

# Product Liability Insurance Terms and Conditions 1/2020

Effective as of 1 July 2020

These product liability insurance terms and conditions form part of the product liability insurance contract entered into between the Estonian Branch of Compensa Vienna Insurance Group, ADB, the brand of which in Estonia is Seesam (hereinafter Seesam), and the policyholder.

## 1 PURPOSE OF INSURANCE

- 1.1 The purpose of the product liability insurance is to indemnify the damage incurred by the third party due to a defect of a product manufactured, sold or mediated by the insured person as well as the costs for legal assistance and expert assessment incurred by the insured person for combating the claims for indemnification of damage filed against the insured person in accordance with the procedure and within the scope provided by the insurance terms and conditions.
- 1.2 Product liability insurance is voluntary liability insurance.

## 2 DEFINITIONS

- 2.1 **Insurer** is the Estonian Branch of Compensa Vienna Insurance Group, ADB (hereinafter Seesam).
- 2.2 **Policyholder** is a person who has entered into an insurance contract with Seesam.
- 2.3 **Insured person** is the person insured for the risk arising from a defect of a product manufactured, sold or mediated by them. The insured person is the policyholder and/or the person specified in the policy.
- 2.4 **Third party** is the person to whom the insured person caused damage. Third party is not the policyholder, insured person or Seesam.
- 2.5 **Product, i.e. insured product**, is a movable specified in the policy, part of another movable or a movable that has become part of an immovable and has been manufactured, sold or mediated by the insured person and the risk arising from a defect of which is insured.
- 2.6 **A product is defective** if it is not safe to the extent that the third party is entitled to expect, including errors in the user manual or another document accompanying the product.

## 3 VALIDITY OF INSURANCE CONTRACT

- 3.1 The insurance contract is valid under the insurance terms and conditions during the insurance period and in the coverage territory provided by the insurance contract.
- 3.2 The rights and obligations arising from the insurance contract are determined according to the insurance period during which the third party incurred damage.
- 3.3 The coverage territory of the insurance contract is the European Union unless otherwise specified in the policy. Upon occurrence of an insured event, Seesam indemnifies damage if the third party incurred damage in the coverage territory of the insurance contract.

## 4 INSURED EVENT

- 4.1 An insured event is deemed occurred if all of the following terms and conditions exist:
- 4.1.1 the third party has incurred bodily injury or property damage during the insurance period,
  - 4.1.2 damage arises from a defect of a product manufactured, sold or mediated by the insured person,
  - 4.1.3 the insured person has a non-contractual or contractual obligation to indemnify the third party for damage within the scope provided by clause 4.2.
- 4.2 **Obligation to indemnify contractual damage**
- Seesam indemnifies claims for indemnification of contractual damage if they do not extend the liability of the insured person compared with that provided by legislation, do not restrict the rights of the insured person or do not otherwise differ from the manner and scope of indemnification of damage provided by legislation (e.g. agreements extending the scope of damage, extension of the limitation period of claims, changing the burden of proof).
- 4.3 **Serial damage**
- All damages arising from one and the same circumstance or event are deemed to constitute one insured event. The time of occurrence of the insured event is deemed the time the first damage is incurred.
- 4.4 **Reporting period**
- Seesam indemnifies only the damage and expenses for which the insured person requests indemnification from Seesam during the insurance period or within three years of the end of the insurance period when the third party incurred the damage.

