with

3.1.1 any company for the hire, lease, or rental of any property;

3.1.2 any oil or gas company in respect of any property hired or leased from them.

3.2 Provided that this clause does not apply to

3.2.1 Property Damage to any of the property the subject of the agreement;

3.2.2 Any provision in the agreement for You to arrange insurance on the property.

4. Employees Vehicles

4.1 Exclusion 3.1 does not apply to Property Damage caused to any motor vehicle while on Your Business premises (not being a motor vehicle owned by You, or any member of Your family ordinarily living with You) and belonging to, or in the charge or under the control of, any employee or agent of Yours in their private capacity.

5. Carparks

5.1 Exclusion 3.1 does not apply to property in any car park operated by You.

6. Conducted Tours

- 6.1 Without limiting the generality of the Business to which this insurance applies, the Business is deemed to include conducted tours of the Insured's premises.

7. Continuous Liability

- 7.1 We undertake to keep you indemnified in terms of this policy in respect of all business carried on at any time by you in Tonga or elsewhere, provided that you keep us advised of any extension to the Business described in the schedule and any addition to the plant used in the Business.
- 7.2 Notice of any such extension or addition must be given to us within three months of the change.

Exclusions

The indemnity expressed in this Policy shall not apply to or include

1. Liability assumed by Your agreement unless and insofar as such liability would have attached to You notwithstanding such agreement.
2. Liability in respect of death or bodily injury including illness of any person arising out of and in the course of the employment of such person by You or for compensation claimed from You by an injured person or dependant under any Workers' Compensation Act or to any person who is a member of Your family ordinarily residing with You.
3. Liability in respect of loss or damage to property
 - 3.1 Belonging to or held under a hire purchase agreement, hired, leased, rented or lent to or in the charge or under Your control or any servant or agent of Yours whilst in the course of his duties as such, or of any member Your family ordinarily residing with You.
 - 3.2 Being that part of any property, goods, land, building or structure on which You or any servant or agent of Yours is or has been working if such damage is caused directly by the process of treatment alteration repair or construction of the part of such property goods land building or structure.
4. Liability in respect of death or bodily injury including illness of any person or loss of or damage to property caused by or in connection with or arising from
 - 4.1 The ownership or possession or use by or on behalf of You of any vehicle required to be registered for road use provided that liability in respect of the loading and unloading or collection of goods to or from a vehicle (insofar as liability is not covered by any other insurance policy) is not excluded hereunder.
 - 4.2 The ownership or possession of or use arising from the ownership or possession of any watercraft aircraft or thing made or intended to float on or in or travel on or through water air or space.
 - 4.3 Work which is being undertaken or has been undertaken by You to any watercraft aircraft or thing made or intended to float on or in or travel through water air or space.
 - 4.4 Earthquake
 - 4.5 Property goods food or drink or the containers thereof sold supplied or constructed or property or goods which have been repaired altered renovated serviced or installed or poisoning of any kind but this Exclusion shall not apply or extend to
 - 4.1.1 property or goods before such have passed from the control and actual physical custody of You of any person in the direct service of You.
 - 4.1.2 property or goods sold or supplied at or from a canteen provided You primarily for the use of employees or visitors of You.
 - 4.1.3 liability in respect of accidental death or bodily injury including illness of any person by poisoning of any kind or by foreign or deleterious matter in food or drink not exceeding the aggregate total sum \$5,000 in any one period of indemnity inclusive of all costs and expenses of litigation recovered by any claimant against You.
 - 4.1.4 Error or omission in design specification or advice remedial or other treatment given administered or prepared by You or by any person acting on Your behalf but the words advice remedial or other treatment shall have no application in respect of any employee of Yours acting in the capacity of Industrial Nurse on behalf of You.
 - 4.1.5 Vibration or the removal or weakening of or interference with the support of land or buildings.
5. Liability for any consequences whether direct or indirect of War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular uprising, military rising, rebellion, revolution, insurrection, terrorism, military or usurped power;

