

## **KEY** trade

# **Commercial Legal Expenses Insurance**

(Version 15 – 5<sup>th</sup> January 2004)

This insurance is a contract between **you** and Magnus Insurance Company Limited, the **insurers**. This insurance is only in force if a current **certificate of insurance** and policy schedule has been issued by Motorist Services Limited (**MSL**). Please read both very carefully and keep them together. If the certificate is incorrect in any way, please tell **MSL** immediately.

Subject to the terms, conditions, and exclusions of this insurance, the **insurers** will indemnify **you** up to a limit of £50,000 any one **claim** against **legal expenses** which may be incurred by **you** during any **period of insurance** for which **MSL** have accepted **your** premium.

The proposal form and declaration **you** have signed forms the basis of this insurance. **You** must therefore ensure that all the information **you** have given **MSL** is accurate and that **you** have not withheld any material facts. Also, **you** are required to tell **MSL** as soon as possible if there are any changes which will materially affect this insurance. Failure to do so may invalidate this insurance.

This insurance has been effected with and signed on behalf of Magnus Insurance Company Limited.

**D. Garner,**  
**Executive Chairman, Motorist Services Limited.**

## DEFINITIONS

Each of the words or phrases listed below will have the same meaning wherever they appear in **bold** in this insurance.

### **Appointed representative**

A solicitor, accountant or other suitably qualified person appointed, in accordance with the provisions of Condition 5, to act for an **insured person**.

### **Certificate of insurance**

The document attached to this insurance which contains details of the **policyholder** and the **period of insurance**.

### **Claim**

A request for payment of **legal expenses** resulting from one or more events or circumstances arising in the **territorial limits** at the same time or from the same cause.

### **Date of occurrence**

#### **For civil cases (except under Part 5 - Tax, PAYE and VAT Protection)**

The date of the incident which may lead to a **claim**. If there is more than one incident arising at the same time or from the same cause, then the **date of occurrence** is the date of the first of these incidents.

#### **For criminal cases**

When the **insured person** began or is alleged to have begun to break the criminal law in question.

#### **For tax and PAYE investigations and Value Added Tax disputes**

##### ***In-depth investigations***

when the Inland Revenue first issues the form IR72 or the Inland Revenue's Code of Practice 2.

##### ***Full enquiries***

when the Inland Revenue first notifies in writing the intention to make enquiries.

##### ***Employer's compliance and Value Added Tax disputes***

when the relevant authority sends an assessment or written decision to the **policyholder**.

#### **For licence appeals**

when **you** first become aware of the proposal by the relevant licensing, regulatory or other authority to suspend, revoke, alter the terms of, refuse to renew or cancel **your** licence.

## **Insured person**

The **policyholder** and the directors, partners, managers and all other employees of **your** business.

## **Insurers/their/them/they**

Magnus Insurance Company Limited, Ashfield House, Ashfield Road, Cheadle, Cheshire, SK8 1BB.

## **Legal expenses**

Legal and accountants fees, costs, disbursements and other professional charges in connection with **legal proceedings** which **MSL** has agreed to fund

- i) reasonably and necessarily incurred by the **appointed representative**
- ii) incurred by other parties in civil cases if an **insured person** has been ordered to pay them or pays them with the prior agreement of **MSL**.

## **Legal proceedings**

The pursuit or defence of legal disputes, tax investigations, tribunal proceedings made by or brought against an **insured person**, including appealing or defending an appeal against judgement and excluding correspondence by way of pre action protocol or any mediation or any other alternative dispute procedure, within the jurisdiction of a court or other body in the **territorial limits**.

## **Employee**

A person working under a contract of service with the **policyholder** excluding any person working under a contract of apprenticeship or providing services under a contract for services.

## **MSL/we/us/our**

Motorist Services Limited, Ashfield House, Ashfield Road, Cheadle, Cheshire, SK8 1BB which manages this insurance on behalf of the **insurers**.

## **Period of insurance**

The period stated in the **certificate of insurance**, for which **you** have paid or agreed to pay and **MSL** have agreed to accept a premium.

## **Territorial limits**

England, Wales and Scotland.

