



# Business Interruption Policy

Nuku'alofa: Patco Building Centre, Taufa'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.

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## 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 40

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.
3. **Reserved**
4. **Period of cover** means the "period" or "period of insurance" specified in the schedule.
5. **Schedule** is the latest current policy schedule, expiry notice or insurance renewal issued to You.
6. **Other specification** is the amended or additional terms and clauses agreed to by Us and confirmed in writing.
7. **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.
8. **Tongan Pa'anga** is the currency in which this policy is issued.

9. **The Gross Profit Item 1** in the Schedule:

9.1 **Gross Profit** (Additions Method) is the sum produced by adding to the Net Profit the amount of the Insured Standing charges, or if there is no Net Profit the amount of the Insured Standing Charges less such a proportion of any net trading loss as the amount of the Insured Standing Charges bears to all Standing Charges of the Business.

9.2 **Net Profit** is the net trading profit (exclusive of all capital receipts and accretions and all outlay properly chargeable to capital) resulting from the Business at the Premises, after due provision has been made for all outstanding and other charges, including depreciation, but before the deduction of any taxation chargeable on profits.

9.3 **Standing Charges** are all charges included in the annual calculation of insured Gross Profit for the purpose of premium adjustment

9.4 **Gross Profit (Difference Method)** is the amount by which the sum of the Turnover and the Closing Stock exceeds the sum of the Opening Stock and the Uninsured Working Expenses

Note: The amounts of the Opening and Closing Stock are to be arrived at in accordance with the Insured's normal accountancy methods, due provision being made for depreciation.

9.5 **Uninsured Working Expenses** are all expenses subtracted in the annual calculation of insured Gross Profit for the purpose of premium adjustment.

9.6 **Turnover** is the money paid or payable to the Insured for goods sold and delivered and for services rendered in the course of the Business at the Premises. And any money paid or payable to the Insured by tenants in respect of rental of the Premises and for services rendered, and any money paid or payable by tenants for rates, insurance and other fixed expenses which, but for that payment, would be payable by the Insured.

9.7 **Rate of Gross Profit** is the Rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the Damage (or in the event of any claim arising from Damage occurring before the completion of the first year's trading of the Business at the Premises), The Rate of Gross Profit earned on the Turnover during the period between the date of the commencement of the Business and the date of the Damage); to which such adjustments are to be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage, or which would have affected the Business had the Damage not occurred; so that the figures thus adjusted will represent, as nearly as may be reasonably practicable, the results which, but for the Damage would have been obtained during the relative period after the Damage.

9.8 **Standard Turnover** is the Turnover during the Period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period (or in the event of any claim arising from Damage occurring before the completion of the first year's trading of the Business at the Premises, the proportional equivalent for a period equal to the Indemnity Period of the Turnover realised during the period between the commencement of the Business and the date of the Damage); to which such adjustments are to be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage, or which would have affected the Business had the Damage not occurred; so that the figures thus adjusted will represent, as nearly as may be reasonably practicable, the results which, but for the Damage would have been obtained during the relative period after the Damage.

9.9 **Annual Turnover** The Turnover during the twelve months immediately before the date of the Damage (or in the event of any claim arising from Damage occurring before the completion of the first year's trading of the Business at the Premises, the proportional equivalent, for a period of twelve months, of the Turnover realised during the period between the commencement of the Business and the date of the Damage);

9.9.1 **Provisions that apply to item 1**

i **Alternative Trading** means that if, during the Indemnity Period, goods are sold or services are rendered elsewhere than at the Premises for the benefit of the Business, either by the Insured or by others on behalf of the Insured, the money paid or payable in respect of those sales or service will be brought into account in arriving at the Turnover during the Indemnity Period.

ii **Average** means that if the Sum Insured by this Item is less than the sum produced by applying the Rate of Gross Profit to the Annual Turnover (divided by 12 and multiplied by the number of months of the Period of Indemnity where the Period of Indemnity is more than 12 months) , the amount payable under this Item will be proportionately reduced.

iii **Departments** means that If the Business is conducted in departments or other units, the independent trading results of which are ascertainable, the provisions of clause (a) and (b) of this Item will apply separately to each department or other unit affected by the Damage.

iv **Uninsured Fixed Expenses** mean that if any fixed charges or expenses of the Business are not insured by this Policy (having been excluded in arriving at the Gross Profit), then in computing the amount recoverable under this Item as Increase in Cost of Working, that proportion only of any additional expenditure will be brought into account which the Gross Profit bears to the sum of the Gross Profit and those uninsured fixed expenses.

