

Section 3J

Public and Product Liability - Contractors

(Operative only if so stated in the schedule)

Definitions

Liable/Liability

Liable and Liability mean legally liable and liability at law respectively.

The business

The business stated in the specification to this section and includes:

- a) the provision and management of canteen, sports, social, educational and welfare organisations for the benefit of the Insured's **employees** and first aid, fire, security and ambulance services
- b) private work undertaken by an **employee**, with the consent of the Insured, for any director, partner or senior official of the Insured
- c) the participation by the Insured in trade shows or exhibitions.

Geographical limits

- a) anywhere in The European Union, the Isle of Man or the Channel Islands
- b) anywhere in the world in respect of
 - i) **products** supplied from within the territories mentioned in (a) above
 - ii) commercial visits by the Insured or a director or **employee** of the Insured normally resident in Great Britain, Northern Ireland, the Isle of Man or the Channel Islands, not involving the supervision or performance of manual work.

Employee

Any of the persons described below, while working for the Insured in connection with the **business**:

- a) a person under a contract of service or apprenticeship with the Insured
- b) a labour master, a labour-only sub-contractor or a person supplied by either of them
- c) a person working for the Insured under a recognised work experience training scheme or youth training scheme
- d) a self-employed person
- e) a person borrowed by or hired to the Insured or deemed by contract conditions to be an employee of the Insured.

Products

Goods (including their containers or labels) manufactured, sold, supplied, repaired, altered, treated, handled, stored or transported by or on behalf of the Insured in the course of the **business** where the work undertaken by or on behalf of the Insured does not involve installation, construction, erection or alteration of such goods at the site of the works.

The works

The works means all permanent and/or temporary works in the course of execution in the performance of any contract or speculative development undertaken by the Insured in the course, of the **business**, including

- a) all materials intended for incorporation into the works
- b) all temporary works and temporary buildings for use in connection with the works
- c) all plant, tools and equipment for use in connection with the works.

Injury

Bodily injury, disease or illness.

Damage

Loss, destruction or damage.

Property

Material property.

Costs

- a) all legal costs recoverable from the Insured by any claimant which have been incurred before **NFU Mutual** has paid or offered to pay either the full amount of the claim or the indemnity limit applicable
- b) the legal costs of defending, in any court of summary jurisdiction, any proceedings brought against the Insured or an **employee** in respect of a breach, or alleged breach, of any statutory duty, resulting in **injury** or **damage to property** that may be the subject of a claim under this section, provided that the payment of such costs in respect of the defence of any **employee** will be made only if so requested by the Insured
- c) all other costs and expenses incurred by the Insured with **NFU Mutual's** written consent

Pollution or Contamination

- a) all pollution or contamination of buildings or other structures or of water or land or the atmosphere; and
- b) all **damage** or **injury** directly or indirectly caused by such pollution or contamination.
- c) all other costs and expenses incurred by the Insured with **NFU Mutual's** written consent.

Cover

NFU Mutual will indemnify the Insured against all sums which the Insured is liable to pay as compensation in respect of accidental

- a) **injury** to any person
- b) **damage to property**
- c) trespass, nuisance, or obstruction of physical property or persons in respect of any right of way or right to air, light, water or other easement.

- d) wrongful arrest, detention, or false imprisonment of any person.

happening in connection with **the business**, within the **geographical limits**, during the **period of insurance**.

Provided that the **liability of NFU Mutual** under this section (including any cover extensions) for all claims

- a) arising out of one occurrence, or number of occurrences arising directly or indirectly from one source or original cause, and
- b) relating to **products**, in respect of all occurrences arising during any one **period of insurance**,

will not exceed the indemnity limit stated in the specification to this section.

In addition, **NFU Mutual** will pay **costs** in respect of any claim to which the indemnity expressed in this section applies.