## **You/your/policyholder**

The person(s) or business named in the **certificate of insurance** as the policyholder.

## INTERPRETATION

- 1 The headings do not form part of this insurance and shall not be taken into account in its construction or interpretation.
2. All references to a statutory provision shall be construed as including references to:
  - i) any statutory modification, consolidation or re-enactment of that provision
  - ii) all statutory instruments or orders made pursuant to it;
  - iii) any statutory provisions of which it is a modification, consolidation or re-enactment.

## CONDITIONS

### 1 Your responsibilities

- i) **You** must have completed a declaration, in the form provided by **us**, prior to the current **period of insurance**.
- ii) **You** must notify **MSL** as soon as is reasonably possible of any change in the information given to **us** which may affect this insurance or of any circumstances which may give rise to a **claim**. Failure to do so may invalidate this insurance or may result in cover not operating fully. **We** reserve the right to alter the terms, charge an additional premium or cancel this insurance should **we** become aware of any fact which may affect the cover provided by this insurance.
- iii) All **insured persons** must
  - a) observe the terms and conditions and exclusions of this insurance
  - b) take all reasonable steps to try to prevent any incident that may give rise to a **claim**
  - c) take all reasonable steps to minimise the amount payable under this insurance
  - d) take all reasonable steps to resolve any dispute that may otherwise give rise to a **claim**, by way of negotiation, mediation or any other available alternative dispute resolution procedure.

### 2 Fraudulent claims or statements

If any **claim** or statement made is in any respect overstated, false or fraudulent, **MSL** will have the right to refuse to pay a **claim** or to avoid this insurance in its entirety.

### 3 Reporting a claim

**MSL** should, as soon as possible, and no later than 180 days after the **date of occurrence** be notified in writing of any potential **claim** including any written or other evidence. **You** will be required to provide the names of any possible witnesses and details, produced at **your** own expense, of any costs incurred prior to **MSL** accepting the **claim**, including any action already taken.

#### 4 Acceptance of a claim and right to refuse indemnity

The **insurers** or **MSL** on **their** behalf are entitled to refuse to accept a **claim**, or to continue to indemnify an **insured person** where

- i) in **our** or **their** opinion,
  - a) the **policyholder** and or any other **insured person** has not disclosed any material information to **MSL** or to the **insurers**
  - b) the **policyholder** and or the **insured person** has failed to provide **MSL** or the **appointed representative** with any relevant information and or supporting evidence
- ii) in the opinion of the **appointed representative**, there do not or no longer exist reasonable grounds for believing that the **legal proceedings** have a reasonable prospect of success, and where applicable, that there are reasonable prospects of recovery from the other party
- iii) in **our** or **their** opinion, after having taken advice from **our** or **their** own advisors (who are not the **appointed representative**) or counsel, there do not or no longer exist reasonable grounds for believing that the **legal proceedings** have a reasonable prospect of success, and where applicable, that there are reasonable prospects of recovery from the other party

**We** may, at any time, require **you** to obtain at **your** own expense an opinion from counsel as to the merits of **legal proceedings**. Payment will be made under this insurance, subject to the limit applicable to the **claim**, to include the cost of obtaining the opinion only if counsel's opinion clearly demonstrates that there are reasonable grounds for pursuit or defence of the **legal proceedings**.

If the **insurers** or **MSL** on **their** behalf refuse to accept a **claim** or to continue to indemnify an **insured person**, **they** or **we** will give the reason(s) in writing to the **policyholder** and the **insured person**.

In all cases, the onus shall be on **you** to demonstrate to the **appointed representative**, or to **our** own advisors or counsel (as appropriate) that such reasonable grounds as referred to above exist. **Your** cost of investigation and other expenses relating to **your** seeking to prove that such reasonable grounds do exist are not covered under this insurance.

#### 5 Legal Representation

- i) Before **MSL** accept a **claim**, **we** will tell **you** the name and address of **our** nominated **appointed representative**. That person will not become the **appointed representative** until **MSL** confirm in writing that **they** have accepted the **claim**.
- ii) If **MSL** agree to the commencement of **legal proceedings** then an **insured person** has the right to nominate an **appointed representative**. This must be done by sending **MSL** the name and address prior to the commencement of any **legal proceedings**.
- iii) When an **appointed representative** is appointed **MSL** will send them a copy of their terms of appointment which must be accepted by the **appointed representative** before commencing any work for **you**.