10. **The Gross Rentals Item 2** in the Schedule:

10.1 **Gross Rentals** mean the money paid or payable to the Insured by tenants in respect of rental of the Premises and for services rendered; and any money paid or payable by tenants for rates, insurance and other fixed expenses which, but for the payment, would be payable by the Insured.

10.2 **Standard Gross Rentals** mean The Gross Rentals during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period (or in the event of any claim arising from Damage occurring before the completion of the first year's trading of the Business at the Premises, the proportional equivalent for a period equal to the Indemnity Period of the Gross Rentals realised during the period between the commencement of the Business and the date of the Damage); to which such adjustments are to be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after Damage, or which would have affected the Business had the Damage not occurred; so that the figures thus adjusted will represent, as nearly as may be reasonably practicable, the results which, but for the Damage would have been obtained during the relative period after the Damage.

10.3 **Annual Gross Rentals** mean the Gross Rentals during the twelve months immediately before the date of Damage (or in the event of any claim arising from Damage occurring before the completion or the first year's trading of the Business at the Premises, the proportional equivalent, for a period of twelve months, of the Gross Rentals realised during the period between the commencement of the Business and the date of the Damage); to which such adjustments are to be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage, or which would have affected the Business had the Damage not occurred; so that the figures thus adjusted will represent as nearly as may be reasonably practicable, the results which, but for the Damage would have been obtained during the relative period after the Damage.

10.4 **Provisions that apply to Item 2 Gross Rentals**

10.4.1 **Alternative premises** means that if, during the Indemnity Period, the Business is conducted elsewhere than at the Premises, the Gross Rentals derived from the other premises will be brought into account in arriving at the Gross Rentals during the Indemnity Period.

10.4.2 **Average** means that if the Sum Insured by this item is less than the Annual Gross Rentals (divided by 12 and multiplied by the number of months of the Period of Indemnity where the Period of Indemnity is more than 12 months) the amount payable under this Item will be proportionately reduced.

10.4.3 **Departments** means that if the Business is conducted in departments or other units, the independent trading results of which are ascertainable, the provisions of clause i and ii of this Item will apply separately to each department or other unit affected by the Damage.

10.5 **Payroll Item 3** in the Schedule:

10.5.1 **Payroll** means the gross remuneration (including but not limited to wages, salaries, redundancy payments, FNPF and FNTC contributions, meal subsidies, accommodation, bonuses, holiday pay, sick pay, superannuation contributions and any other payments whatsoever pertaining to payroll), for all employees other than

i employees not engaged in activities of the Business

ii outworkers paid solely on an output basis

iii agents or employees paid solely on a commission basis.

iv casual workers

v employees whose remuneration is treated as salaries in the Insured's books of account, but only where this category of employee is specifically deleted from this Item as indicated within the Policy Schedule.

10.5.2 **Rate of payroll** is the rate of Payroll to Turnover during the financial year immediately before the date of the Damage (or in the event of any claim arising from Damage occurring before the completion of the first year's trading of the business at the Premises, the Rate of Payroll during the period between

the commencement of the Business and the date of the Damage); to which such adjustments are to be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage, or which would have affected the Business had the Damage not occurred, so that the figures thus adjusted will represent as nearly as may be reasonably practicable the results which, but for the Damage, would have been obtained during the relative period after the Damage.

10.5.3 **Shortage in turnover** is the amount by which the Turnover during a period, in consequence of the Damage, falls short of the part of the Standard Turnover which related to that period.