## 5 COSTS FOR LEGAL ASSISTANCE AND EXPERT ASSESSMENT

- 5.1 Seesam indemnifies court and out-of-court costs for legal assistance and expert assessment necessary for combating the claims for indemnification of damage filed against the insured person.
- 5.2 Costs for legal assistance and expert assessment are indemnified if all of the following terms and conditions exist:
- 5.2.1 the insured person needs legal assistance and/or expert assessment for combating the claims for indemnification of damage arising from a defect of a product manufactured, sold or mediated by the insured person;
  - 5.2.2 none of the terms and conditions specified in the insurance contract exclude the performance obligation of Seesam;
  - 5.2.3 indemnification of the costs for legal assistance and expert assessment has been approved by Seesam in advance in a format that can be reproduced in writing.
- 5.3 Seesam indemnifies costs for legal assistance and expert assessment even if the claim filed against the insured person is later proven unfounded.
- 5.4 If it appears after the costs for legal assistance or expert assessment have been indemnified that a condition in the insurance contract applies which excludes the performance obligation of Seesam, Seesam will no longer be required to indemnify any further costs for legal assistance and expert assessment after Seesam has learned of the exclusion of its performance obligation.
- 5.5 If a court orders that the third party pay costs for legal assistance and expert assessment for the benefit of the insured person, the insured person is required to refund Seesam the portion of the costs for legal assistance and expert assessment that corresponds to the sum of the costs for legal assistance and expert assessment paid by Seesam.
- 5.6 Seesam agrees to indemnify the costs for legal assistance incurred by the insured person within two weeks as of the moment the insured person submitted proof of the amount of the costs for legal assistance to Seesam.

## 6 DAMAGE AND EXPENSES SUBJECT TO INDEMNIFICATION

- 6.1 Seesam indemnifies the bodily injury and property damage incurred by the third party due to a defect of a product manufactured, sold or mediated by the insured person.
- 6.2 **Bodily injury** is damage arising due to damage to health, bodily injury or death.
- 6.3 **Property damage** is damage arising due to impairment or destruction of a thing.

## 7 DAMAGE AND EXPENSES NOT SUBJECT TO INDEMNIFICATION

- 7.1 Seesam does not indemnify loss of profit (except for decrease in income due to bodily injury), pure financial loss (except for funeral expenses), non-proprietary damage and environmental damage incurred by the third party due to a defect of a product manufactured, sold or mediated by the insured person.
- 7.2 **Loss of profit** is loss of the gain a person would have been likely to receive if the circumstances on which compensation for damage is based had not occurred.
- 7.3 **Pure financial loss** is loss not directly related to bodily injury or property damage.
- 7.4 **Non-proprietary damage** is moral damage that involves primarily physical and emotional distress and suffering.
- 7.5 **Environmental damage** is the bodily injury or property damage caused by pollutants, including damage to the air, water or soil as well as damage to protected species and natural habitats and any other damage arising from deterioration of the environmental quality.
- 7.5.1 A pollutant is a contaminating substance or a substance causing damage in any other manner, such as smoke, steam, soot, acid, alkalis, chemicals or waste.
- 7.5.2 Protected species and natural habitats are the species and habitats provided by Directive 2004/35/EC of the European Parliament and of the Council.

## 8 EXCLUSIONS

Unless otherwise specified in the policy, Seesam does not indemnify damages or expenses:

- 8.1 if a claim filed by the third party for indemnification of damage is governed by the law or jurisdiction of a country located outside of the coverage territory of the insurance contract;
- 8.2 which the insured person has caused intentionally;
- 8.3 which have been caused by sabotaging a product or by other intentional damage to a product;
- 8.4 which are based on a circumstance or event of which the insured person was or had to be aware before entry into the insurance contract;
- 8.5 which were incurred by the insured person themselves;
- 8.6 which the insured person has caused to another insured person;
- 8.7 which have arisen before the insured person has lost possession of the product;
- 8.8 which have arisen to the product itself;
- 8.9 which arise from remaking, replacing or repairing a product;
- 8.10 which arise from recalling or removing a product from market (the damage related to recalling a product is to be insured by product recall insurance);
- 8.11 which arise due to failure to fulfil the product safety requirements provided by legislation;
- 8.12 which have been caused by using the product not for its designated purpose, incorrect or unskilled use thereof, including disregard of the manufacturer's instructions;
- 8.13 which arise from normal wear and tear of the product or failure to maintain the product;
- 8.14 which arise from the fact that the product lacks the promised effect or properties;
- 8.15 which consist of contractual penalty, default interest, interest or warranty claim;
- 8.16 which arise from a tax or sanction in public law (including a pecuniary punishment, fine, penalty payment);
- 8.17 which are subject to indemnification on the basis of compulsory liability insurance;
- 8.18 which are caused by an explosive, ammunition, pyrotechnics or firearm;
- 8.19 which are caused by a medical product, medicinal product, blood product or blood bank;
- 8.20 which are caused by a tobacco product or tobacco-related product;
- 8.21 which arise from a product manufactured, sold or mediated for a motor vehicle, aircraft, watercraft or space equipment;
- 8.22 which have arisen to aircraft or watercraft;
- 8.23 which are related to an epidemic or pandemic declared by a national or international organisation.