6. Liability in respect of
 - 6.1 any accident or any loss or destruction of or any damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Solely for the purpose of this exclusion, combustion shall include any self- sustaining process of nuclear fission.
 - 6.2 any accident, loss, destruction, damage or legal liability directly or indirectly caused by or contributed to by or arising from nuclear weapons material.
7. Liability in respect of the extent to which You is or would but for the existence of this indemnity be indemnified under any other Policy of Insurance or You or any employee or agent of Your is or should be indemnified under Statutory Insurance under the Traffic Act and its amendments or any Act or Acts in substitution therefore.
8. Liability arising whilst any motor vehicle is
 - 8.1 being driven by any person who at the time of any event giving rise to a claim under this policy has a proportion of breath/alcohol concentration which exceeds the legal limit prescribed in Tonga.
 - 8.2 being driven by any person who following an event which gives rise to a claim under this policy fails or refuses to permit a specimen of blood or breath test to be taken after having been lawfully required to give such specimen.
 - 8.3 being driven by any person who arising out of circumstances giving rise to a claim under this policy is convicted of any alcohol or drug related breach of the law governing the use of motor vehicles or
 - 8.4 being driven by any person who is in any way under the influence of intoxicating liquor or drugs.
 - 8.5 being driven by any person who is not licensed to drive the type of vehicle being driven.
 - 8.6 being driven in an unsafe condition which causes or contributes to the accident, and which You, or any authorised driver, is aware of, or should have been aware of by the exercise of reasonable diligence
 - 8.7 being loaded, or has been loaded, in excess of manufacturers specifications.
9. Any liability arising from property damage or personal injury directly or indirectly caused by pollution or contamination, or for the cost of removing nullifying or cleaning up polluting or contaminating substances. However, We will indemnify You for liability arising from Property Damage or Personal injury occurring in Tonga during the period of insurance and in connection with the business directly caused by pollution or contamination if the occurrence giving rise to the pollution or contamination is
 - 9.1 sudden and accidental; and
 - 9.2 takes place during the Period of Insurance; and
 - 9.3 is discovered by You or any employee of Yours within 72 consecutive hours of it first happening; and
 - 9.4 all reasonable remedial action is immediately taken by You upon discovery.
10. Any liability arising directly or indirectly from
 - 10.1 mining, processing, transporting, distributing or storing asbestos;
 - 10.2 manufacturing or processing materials containing asbestos;
 - 10.3 any process of decontamination, treatment or control of asbestos;
 - 10.4 the presence of asbestos in any building or structure;
 - 10.5 asbestos pollution or contamination.
11. Any liability in respect of any fine or penalty imposed upon You, or any punitive or exemplary damages awarded against You.

Extensions only apply if stated in the schedule and You have paid an additional premium

The following extension clauses to the Policy are included when they are noted on the Schedule and an additional premium has been paid provided always that each clause is subject to the Policy terms, unless otherwise stated.

Some clauses have specified sub-limits and Excesses and these will apply unless specifically stated otherwise in the Schedule. All sub-limits are included in and are not in addition to the Limit of Indemnity specified in the Schedule.

1. Mechanical Plant Liability/Vehicles

- 1.1 Notwithstanding Exclusion 4.1 (Vehicles) We will indemnify You in respect of Personal Injury or Property Damage:
 - 1.1.1 arising from loading or unloading any Vehicle used by or on Your behalf but not in Your care, custody or control;

- 1.1.2 arising from any Vehicle while it is being operated or used by You as plant or a tool of trade, and not as a Vehicle;
- 1.1.3 to vehicles (not belonging to or used by or on Your behalf) in Your physical or legal control where such Property Damage occurs whilst any such vehicle is in a car park owned or operated by You, provided that You as part of its Business does not own or operate a car park for reward;
- 1.1.4 relating to any bridge, viaduct, weigh bridge, road or anything beneath the Vehicle caused by vibration or by the weight of any Vehicle and/or its load, provided that any designated weight restrictions were not exceeded. An Excess of \$2,500 shall apply to each and every claim under this Extension 1.1.4.

Deductibles and sub- limits

You shall bear the amount of the Deductible shown in the Schedule in respect of each Item of each claim. All occurrences of a series consequent on, or attributed to, one source or original cause, will be deemed to be a single occurrence and to constitute one claim for the purposes of this clause.

Conditions

1. Alteration

If any material change occurs in the Business, or in any of the circumstances earlier conveyed to Us other than

- 1.1 changes usual or incidental to Your Business;
- 1.2 structural alterations or repairs to Your property;
- 1.3 the shutting down or ceasing of operations;
- 1.4 the vacancy of individual buildings
- 1.5 You shall give written notice to Us within a reasonable period of You becoming aware of the change. We shall be entitled to adjust the premium to reflect the change.

2. Fraud

We will not be liable under this Policy if any fraudulent means or devices are used by You, or anyone acting on Your behalf, when entering into this insurance, or to obtain any benefit under this Policy. Any benefits already paid will be recoverable by Us.