#### 10.6 Provisions that apply to Item 3 Payroll

10.6.1 **Average** means that if the Sum Insured by this Item is less than the sum produced by applying the Rate of Payroll to the Annual Turnover (divided by 12 and multiplied by the number of months of the Period of Indemnity where the Period of Indemnity is more than 12 months), the amount payable under this Item will be proportionately reduced.

10.6.2 **Departments** means that If the Business is conducted in Departments or other units, the independent trading results of which are ascertainable, the provisions of clause i and ii of this Item will apply separately to each department or other unit affected by the Damage.

#### 11. Wages Item 4 in the Schedule:

11.1 **Wages** means the gross remuneration (including but not limited to wages, salaries, redundancy payments, FNPF and FNTC contributions, meal subsidies, accommodation, bonuses, holiday pay, sick pay, superannuation contributions and any other payments whatsoever pertaining to payroll), for all employees other than

11.1.1 employees not engaged in activities of the Business

11.1.2 outworkers paid solely on an output basis

11.1.3 agents or employees paid solely on a commission basis.

11.1.4 casual workers

11.1.5 employees whose remuneration is treated as salaries in the Insured's books of account, but only where this category of employee is specifically deleted from this Item as indicated within the Policy Schedule.

#### 11.2 Provisions that apply to Item 4 Wages

11.2.1 **Average** means that if the sum Insured by this Item is less than the amount of Wages that would, but for the Damage, have been paid during the specified period, the amount payable under this Item will be proportionately reduced.

#### 12. Claims Preparation costs Item 4 in the Schedule:

12.1 The Insurance under this Item is to cover costs (including but not limited to fees) reasonably incurred by the Insured for preparation of claims under this Policy.

## What You are insured for

We will indemnify You in respect of any business interruption as defined by the Items below ( not exceeding the sum insured for each Item specified within the Policy Schedule) that You shall sustain as a result of damage to the buildings and/or contents at the Premises and subject always to the Terms and Conditions of this Policy.

Provided that the buildings and/or contents which have sustained damaged are insured by Us under our Commercial Property Policy and that We have paid for or admitted liability (or would have paid or admitted liability except for the application of a Deductible or Excess) in respect of the damage.

## What We will pay

#### 1. Item 1 Loss of Gross Profit:

1.1 the insurance under this item is limited to loss of Gross Profit due to Reduction in Turnover and Increase in cost of Working and the amount payable as indemnity under this item will be:

1.2 In respect of Reduction in Turnover;

1.3 the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period, in consequence of Damage, falls short of the Standard Turnover.

- 1.4 In Respect of Increase in cost of Working;
- 1.5 the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure, would have taken place during the Indemnity Period in consequence of Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;
- 1.6 less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of Damage.

**2. Item 2 Gross Rentals:**

- 2.1 the insurance under this Item is limited to Loss of Gross Rentals and Increase in Cost of Working and the amount payable as indemnity under this Item will be:
- 2.2 In respect of Gross Rentals;
- 2.3 The amount by which the Gross Rentals during the Indemnity Period, in consequence of Damage, falls short of the Standard Gross Rental;
- 2.4 In respect of Increase in Cost of Working the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of Gross Rentals which, but for that expenditure, would have taken place during the Indemnity Period in consequence of Damage, but not exceeding the amount of the reduction in Gross Rentals thereby avoided;
- 2.5 less any sum saved during the Indemnity Period in respect of such of the expenses of the Business payable out of Gross Rentals as may cease or be reduced in consequence of Damage.