- iv) If **MSL** and an **insured person** do not agree about the choice of the **appointed representative**, both parties may agree in writing to choose a second suitably qualified person to decide the matter.
- v) The **insured person** shall always have regard to Condition 1 iii) c) both in relation to the nomination of an **appointed representative** and in relation to the conduct of the **legal proceedings**.
- vi) This Condition 5 also applies where a conflict of interest arises during **legal proceedings** or arises from the handling of a **claim** and the appointment of a replacement **appointed representative** is required.

## 6 Control of the claim

- i) All information, evidence and documents relating to the **legal proceedings** must be provided, at the **insured person's** own expense, to the **appointed representative** when requested and the **insured person** must meet with the **appointed representative** when requested.
- ii) The **insured person** must keep the **appointed representative** regularly informed of all developments and co-operate fully in all respects.
- iii) **MSL** must have direct access to the **appointed representative** at all times.
- iv) The **insured person** must give the **appointed representative** any instructions asked for by **MSL** including for the supply of any documents or other information required by **MSL**.
- v) **MSL** is entitled to require the **policyholder** and or the **insured person** to immediately produce to **us** all information, evidence, legal advice and documents relating to the **legal proceedings** in the possession or custody of the **policyholder**, the **insured person** or the **appointed representative**.
- vi) The **policyholder** or the **insured person**, directly or via the **appointed representative**, must inform **MSL** immediately in writing if anyone makes an offer to settle the **legal proceedings**.

## 7 Payment under this insurance

- i) If any offer to settle the **legal proceedings** which equals or exceeds the total damages (including any interest) eventually recovered by the **insured person** in the **legal proceedings** is not accepted by the **insured person**, the **insurers** will have no liability in respect of **legal expenses** incurred after such refusal *unless* **MSL** have given its written agreement to the continuation of the **legal proceedings**.
- ii) When requested by **MSL** the **insured person** must instruct the **appointed representative** to have the **legal expenses** made subject to detailed assessment or audit by the relevant court or tribunal.
- iii) All accounts, orders or awards of a court or tribunal for **legal expenses** to be paid under this insurance must be submitted to **MSL** promptly.
- iv) Following receipt of the relevant accounts, orders or awards of a court or tribunal for **legal expenses** to be paid under this insurance, payment will be made direct to the **appointed representative**, to the other party's legal representative or to such other party as is appropriate according to the terms of any order or award of the court or tribunal.

- v) If the **insured person** withdraws from the **legal proceedings** without the agreement of **MSL**, cover will cease immediately and **MSL** will be entitled to be reimbursed for any **legal expenses** previously agreed or paid to or on behalf of the **insured person** in respect of such **legal proceedings**.

## 8 Recoveries

The **insurers** or **MSL** on **their** behalf reserve the right to take proceedings in **your** name, at **their** own expense and for **their** own benefit, to recover any payment **MSL** have made under this insurance to anyone else. If **you** or an **insured person** recovers any **legal expenses** previously paid under this insurance from any other party, such **legal expenses** must be immediately repaid to **us**.

## 9 Arbitration

Any dispute or difference of any kind between the **insurers**, **MSL** and an **insured person** will be referred to arbitration by a single arbitrator who will be either a barrister or solicitor. If the parties are unable to agree on the appointment of an arbitrator, all parties agree to accept an arbitrator nominated by the President of a relevant national Law Society. The arbitrator's decision will be final and binding on all parties and the unsuccessful party shall be responsible for any costs incurred by the successful party in the arbitration proceedings as well as their own costs.

## 10 Assignment

This insurance is between and binding upon the **insurers** and the **policyholder** and their respective successors in title, but this insurance may not otherwise be assigned by the **policyholder** without the **insurers** prior written consent.

## 11 Waiver

If the **insurers**, **MSL** or any **insured person** fail to exercise or enforce any rights conferred on them by this insurance, the failure to do so will not be deemed to be a waiver, nor will it bar the exercise or enforcement of, such rights at any subsequent time.

