

**QBE Insurance (Malaysia) Berhad** Reg. No. 161086-D  
(Licensed under the Financial Services Act 2013 and regulated by Bank Negara Malaysia)  
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# PRODUCTS LIABILITY POLICY (CLAIMS MADE BASIS OF INDEMNITY)

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**QBE INSURANCE (MALAYSIA) BERHAD** welcomes you as a Policyholder and we take this opportunity to recommend that you thoroughly examine this Document which sets out the limitations and benefits of the insurance. Please store it in a safe place.

Should you have any query, please contact your Registered Agent/Broker or our QBE office, especially if the insurance is not completely in accordance with your intentions.



This Policy is issued in consideration of the payment of premium as specified in the Policy Schedule and pursuant to the answers given in the Insured's Proposal Form (or when the Insured applied for this insurance) and any other disclosures made by the Insured between the time of submission of the Insured's Proposal Form (or when the Insured applied for this insurance) and the time this contract is entered into. The answers and any other disclosures given by the Insured shall form part of this contract of insurance between the Insured and **QBE Insurance (Malaysia) Berhad** (hereinafter called "the Company"). In the event of any pre-contractual misrepresentation made in relation to the Insured's answers or in any disclosures made by the Insured, it may result in avoidance of the Insured's contract of insurance, refusal or reduction of the Insured's claim(s), change of terms or termination of the Insured's contract of insurance.

This Policy reflects the terms and conditions of the contract of insurance as agreed between the Insured and the **QBE INSURANCE MALAYSIA BERHAD**.

The Company will, subject to the terms, exclusions and conditions of this Policy, indemnify the Insured against

- Products Liability**
1. All sums which the Insured shall become legally liable to pay as damages in respect of
    - (a) bodily injury (which expression includes death or illness)
    - (b) property damage (which expression includes loss of property)

arising out of any claim first made in writing against the Insured during the Period of Insurance and which is notified in writing to the Company during the Period of Insurance as a result of an Occurrence and caused by the nature, condition or quality of any of the Insured's Products in connection with the Business and happening after the Retroactive Date shown in the Schedule anywhere within the Territorial Limits elsewhere than at premises owned or occupied by the Insured.

**Legal Costs and Expenses**

2. With respect to the indemnity afforded by this Policy, the Company will:
  - (a) defend in the name of and on behalf of the Insured any suit against the Insured alleging such Bodily Injury or Property Damage and seeking damages on account thereof even if such suit is groundless, false or fraudulent, and the Company may make such investigation, negotiation and settlement of any claim or suit as the Company may deem expedient;
  - (b) pay all expenses incurred by the Company, all costs taxed or awarded against the Insured in any suit and all interest accruing after entry of judgment until the Company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability as specified in the Schedule;
  - (c) reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred with the consent of the Company;

Provided that:

- (i) the Company shall not be obliged to pay any claim or judgment or to defend any suit after the Limit of Indemnity has been exhausted by payment of judgments or settlements;
- (ii) if a payment exceeding the Limit of Indemnity has to be made to dispose of a claim, the Company's liability to pay any law costs and expenses in connection therewith shall be limited to such proportion of the law costs and expenses as the Limit of Indemnity bears to the amount paid to dispose of the claim.

The amounts thus incurred, except payments in settlement of claims, suits and all costs awarded against the Insured, are payable by the Company in addition to the Limit of Indemnity specified in the Schedule.

**LIMITS OF INDEMNITY**

- Any One Occurrence**
- a) The liability of the Company for all damages, legal costs and expenses in respect of any one Occurrence shall not exceed the Limit of Indemnity specified in the Schedule.
- Any One Period**
- b) The Company's total aggregate liability during any one Period of Insurance for all claims arising under this Policy shall not exceed the Limit of Indemnity specified in the Schedule.