## 9 SUM INSURED, SUBLIMIT AND DEDUCTIBLE

- 9.1 **Sum insured** is the amount specified in the insurance policy which constitutes the maximum amount of payment of all insurance indemnities, incl. costs for legal assistance and expert assessment, payable in the insurance period.
- 9.2 **Sublimit** is the amount per insured event, the type of damage, costs for legal assistance and expert assessment or the insured activity or insured risk specified in the policy and constituting the maximum indemnity. The sublimits are included in the sum insured and do not exceed said sum insured.
- 9.3 The sum insured and the sublimit decrease equally by the insurance indemnity paid out during the insurance period.
- 9.4 **Deductible** is the amount of money specified in the policy or the value determined, which is to be borne by the insured person themselves in the case of each insured event.
- 9.5 A deductible is not applied to indemnification of costs for legal assistance and expert assessment.

## 10 OBLIGATIONS OF INSURED PERSON

- 10.1 The insured person must immediately notify Seesam of the occurrence of an insured event, a claim for indemnification of damage filed against the insured person or any other circumstances or events as a result of which a claim for indemnification of damage may be filed against the insured person.
- 10.2 The insured person agrees to provide Seesam with explanations and proof necessary for evaluating the circumstances of the occurrence of damage, the scope of the damage and the grounds for the emergence of the possible liability of the insured person.
- 10.3 If the insured person breaches the obligations specified in clauses 10.1 and 10.2 and the breach has an impact on the establishment of the circumstances of the insured event and the performance obligation of Seesam, Seesam will be released from its performance obligation in part or in full.

## 11 RIGHT OF CLAIM AND PAYMENT OF INSURANCE INDEMNITY

- 11.1 The person entitled to receive the insurance indemnity is the person related to whom the insured risk has been insured.
- 11.2 The insured person who is not a policyholder has the right to demand that Seesam pay the insurance indemnity to the insured person and claim all the rights related thereto if the policyholder has granted their consent thereto.
- 11.3 The third party has the right to demand that Seesam pay the insurance indemnity to the third party if the policyholder, in the case specified in clause 11.2 the insured person, and Seesam have agreed thereon.
- 11.4 Seesam will be released from the obligation to pay the insurance indemnity if the insured person indemnifies the third party for the damage or acknowledges the claim of the third party in a situation where the liability of the insured person or the scope thereof is not clear.

## 12 RIGHT OF RECOURSE OF SEESAM

- 12.1 A claim, incl. a claim for indemnification of damage, that the insured person has against another person transfers to Seesam in full to the extent of the insurance indemnity paid.
- 12.2 If the insured person waives their claim against the person referred to in clause 12.1, Seesam will be released from its performance obligation in so far as Seesam could have demanded that the foregoing persons indemnify the damage.
- 12.3 The insured person is required to provide Seesam with all the existing data and documents that allow Seesam to exercise the right of recourse.

### **13 CANCELLATION OF INSURANCE CONTRACT**

- 13.1 Either of the parties to the contract may cancel the insurance contract if Seesam has acknowledged its performance obligation in respect of the insured person after the occurrence of an insured event or refused performance after the insurance indemnity has fallen due.
- 13.2 The insurance contract may be cancelled within one month after acknowledgement of the performance obligation or refusal to pay the insurance indemnity.