## 12 Governing law

This insurance is governed by English law.

## 13 Third party rights

Unless expressly stated in this insurance, nothing in this insurance will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999. This Condition does not affect any right or remedy, of any person, which exists or is available otherwise than pursuant to that Act.

## EXCLUSIONS

This insurance does not cover any

### 1 War Risks

**legal expenses** arising from any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, confiscation, requisition or damage to property by or under the authority of any government, public or local authority

### 2 Radioactive Contamination and Pressure Waves

**legal expenses** arising from any expense, consequential loss, legal liability or any loss or damage, to property directly or indirectly caused by, contributed to, by or arising from any of the following, or from any similar reaction or event

- i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly
- iii) pressure waves caused by aircraft or any other airborne devices travelling at sonic or supersonic speeds

### 3 Road traffic accidents

**legal expenses** arising from a road traffic accident

### 4 Date change

**legal expenses** arising directly or indirectly from the failure of computer, data processing and any other electronic equipment or component, including microchips, integrated circuits and similar devices and or any software to recognise, interpret or process any date as its true calendar date

### 5 Libel or slander

dispute relating to written or verbal remarks

### 6 Deliberate acts

cause of action intentionally brought about by an **insured person**

### 7 Dishonesty, violence or criminal acts

**claim for legal expenses** relating to an **insured person's**:-

- i) actual or alleged dishonesty; or
- ii) actual or alleged violent behaviour

## 8 Legal expenses not agreed

**legal expenses** incurred

- i) before **MSL** agrees to pay them on the **insurers** behalf
- ii) where the **policyholder** and or **insured person**
  - a) pursues or defends a case without the agreement of **MSL** or in a different manner to or against the advice of the **appointed representative**
  - b) fails to give proper instructions in due time to **MSL**, to the **appointed representative** or to counsel or other persons instructed by the **appointed representative**
- iii) where the **appointed representative** refuses to act on behalf of the **insured person** for any reason other than a conflict of interest when Condition 5 vi) will apply
- iv) in respect of witnesses, experts or agents interviewed, engaged or called as witness without the prior written approval of **MSL**
- v) prior to issue of formal **legal proceedings** which does not include correspondence by way of pre action protocol or any mediation or other alternative dispute resolution procedure
- vi) adverse costs awards made against the **insured person**, pursuant to section 22, Employment act 2002 including, without limitation, prior to the expiry of any applicable ACAS discussion period

## 9 Delay and prejudicial acts

**claim** where an **insured person**, in the reasonable opinion of the **insurers**, acts in a manner which is prejudicial to the case, including being responsible for any unreasonable delay, withdrawing instructions from the **appointed representative** or withdrawing from the case

## 10 Other insurances

**legal expenses** which can be recovered by an **insured person** under any other insurance or which would have been covered if this insurance did not exist *except* for any amount in excess of that which would have been payable under such other insurance

## 11 Fines and penalties

finances, damages or other penalties which the **insured person** is ordered to pay by a court or other authority

## 12 Judicial review

**legal expenses** relating to any judicial review whether within the **territorial limits** or not

## 13 Bankruptcy, liquidation or receivership

**claim** for **legal expenses** when the **insured person** is bankrupt, in liquidation, has made an arrangement with his or her creditors, has entered into a deed of

arrangement or part or all of the **insured person's** affairs or property are in the care or control of a receiver or an administrator

**14 Disagreement**

dispute with the **insurers** or **MSL**

**15 Intellectual property**

any **claim** relating to **legal proceedings** involving copyright(s), trademark(s), merchandise mark(s), unregistered design(s) or other intellectual property rights or secrecy and confidentiality agreements

## THE COVER

The **insurers** will indemnify **you** and, where requested by **you**, any other **insured person** against **legal expenses** up to £50,000 any one **claim** for a maximum of two **claims** in any one **period of insurance** falling within the scope of any of Parts One to Nine below and which arise from the conduct of **your** business based within the **territorial limits** and from **legal proceedings** made by or brought against the **insured person**, including appealing or defending an appeal against judgement under the following parts *provided that*

- i. the **date of occurrence** is always within the **period of insurance**
- ii. in respect of each and every **claim** the **insured person** is responsible for paying the applicable first amount (plus VAT) of such **claim** as stated in the **certificate of insurance**
- iii. no more than two **claims** any one **period of insurance**, not taking into account any **claim(s)** rejected by **MSL**.