#### DEFINITIONS

<b>Additional Persons Insured</b>	1.	The Insured shall include in the event of the death of the Insured, any personal representative of the Insured in respect of liability incurred by the Insured.
<b>Business</b>	2.	The Business shall mean the business conducted by the Insured as specified in the Schedule.
<b>Occurrence</b>	3.	Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the Insured.
<b>Claim</b>	4.	Claim shall mean: a) the receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured; or b) any writ, statement of Claim, summons, application or other originating legal or arbitral process, cross-Claim, counter-Claim or third or similar party notice served upon the Insured.
<b>Bodily Injury</b>	5.	Bodily injury means bodily injury (which expression includes death and illness), disability, shock, fright.
<b>Property Damage</b>	6.	Property Damage means physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom.
<b>Products</b>	7.	Products means any goods, products and property after they have ceased to be in the possession or under the control of the Insured, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container thereof other than a vehicle).
<b>Pollutants</b>	8.	Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.
<b>Territorial Limits</b>	9.	This Policy applies Worldwide unless otherwise specified in the Schedule, subject to the provisions of Exclusion 21.

#### EXCESS

The Company shall not be liable for the first amount specified in the Schedule under the heading Excess which is to be borne by the Insured in respect of each and every claim arising under this Policy.

#### RETROACTIVE DATE

The Company shall not be liable for claims made as a result of an Occurrence which happened prior to the Retroactive Date specified in the Schedule.

#### GENERAL EXCLUSIONS APPLICABLE TO THIS INSURANCE

This Policy shall not apply to

<b>Radioactive Contamination</b>	1)	any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; (b) the radioactive, toxic, explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof.
<b>War Clause</b>	2)	any liability for any consequence whether direct or indirect of war, invasion, act of foreign enemy hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.
<b>Terrorism</b>	3)	loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s) which from its nature of context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public or any section of the public, in fear.

This exclusion also applies to loss, damage, death, injury, illness, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

**Absolute Asbestos** 4) any actual or alleged liability whatsoever for any claim or claims in respect of loss or loses directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

**Pollution** 5) a) Bodily Injury or Property Damage caused by or arising out of the discharge, dispersal, release or escape of pollutants into or upon land, the atmosphere, or any water course or body of water. Provided this exclusion 5 (a) does not apply if such discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.

b) Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution. Provided this exclusion 5 (b) does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Bodily Injury or Property Damage.

c) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others.

d) The actual alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the United States of America or Canada or in any country to which the laws of the United States of America or Canada apply.

Our liability under clauses 5 (a) and 5 (b) above in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of pollutants during any one Period of Insurance will not exceed the Limit of Indemnity.

**Information Technology Hazards, Computer Data, Program and Storage Media** 6) a) Bodily Injury or Property Damage arising, directly or indirectly, out of, or in any way involving the Insured's "Internet Operations".

This exclusion does not apply to Bodily Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.

"Internet Operations" means the following:

- i. Use of electronic mail systems by the Insured or the Insured's employees, including part-time and temporary staff, contractors and others within the Insured's organisation;
- ii. Access through the Insured's network to the world wide web or a public internet site by the Insured's employees. Including part-time and temporary staff, contractors and others within the Insured's organisation;
- iii. Access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the Insured or others outside the Insured's organisation; and
- iv. The operation and maintenance of the Insured's website.

Nothing in this exclusion shall be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

- b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
- (a) the use of any computer hardware or software;
  - (b) the provision of computer or telecommunication services by the Insured or on the Insured's behalf;
  - (c) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

**Employer's Liability** 7) any liability in respect of injury to any person in the service of or under a contract of service or apprenticeship with the Insured where the injury arises out of and in the course of such person's employment with the Insured.

**Contractual Liability** 8) any liability assumed by the Insured under agreement unless such liability would have attached in the absence of such agreement.