Exclusions

NFU Mutual will not indemnify the Insured in respect of:

1. any **liability** arising out of the ownership, possession or use by or on behalf of the Insured of

- a) any mechanically propelled vehicle (including any trailer while attached)

provided that, if there is no indemnity afforded by any other insurance, and providing the vehicle is not being used in circumstances requiring the existence of a certificate of insurance or security under any legislation governing the use or driving of any mechanically propelled vehicle, this exclusion will not apply to

- i) any vehicle not licensed for road use,
- ii) loading or unloading of any vehicle,
- iii) **liability** arising solely from the use as a tool of trade,
- iv) the movement of any vehicle which is interfering with the performance of the business
- b) any railway or craft designed to travel in, through or on water (other than hand propelled boats), air or space
2. **liability for injury** to any **employee**
3. **liability for damage to property**
- a) owned by the Insured
- b) held in trust by or in the custody or control of the Insured or which is leased, let, rented or hired to the Insured, other than
- i) **employees'** personal effects (including motor vehicles) and personal effects of persons visiting the Insured's premises
- ii) premises (including contents) at which the Insured is undertaking a contract for the performance of work in connection with **the business**
- iii) premises leased, let, rented or hired to the Insured providing that **liability** for such **damage** is not assumed under any agreement unless liability would have attached in the absence of such agreement.
- c) which constitutes or forms any part of **the works**
- d) caused by those risks against which the Insured is

required to effect insurance of such property by reason of Clause 21.2.1 of the Standard Form of Building Contract issued by the Joint Contracts Tribunal or any other contract condition incorporating a similar requirement

4. any expenditure incurred in recalling, making good, repairing, reinstating or replacing or making any refund on the price paid for any **products** or anything installed, constructed, erected, repaired, altered or treated by or on behalf of the insured

5. any **liability** consequent upon the giving of advice or the design, plan or specification of work for a fee

6. additional damages resulting from multiplication of compensatory damages and/or punitive damages and/or exemplary damages and/ or aggravated damages.

7. any action for damages which is brought against the Insured in the courts of a country outside Great Britain, Northern Ireland, the Isle of Man or the Channel Islands in which the Insured has a business established or is represented by any **employee** domiciled in the territory, or by a company, firm or individual holding the Insured's power of attorney

8. any **liability** assumed by the Insured under agreement except that in so far as such **liability** is not otherwise excluded, this exclusion does not apply to

- a) **liability** which would have attached in the absence of agreement
- b) **liability** assumed under the terms of any contract for
- i) the construction, alteration, repair or renovation of **property** or the installation of anything in such **property**,
- ii) **injury** or **damage to property** other than the **works** arising in connection with the hire of plant for use in connection with any contract described in (i) above

provided that

- a) the conduct and control of claims is vested solely in **NFU Mutual** and
- b) **NFU Mutual** will not be **liable** for any amount payable by way of liquidated damages or fines or under any penalty clause

9. the amount shown in the specification as the excess, being the amount for which the Insured will be responsible in respect of each and every occurrence of **damage to property**

10. any liability in respect of **pollution or contamination** other than **pollution or contamination** caused by a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific time and place during the **period of insurance**.

All **pollution or contamination** which arises out of one incident shall be deemed to have occurred at the time such incident takes place.

The liability of **NFU Mutual** in respect of all compensation payable in respect of all **pollution or contamination** which is deemed to have occurred during the **period of insurance** shall not exceed £5,000,000 in the aggregate.

Cover Extensions

1. Compensation for Court attendance

In the event of the Insured or any director or **employee** attending Court as a witness at the request of **NFU Mutual** in connection with any claim to which the cover under this section applies, **NFU Mutual** will pay the undernoted daily rates for each day on which attendance is required.

- a) the Insured or any director of the Insured £150
- b) any **employee** £150

2. Cross liabilities

In the event of there being more than one Insured named in the schedule, this section will apply separately to each of the Insured in the same manner and to the same extent as if separate sections had been issued to each, provided that nothing in this extension will increase the total **liability** of **NFU Mutual** beyond any indemnity limit applicable.

3. Defective Premises Act

NFU Mutual will indemnify the Insured against all sums which the Insured is **liable** to pay, by virtue of Section 3 of the Defective Premises Act 1972 or Article 5 of the Defective Premises (Northern Ireland) Order 1975, and arising

- a) during the **period of insurance**, or
- b) within a period of seven years from expiry or cancellation of this section

in connection with any premises disposed of by the Insured and not remaining in the ownership of the Insured and which, prior to such disposal, were occupied by the Insured in connection with **the business**.

Provided that **NFU Mutual** will not provide an indemnity

- a) for any **damage** to or the cost of rectifying any defect in the said premises
- b) if the Insured is entitled to indemnity from any other source.