**3. Item 3 Payroll (Dual Basis):**

- 3.1 the Insurance under this Item is limited to loss in respect of Payroll and the amount payable as indemnity under this Item will be:
- 3.2 In respect of Reduction in Turnover
  - 3.2.1 during the portion of the Indemnity Period beginning with the occurrence of the Damage and ending not later than the Initial Period specified in the Policy Schedule, the sum produced by applying the Rate of Payroll to the Shortage in Turnover during that portion of the Indemnity Period; less any saving during that portion of the Indemnity Period through reduction, in consequence of the Damage, in the amount of Payroll paid;
  - 3.2.2 during the remaining portion of the Indemnity Period, the sum produced by applying the Rate of Payroll to the shortage in Turnover during that remaining portion of the Indemnity Period;
    - 3.2.2.1 less any saving during that remaining portion of the Indemnity Period through reduction, in consequence of the Damage, in the amount of Payroll paid;
    - 3.2.2.2 but not exceeding the sum produced by applying the percentage specified in the Policy Schedule of the Rate of Payroll to the Shortage in Turnover during that remaining portion of the Indemnity Period, increased by such amount as is deducted for savings under the terms of Clause 3.1.1.
    - 3.2.2.3 NOTE: At the option of the Insured the number of weeks referred to in Clause 3.1.1 above may be increased to the number specified in the Policy Schedule provided that the amount arrived at under the provisions of Clause 3.1.2 will not exceed such amount as is deducted under clause 3.1.1 for savings effected during the increased number of weeks.
- 3.3 In respect of Increase in Cost of Working
- 3.4 so much of the additional expenditure described in Clause 1.2 of the Item on Gross Profit as exceeds the amount payable under that Item but not more than the additional amount which would have been payable in respect of reduction in Turnover under the provision of Clause 3.1 and 3.2 of this Item had such expenditure not been incurred.

**4. Item 4 Wages**

- 4.1 The insurance under this Item is limited to loss incurred by the Insured by the payment of Wages for a period beginning with the occurrence of the Damage and ending not more than the number of weeks specified in the Policy Schedule.

- 4.2 The amount payable as Indemnity under this Item will be the actual amount paid by You as Wages for the specified period to employees whose services cannot, in consequence of the Damage, be used at all by the Insured during that period and an equitable part (based upon Shortage in Turnover) of the Wages paid for the specified period to employees whose services cannot, in consequence of the Damage, be used in full by the Insured during that period.

#### **5. Item 5 Claim preparation costs**

- 5.1 The Insurance under this Item is to cover costs (including but not limited to fees) reasonably incurred by the Insured for preparation of claims under this Policy.

#### **6. Additional Increased Cost of Working**

- 6.1 The Insurance under this Item is limited to the additional expenditure, beyond that recoverable under clause 1.2 of the item on Gross Profit, (and, if insured by separate items, of the items on Gross Rentals and Wages (Dual Basis)), reasonably incurred by You during the Indemnity Period and in consequence of the Damage, for the purpose of avoiding or diminishing a reduction in Turnover (including Gross Rentals if applicable) or for the purpose of resuming or maintaining any normal business operations.

Notwithstanding the above, this item does not include costs of reinstating physical damage other than such costs incurred in the reconstitution of records.

## **Additional benefits**

### **1. Automatic Reinstatement of Cover**

- 1.1 We will not reduce cover by the amount of any claim provided You pay any additional premium that may be required.

### **2. Accumulated Stocks**

- 2.1 In adjusting any loss, account will be taken, and an equitable allowance made, if any Shortage in Turnover due to the damage is postponed by reason of the Turnover being temporarily maintained from accumulated stocks of finished goods held by the insured.

### **3. Progress Claim Payments**

- 3.1 In the event of Damage giving rise to a claim under this Policy, We will make progress claim payments on production of a statement of claim certified by the Accountant appointed in accordance with Condition 3 of this policy.

### **4. Turnover or Other Index**

- 4.1 In the event of a claim under this Policy adjustment may be based on Turnover or any other index of business activity (Alternative Index), whichever affords the more equitable result and - except in the definitions of Turnover - the word "Turnover" wherever used in this policy is to be read as "Turnover or Alternative Index".

### **5. Other Premises**

- 5.1 Loss as insured by this Policy and resulting from interruption of or interference with the Business in consequence of Damage to any property whatsoever at the premises of suppliers or customers anywhere in the world, or at any port installation, railway premises or airport in Tonga, shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises for the purposes of the Business.
- 5.2 Our liability under this benefit shall be limited to a maximum of 10% of the Gross Profit Item insured under this Policy.