### Part One Employment disputes

**Your** defence in a dispute with an

- a) ex-employee dismissed by **you**
- b) employee or ex-employee arising from or relating to a **contract of employment** with **you**
- c) employee, ex-employee or prospective employee under the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986, the Disability Discrimination Act 1995

*excluding any*

- i) dispute where the cause of action arises within the first 180 days of cover
- ii) dispute with an employee who was subject to
  - a) formal or informal written or verbal warnings that were current at the inception of this **insurance**
  - b) redundancy, alleged redundancy or unfair selection for redundancy arising within the 180 days immediately preceding the inception of this insurance
- iii) defence of an action for damages in respect of personal injury or loss of or damage to property.

### Part Two Legal defence – policyholder and employee

- a) The defence of a
  - i) prosecution of an **insured person** in a court of criminal jurisdiction in respect of any act or omission or alleged act or omission where counsel's opinion obtained pursuant to Condition 4 clearly demonstrates that there are reasonable grounds for defence of the prosecution.
  - ii) civil action being taken against **you** for wrongful arrest in connection with an accusation of theft alleged to have been carried out during the **period of insurance**
  - iii) civil action being taken against an **insured person** *but not* the **policyholder**

- a) under the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986, the Disability Discrimination Act 1995 arising from that person's work as an employee
  - b) as a trustee of a pension fund set up for the benefit of **your** employees
- b)** The **policyholder** or an **insured person** being served with an improvement or prohibition notice, a suspension notice or an order of enforcement under the Health & Safety at Work etc, Act 1974, the Food Safety Act 1990 and the Consumer Protection Act 1987

*provided that* where proceedings under the Health & Safety at Work etc, Act 1974 are concerned, the **territorial limits** will be any place where the Act applies

*excluding any legal proceedings* which lead to an **insured person** being prosecuted for infringement of road traffic laws or regulations in connection with the ownership, driving or use of a motor vehicle.

### **Part Three Data Protection**

Under the Data Protection Act 1984 and the Data Protection Act 1998 or any amending or superseding legislation

- a) The defence of a civil action for compensation under Section 22 or 23 of the 1984 Act or section 13 of the 1998 Act (as the case may be). Subject to the limit any one **claim**, any compensation awarded against an **insured person** will also be paid under this insurance.
- b) An **insured person** being served with an enforcement, de-registration or transfer prohibition notice or information notice or special information notice.
- c) **Your** appeal against the refusal of the Data Protection Registrar or Data Protection Commissioner (as appropriate) to register **your** application for registration.

There is no cover for **claims** arising under Sections 22 and 23 of the 1984 Act or section 13 of the 1998 Act *unless you* have registered with the Data Protection Register or Data Protection Commissioner (as appropriate).

### **Part Four Contract disputes**

A dispute with a customer or supplier in respect of a contract for the sale, hire, supply or the purchase of goods or services

*provided that*

- i) the **policyholder** has entered into the agreement or alleged agreement during the **period of insurance**
- ii) the total amount in dispute, including any instalment payments due and payable at the time of making the **claim**, exceeds the maximum limit as set out from time to time in the small claims procedure in the County Court for England and Wales or the Sheriffs Court of Scotland

*excluding any claim* relating to

- i) a lease, licence or tenancy of land or buildings
- ii) a dispute which relates to any compensation or amount payable under a contract of insurance
- iii) a contract of employment
- iv) arbitration arising out of an arbitration clause in any contract
- v) computer goods, systems or services
- vi) a breach or alleged breach of professional duty by an **insured person**
- vii) the recovery of money and interest due from another party *other than* disputes where the other party intimates that a defence exists.