3. Claims

Upon becoming aware of any circumstance, occurrence giving rise to loss, damage or personal injury or likely to give rise, to a claim under this Policy:

3.1 You must:

- 3.1.1 take prompt steps to minimise the claim;
- 3.1.2 take all reasonable steps to prevent further loss, damage or personal injury;
- 3.1.3 immediately notify Us;
- 3.1.4 inform the police if any theft burglary, arson or malicious damage if any other criminal act has occurred or is suspected;
- 3.1.5 immediately send to Us any legal process issued or commenced against You, and give all assistance to enable the claim to be settled or resisted.
- 3.1.6 at Your expense, provide Us with any reasonably required proof and information in respect of the claim;
- 3.1.7 allow Us to enter any premises where loss or damage has occurred and take and keep possession of the property and deal with salvage in a reasonable manner;
- 3.1.8 allow Us to take proceedings in Your name to obtain relief from any third party and undertake the conduct, control or compromised of any such proceedings.

3.2 You must not:

- 3.2.1 prejudice Our ability to settle the claim;
- 3.2.2 act in any way to the detriment or prejudice Our interest;
- 3.2.3 dispose of or abandon any Property for which You intend to make a claim;
- 3.2.4 start any repairs without Our permission unless it is necessary to prevent further loss;
- 3.2.5 without Our the written consent;
 - a incur any expense of litigation.
 - b repudiate liability, negotiate or make any admission, offer, promise or payment.

3.3 **You must then:**

- 3.3.1 within 14 days submit in writing full particulars of the claim in such a form or manner as may be reasonably required by Us so that any claim is not prejudiced;
- 3.3.2 give Us free access to examine and assess any loss or damage;
- 3.3.3 provide any other information or assistance We reasonably request in relation to Your claim;
- 3.3.4 co-operate with the necessary investigations and provide all necessary information and submit all particulars in order to enable Us to expedite the claim;
- 3.3.5 forward any letters of demand or court documents to Us immediately;
- 3.3.6 if We request it, provide a statutory declaration to verify the Loss;
- 3.3.7 if We request it, attend interviews with any person We nominate;
- 3.3.8 be responsible for the payment of the Deductible to Us or to the repairer unless We are deducting it from any claim settlement to You.

If Your property is mortgaged or secured by any other financial agreement, We may make payment for any loss direct to the interested party. This will meet Our obligations under this policy.

Your compliance with the terms and conditions of this Policy, and the truth of any statements made to Us (whether made by You or not), are conditions precedent to any liability for Us to provide any indemnity under this Policy.

4. **Inspection**

We shall have the right and opportunity at all reasonable times to inspect the plant, works, machinery, and appliances used in Your business.

5. **Precautions**

You shall

- 5.1 take all reasonable endeavours to see that only competent employees are employed;
- 5.2 exercise reasonable care to see that all buildings, ways, works, plant, machinery, furniture and fittings are substantial and sound and in proper order and fit for the purposes for which they are used;
- 5.3 take all reasonable precautions to observe and comply with all statutory obligations, regulations, by-laws and directions;
- 5.4 take all reasonable precautions to prevent Property Damage or Personal Injury.

6. **Other Insurance**

- 6.1 If at the time of any loss, damage or liability there shall be any other insurance covering such loss, damage or liability or any part thereof, We shall be liable only for the amount of loss not covered by such other insurance.

7. **Cancellation and Variations**

- 7.1 You may cancel this policy at any time in which case We will refund 75% of the unused basic and burglary premium.
- 7.2 We may cancel this policy or amend the terms, exclusions and limitations after 4.00pm on the 14th day following dispatch or written notice to Your last known address. You shall be entitled to a return of premium proportionate to the unexpired period of the cancelled policy.

8. **Jurisdiction**

Notwithstanding anything contained in this policy to the contrary the indemnity provided herein shall not be apply to:

- 8.1 Any matter where an action for damages is brought in a court of law outside Tonga and not subject to Tongan law or where an action is brought in Tonga to enforce a foreign judgement whether by way of reciprocal agreement or otherwise.
- 8.2 Costs and expenses of litigation which are not incurred within Tonga.

9. **Suit or Legal Action**

- 9.1 No suit or legal action on this policy for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months after the date of the loss.

10. **Proposal**

- 10.1 The truth of the statements and answers in the proposal form or any other written submission provided by You or on Your behalf prior to the original inception date or each subsequent renewal date shall be a condition precedent to any liability of Us to make any payment under this Policy.

11. Policy Amendment

- 11.1 Any amendment to the terms and conditions of this policy must be evidenced by written confirmation signed by Us.

12. Debt offset

- 12.1 Any claim payment payable under this policy may be used to settle any other premium or other debt owed by You to Us.

13. Premium Payment

- 13.1 Unless We have agreed to accept payment of the premium by instalments Your policy will become null and void if the premium is not paid in full to Us before the original inception date or any subsequent renewal date
- 13.2 Where We have agreed to accept payment of the premium by instalments:
- 13.2.1 We reserve the right in the event of a claim being made to require immediate payment of the balance of any annual premium; and
- 13.2.2 all benefits under this policy will be forfeited if any instalment remains unpaid.