### **6. Utilities**

- 6.1 Loss, as insured by this Policy but in all cases excluding cyclone or earthquake and resulting from interruption of or interference with
- 6.1.1 the supply of electric power, gas or water to the Premises due to Damage to the property of any electric power, gas or water supply authority in Tonga or
- 6.1.2 the discharge of effluent from the premises due to Damage to the property of any public authority in Tonga,
- 6.1.3 shall be deemed to be loss resulting from Damage to property used by the insured at the Premises for the purpose of the Business.
- 6.2 Our liability under this benefit shall be limited to a maximum of 10% of the Gross Profit Item insured under this Policy.

### **7. Recovery Apportionment**

- 7.1 If We, having exercised Our right of subrogation, recovers any part or all of a loss in respect of which a claim has been paid or is payable under this Policy, the amount so recovered shall be apportioned as follows:
- 7.1.1 You shall be fully reimbursed for the uninsured portion of the loss, excluding that portion of the loss which is uninsured by reason of a Deductible.
- 7.1.2 Any remaining balance shall be apportioned between You and Us in the ratio of each respective losses; the loss to You being that portion of the loss which is uninsured by reason of any Deductible, and the loss to Us being the amount of its actual payment under the Policy.
- 7.1.3 The expenses of all recovery proceedings shall be apportioned in the ratio of respective recoveries. If no recovery is made, proceedings conducted solely by Us shall be at Our expense.
- 7.1.4 Notwithstanding anything to the contrary in the Deductible clause of this Policy, no account shall be taken of subrogated recoveries in determining the amount of adjusted loss to which the Deductible applies.

## **8. Public Authorities**

- 8.1 This insurance is extended to cover loss, as insured by this Policy, directly resulting from interruption to or interference with the Business carried on by the Insured at the Premises caused by any action of a Public Authority consequent upon:
- 8.1.1 damage to any property except where such damage is the result of cyclone or earthquake (whether the property is at the Premises or elsewhere and whether or not the property is used or to be used by the Insured for the purpose of the Business).
- 8.1.2 bodily injury to any person on or in the vicinity of the affected Premises,
- 8.1.3 vermin, pests, infectious contamination, fumes, escape of any hazardous material, defective sanitation or effluent system,
- 8.1.4 or the threat or fear of any of them

## **9. Increased Working Costs - Joint Insured's**

- 9.1 Where, for the purpose of avoiding or diminishing a reduction in turnover, goods or services are purchased from a party jointly insured under this Policy, the reasonable full price of such goods or services (less any discount normally allowed) shall be taken into account for the purposes of adjusting a claim, as though the goods or services were purchased during the course of normal business.

## **10. Turnover or Other Index**

- 10.1 In the event of a claim under this Policy adjustment may be based on TURNOVER or ANY OTHER INDEX OF BUSINESS ACTIVITY whichever affords the more equitable result and - except in the definition of Turnover - the word "TURNOVER" wherever used in this Policy shall read as "Turnover or Alternative Index".

## **11. Advance Interruption**

- 11.1 Buildings or plant or other property in the course of construction, erection, alteration, installation or testing (and the materials, components and works pertaining to any of them) are all deemed to be property used by the Insured at the Premises for the purpose of the Business. For the purpose of claims arising from Damage to such property, the Indemnity Period as defined in the Schedule shall begin on the date that the property would, but for the Damage, have been put in to use for the purpose of the Business, and not as otherwise stated.

## **12. Value Added Tax (where insurance is not exempt from Vat)**

- 12.1 Provided that Value added tax (VAT) is recoverable by Us, the sum or sums insured by this Policy are exclusive of VAT to the intent that, in the event of a claim, We will pay a maximum of the sum insured plus additional VAT to a maximum of the current rate of VAT applied to that sum insured.
- 12.2 Where You are liable for VAT on any indemnity payment made under this Policy, and providing the VAT is recoverable by Us, We will include the amount of that VAT in the payment as if it were part of the loss for which the indemnity is paid.