## **Part Five Tax, PAYE and VAT Protection**

### **a) Inland Revenue investigations or full enquiries**

- i) an **in-depth investigation** by the Inland Revenue into the **policyholder's** business accounts and records
- ii) a **full enquiry** in the form of an extensive examination by the Inland Revenue which considers all aspects of the **policyholder's** tax affairs *excluding* those enquiries which are limited to one or more specific aspects of the self-assessment tax return

### **b) Policyholder's compliance with Pay As You Earn Regulations**

an investigation into and or a dispute following an investigation and audit by the Inland Revenue of **your** compliance with Pay As You Earn Regulations

### **c) VAT disputes**

an appeal to a VAT tribunal against an assessment issued by HM Customs and Excise for Value Added Tax due

*provided that*

- i) the **policyholder** has taken reasonable care to ensure that the business accounts and records have been properly maintained
- ii) all returns have been and are complete and correct
- iii) all such returns are submitted within the statutory time limits allowed

*excluding any claim* relating to

- i) the **policyholder's** failure to register for Value Added Tax
- ii) investigations or enquiries by
  - a) the Inland Revenue Special Investigation Section or Special Compliance Office
  - b) HM Customs and Excise into alleged dishonesty or alleged criminal offences.
- iii) any investigation deliberately or intentionally solicited by the **policyholder**.
- iv) Accountancy fees where the investigation has concluded that the **policyholder** and/or his accountant has submitted inaccurate or misleading information, returns, accounts or computations to the Inland Revenue or HM Customs and Excise.

## Part Six Property protection

Any civil action relating to material property, owned by the **policyholder** or for which the **policyholder** is responsible, arising out of

- a) an alleged or actual negligent act or omission of, or
- b) any nuisance, trespass or criminal damage by

a third party which causes or could cause physical damage to such material property or pecuniary loss to the **policyholder**.

## Part Seven Licence protection

An appeal or representation to the relevant statutory or regulatory authority, court, tribunal or other mandatory body following an act, or omission or alleged act or omission which leads to the suspending, revoking, altering the terms of or refusing to renew any of **your** licence(s)

*excluding any claim* relating to

- i) an original application or application for renewal
- ii) any licence
  - a) which has not been declared to **MSL**
  - b) in respect of which an appeal or representation was made in the twelve months immediately preceding the inception of this insurance.

## Part Eight Bodily injury

Death of or bodily injury to an **insured person**

*excluding any claim* relating to

- i) any illness, naturally occurring condition or degenerative process which develops gradually and is not caused by a specific or sudden accident
- ii) the defence of an **insured person** other than the defence of a counter-claim or an appeal against judgement.

## Part Nine Attendance expenses

The actual loss of the salary or wages of an **insured person** for the time off work to attend

- a) any court or tribunal hearing at the request of the **appointed representative**
- b) any court hearing as a defendant of an admitted **claim** under this insurance *provided that* such salary or wages are not recoverable from the relevant court or tribunal.

## MAKING A CLAIM

**Claims** should be made in writing, as soon as is reasonably practical, to Motorist Services Limited (**MSL**) at the following address

Motorist Services Limited,  
Ashfield House,  
Ashfield Road, Cheadle, Cheshire, SK8 1BB  
Telephone: 0870 7 55 44 88 Fax: 0870 7 55 44 85

Once details of the **claim** have been sent to **MSL** and it has been accepted, **MSL** will supply, the name(s) of one or more solicitors, accountants or other suitably qualified and experienced persons from their panel to act on **your** behalf. Please see Condition 5 for more details on legal representation.

## COMPLAINTS PROCEDURE

**Our** aim is to provide a first class standard of service at all times. If **you** think **we** have let **you** down, please contact **us** or **your** usual insurance advisor who will try to help **you**. Quoting **your** certificate number will assist **us** in dealing with the problem more quickly.

If **you** are not satisfied with the outcome, please write to The Claims Manager, Motorist Services Limited, Ashfield House, Ashfield Road, Cheadle, Cheshire SK8 1BB.

If, after taking this action **you** are still unhappy, **you** may write to The Managing Director, Magnus Insurance Company Limited, Ashfield House, Ashfield Road, Cheadle, Cheshire SK8 1BB.

The use of these facilities does not affect **your** right to take legal action.