4. Indemnity to other persons

NFU Mutual will

- a) in the event of the death of the Insured, indemnify the Insured's legal personal representatives
- b) on the request of the Insured, indemnify
 - i) any principal for whom the Insured, in the course of **the business**, is, or has been, carrying out a contract for the performance of work, but only in relation to **liability** arising in connection with that work
 - ii) any director or **employee** of the Insured in respect of **liability** arising in connection with **the business**
 - iii) any officer, committee member or other member of the Insured's canteen, sports, social, educational or welfare organisations, or first aid, fire, security or ambulance services, in his or her respective capacity
 - iv) the owner of plant hired in by the Insured but only to the extent required by the terms of the contract

- v) in the event of the death of any person listed above, the legal personal representatives of the deceased person.

Provided that

- a) the Insured would have been entitled to indemnity if the claim had been made against the Insured
- b) the total **liability** of **NFU Mutual** will not exceed the amount which would have been payable if the claim had been made against the Insured
- c) every person, company or firm to whom or to which indemnity is afforded will, as though the Insured, be subject to the terms, conditions and limitations of the section in so far as they apply
- d) claims control will be vested solely in **NFU Mutual**.

5. Motor contingent liability

Notwithstanding exclusion 1 a), **NFU Mutual** will indemnify the Insured against all sums which the Insured is **liable** to pay as compensation for **injury** to persons or **damage** to **property** in respect of the use of any motor vehicle (not the property of or provided by or the responsibility of the Insured) being used in Great Britain, Northern Ireland, Isle of Man or the Channel Islands in connection with the business.

Provided that **NFU Mutual** will not indemnify the Insured in respect of

- a) **damage** to the motor vehicle or its contents
- b) **liability** arising
 - i) while the motor vehicle is being driven by the Insured, or by any person who, to the knowledge of the Insured, does not hold a licence for such a vehicle or is disqualified from holding or obtaining such a licence
 - ii) while the vehicle is involved in any form of motor sport
 - iii) where the Insured is entitled to indemnity under any other insurance.
- c) injury to any person arising out of or in course of their employment by any person insured under this policy except so far as is necessary to meet the requirements of any compulsory Road Traffic Act legislation.

6. Overseas Personal Liability

NFU Mutual will indemnify the Insured and at the Insured's request any **employee** or director, against **liability** incurred in a personal capacity while temporarily outside Great Britain, Northern Ireland, the Isle of Man or the Channel Islands in connection with **the business**.

Provided that this indemnity will not apply

- a) to **liability** arising out of the ownership or occupation of land or buildings
- b) to **liability** arising out of the ownership, possession or use of any motor vehicle, aircraft or watercraft
- c) where indemnity is provided by any other insurance.

Special Clause 1 - Employers Contractual Indemnity (Clause 6.5.1.)

(Operative only if endorsement B06A applies to this Section).

Definitions

For the purposes of this Special Clause only, the following definitions apply

1. Insured means
 - a) the Insured specified in the schedule who is referred to as the contractor in this Special Clause
 - b) the employer, being the party specified as such in the contract which the contractor is undertaking in connection with **the business**.
2. Contract means any contract undertaken by the contractor which requires the contractor to effect insurance under Clause 6.5.1 of the Standard Building Contract With Quantities issued by the Joint Contracts Tribunal or any contract containing a similar provision.

Cover

Where the contractor has entered into any contract requiring such an indemnity, **NFU Mutual** will indemnify the employer in respect of any expense, **liability**, loss, claim or proceeding which the employer may incur or sustain by reason of **damage** to any **property** other than **the works** happening during the **period of insurance**, caused by collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of **the works** by the contractor.

The total **liability** of **NFU Mutual** for all claims in respect of any one contract will not exceed the limit of indemnity

shown as applying to this Special Clause by endorsement B06A, except that **NFU Mutual** will in addition pay **costs** in respect of any claim to which the indemnity expressed in this Special Clause applies.

Exclusions

NFU Mutual will not be liable for **damage**:

1. caused by the negligence, omission or default of the contractor or the servants or agents of the contractor, or of any sub-contractor or the servants or agents of the sub-contractor
2. attributable to errors or omissions in the designing of the works
3. which could reasonably have been seen to have been inevitable, having regard to the nature of the work to be executed or the manner of its execution
4. which is at the sole risk of the employer under the terms and conditions of the contract
5. where **liability** for such **damage** arises under any agreement which imposes on the employer a **liability** which would not have attached in the absence of such agreement
6. the cost of which is recoverable under any other policy or contract of indemnity effected for the benefit of the contractor or employer.