<b>Property in Custody or Control</b>	9)	any liability in respect of loss of or damage to property (a) belonging to the Insured; (b) in the charge, custody or under the control of the Insured or any servant or agent of the Insured.
<b>Damage to Goods Supplied</b>	10)	any liability in respect of loss of or damage to any commodity, article or thing supplied, installed or erected by the Insured if such loss or damage is attributable to any defect therein or the harmful nature or unsuitability thereof.
<b>Professional Liability</b>	11)	any liability in respect of injury, loss or damage caused by or through or in connection with remedial or professional or other advice or treatment given or administered or omitted by the Insured.
<b>Fines</b>	12)	any liability for fines, penalties or liquidated damages.
<b>Punitive Damages</b>	13)	any liability for punitive damages and/or exemplary damages and/or aggravated and/or any additional damages resulting from the multiplication of compensatory damages.
<b>Design Formula and Advice</b>	14)	any liability in respect of injury, loss or damage as a result of (a) any defect in or the harmful nature of any commodity, article or thing intended to be supplied and supplied if it is in accordance with the design, plan, drawing, specification or formula intended to be used and used by the Insured. (b) any defect in the directions or advice intended to be given and given by the Insured concerning the use or storage of any commodity, article or thing supplied by the Insured.
<b>Loss of Use</b>	15)	Loss of use of tangible property which has not been physically injured or destroyed resulting from the failure of the Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured, but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the Insured's Products after such products have been put to use by any person or organisation other than the Insured.
<b>Products Recall</b>	16)	any liability in respect of the cost of recalling, repairing, altering or replacing any of the products or making any refund on the price paid for any product.
<b>Aircraft or Aerial Device</b>	17)	any liability in respect of injury, loss or damage caused by or arising out of the Products manufactured specifically for and installed in an aircraft or other aerial device or caused by or arising out of products which the Insured knew would be so installed.
<b>Known Defects</b>	18)	any liability in respect of injury, loss or damage arising from any defect or deficiency in any of the Insured's products which defect or deficiency the Insured himself or his employees (other than employees below a supervisory level) or agents has knowledge of or has reason to suspect at the time when the said product passes from the actual physical custody of the Insured or of any person under the control of the Insured.
<b>Pharmaceutical Manufacturers and Importers</b>	19)	any liability in respect of bodily injury or property damage arising from the sale or distribution of pharmaceuticals imported or manufactured by the Insured. Provided that this exclusion does not apply to those vitamins available without a prescription.
<b>Vendor's Liability</b>	20)	any liability in respect of any vendor of the named Insured's products.
<b>Territorial and Jurisdictional Limits</b>	21)	a) Claims made and actions instituted within the United States of America or the Dominion of Canada or any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada b) Claims and actions to which the laws of the United States of America or the Dominion of Canada apply  Provided that this exclusion shall not apply to claims and actions arising from the presence outside the country in which this Policy was issued, of any person who is normally resident in such country and who is not a manual worker or supervisor of work.  In respect of any non-manual worker or supervisor of work travelling in the United States of America or the Dominion of Canada, all Legal Costs and Expenses shown in Coverage Section 2 are paid by the Company within the Limit of Indemnity shown in the Schedule, not in addition to it.
<b>Known Exports</b>	22)	any liability for claims in respect of bodily injury or property damage caused by or arising out of the Insured's products knowingly exported by the Insured, his agents or servants to the United States of America or Canada.

- Electronic Data** 23) Notwithstanding anything to the contrary in this Policy, this insurance does not cover any claim arising directly or indirectly caused by or contributed to by or arising from the failure or inability of any computer equipment including but not limited to any or any combination or part of data, computer hardware, operating system, application, software and computer chip including microprocessor chip or embedded control logic whether the property of the Insured or not, occurring at any time to:
- (a) Correctly recognise any date as its true calendar date, prior to, during or after the Year 2000 or any other date.
  - (b) Capture, save or retain, and/or correctly to manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date, prior to, during or after Year 2000 or any other date.
  - (c) Capture, save or retain, or correctly to process any data as a result of the operation of any command which has been programmed and which causes the loss of data or the inability to capture, save, retain or correctly to process such data, prior to, during or after Year 2000 or any other date.