## **13. Value Added Tax Liability (where insurance is exempt from Vat)**

- 13.1 Where specified in the schedule as an extension to this policy and in return for an additional premium it is agreed that all adjusted claims (before application of any deductible) will be increased by 11.111%

## Conditions

### 1. 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:

#### 1.1 You must:

- 1.1.1 take prompt steps to minimise the claim;
- 1.1.2 take all reasonable steps to prevent further loss, damage or personal injury;
- 1.1.3 immediately notify Us;
- 1.1.4 inform the police if any theft burglary, arson or malicious damage if any other criminal act has occurred or is suspected;
- 1.1.5 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.
- 1.1.6 at Your expense, provide Us with any reasonably required proof and information in respect of the claim;
- 1.1.7 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;
- 1.1.8 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.

#### 1.2 You must not:

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

#### 1.3 You must then:

- 1.3.1 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;
- 1.3.2 give Us free access to examine and assess any loss or damage;
- 1.3.3 provide any other information or assistance We reasonably request in relation to Your claim;
- 1.3.4 co-operate with the necessary investigations and provide all necessary information and submit all particulars in order to enable Us to expedite the claim;
- 1.3.5 forward any letters of demand or court documents to Us immediately;
- 1.3.6 if We request it, provide a statutory declaration to verify the Loss;
- 1.3.7 if We request it, attend interviews with any person We nominate;
- 1.3.8 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.

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.

### 2. Other Insurance

- 2.1 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.

### 3. Cancellation and Variations

- 3.1 You may cancel this policy at any time in which case We will refund 75% of the unused basic and burglary premium. No refund will be given in respect of any cyclone premium.
- 3.2 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.

#### **4. Jurisdiction**

- 4.1 Notwithstanding anything contained in this policy to the contrary the indemnity provided herein shall not be apply to:
- 4.2 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.
- 4.3 Costs and expenses of litigation which are not incurred within Tonga.

#### **5. Suit or Legal Action**

- 5.1 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.

#### **6. Proposal**

- 6.1 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.

#### **7. Premium Adjustment**

- 7.1 Within six months of the period for which the premium is to be adjusted, You must submit to Us a certificate from Your auditors setting out the actual Gross Profit, Gross Rentals or Wages in the accounting year most nearly concurrent with the Period of Insurance.
- 7.2 If the actual Gross Profit, Gross Rentals or Wages so certified is less than the Sum Insured for each respective Item, then, subject to any refund payable under this clause not exceeding 50% of the initial premium charged for insurance under the Item, the premium will be adjusted at the agreed rates on the amount so certified.
- 7.3 If any claim occurs during the period for which the premium is to be adjusted, the amount paid or payable for loss under the applicable Item occurring during that period will be regarded as actually earned.

#### **8. Policy Amendment**

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

#### **9. Debt offset**

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

#### **10. Premium Payment**

- 10.1 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
- 10.2 Where We have agreed to accept payment of the premium by instalments:
  - 10.2.1 We reserve the right in the event of a claim being made to require immediate payment of the balance of any annual premium; and
  - 10.2.2 all benefits under this policy will be forfeited if any instalments remains unpaid.

#### **11. Termination of cover**

- 11.1 Notwithstanding anything contained herein to the contrary, if during any period in respect of which this Policy is in force;
  - 11.1.1 You cease to carry on a Business or any part of the Business is disposed of permanently discontinued or
  - 11.1.2 Your interest in the Business or such part thereof ceases otherwise than by death; or

- 11.1.3** You (being a corporation) is placed in liquidation (or provisional liquidation), is placed under Official management, enters into a Scheme of Arrangement, has Receivers and/or Managers appointed over its assets or undertaking(s); or
- 11.1.4** You (being a natural person) becomes a bankrupt or enters into a scheme of arrangement or compromise or composition with creditors' then the insurance cover provided under policy in respect of such Business shall automatically and forthwith cease.
- 11.2** In the event of the Indemnity Period having begun to run in respect of any claim relating to such Business or part thereof, the Indemnity Period shall thereupon be at an end, unless its continuance be admitted by memorandum signed for or on behalf of Us.