**CLAIMS PROVISIONS AND PROCEDURES**

- Notice of Claims** 1. Any Occurrence which might give rise to a claim under this Policy shall be reported in writing to the Company as soon as possible and, as far as is practicable, no alteration or repair shall be carried out until the Company has had an opportunity of inspecting. The Insured shall give immediate notice of any impending prosecution inquest, fatal inquiry or civil proceeding in connection with the occurrence and shall send to the Company immediately every relevant document.
- Notification of Circumstances** 2. If during the Period of Insurance, the Insured becomes aware of any fact or circumstance that may give rise to a claim under this Policy and elects to give notice in writing to the Company of such fact or circumstance, then any Claim which may subsequently arise out of such fact or circumstance shall be deemed to be a Claim made during the Period of Insurance. PROVIDED ALWAYS THAT such written notice is given to the Company during the Period of Insurance.
- Control of Claims** 3. No admission of liability or offer, promise or payment shall be made without the Company's written consent. The Company shall be entitled at its discretion to take over and conduct in the name of the Insured the defence or settlement of any claim and to prosecute at its own expense and for its own benefit any claim for indemnity or damages against any persons and the Insured shall give all information and assistance required.
- Discharge of Liability** 4. The Company may pay to the Insured the Limit of Indemnity after deduction of any sum or sums already paid as compensation or any less amount for which such claim or claims can be settled and upon such payment being made, the Company shall relinquish the conduct and control of and be under no further liability in respect of such claim or claims except the payment of costs and expenses of litigation recoverable or incurred in respect of matters prior to the date of such payment and the Company shall not be responsible for any losses alleged to have been sustained by the Insured in consequence of any action or omission of the Company in connection with such claim or proceedings.
- Other Insurance** 5. As soon as is reasonably practical but within 15 days after entering into any other contract of insurance, the Insured shall notify the Company of, and shall give the Company full details of, any such other insurance which provides indemnity, in full or in part, for any of the liabilities insured hereunder.
- To the extent that the Insured has any other insurance in force in respect of the liabilities insured hereunder, the Company shall only be liable under this Policy for the excess beyond any amount insured by such other insurance in respect of that liability, whether or not such insurance is valid or collectible.
- Subrogation** 6. In the event of a payment under this Policy to or on behalf of the Insured, the Company shall be subrogated to all the Insured's rights of recovery against all persons and organizations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist the Company in the exercise of such rights.

**GENERAL CONDITIONS**

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| <b>Duty of Disclosure</b>       | 1.  | <p>Where you have applied for this Insurance wholly for purposes related to your trade, business or profession, you had a duty to disclose any matter that you know to be relevant to our decision in accepting the risks and determining the rates and terms to be applied and any matter a reasonable person in the circumstances could be expected to know to be relevant otherwise it may result in avoidance of your contract of insurance, refusal or reduction of your claim(s), change of terms or termination of your contract of insurance.</p> <p>You also have a duty to tell us immediately if at any time after your contract of insurance has been entered into, varied or renewed with us any of the information given in the Proposal Form (or when you applied for this insurance) is inaccurate or has changed."</p>   |
| <b>Identification</b>           | 2.  | <p>The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or Schedule shall bear the meaning wherever it may appear.</p>  |
| <b>Observance of Conditions</b> | 3.  | <p>The due observance and fulfilment of the terms, conditions and endorsements of this Policy insofar as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.</p>   |
| <b>Reasonable Care</b>          | 4.  | <p>The Insured shall</p> <ul style="list-style-type: none"> <li>(a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;</li> <li>(b) take all reasonable precautions to <ul style="list-style-type: none"> <li>(i) prevent bodily injury and damage to property,</li> <li>(ii) prevent the manufacture, sale and supply of defective products, and</li> <li>(iii) comply and ensure that his employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any Public Authority thereof for the safety of persons or property;</li> </ul> </li> <li>(c) at his own expense take reasonable action to trace, recall or modify any of the Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.</li> </ul> |
| <b>Suspension of Cover</b>      | 5.  | <p>The Company may at any reasonable time inspect any property and in the event of any defect or danger being apparent, the Company may give written notice to the Insured when liability of the Company arising from such defect or danger shall be suspended.</p>   |
| <b>Alteration of Risk</b>       | 6.  | <p>If at any time anything shall occur materially affecting the risk insured, the Insured shall within seven days give notice in writing to the Company and shall pay such additional premium as the Company may require.</p>   |
| <b>Cancellation</b>             | 7.  | <p>This Policy may be cancelled at any time</p> <ul style="list-style-type: none"> <li>(a) by the Company on 30 days' notice to that effect being given in writing to the Insured's last known address and in such event the Company will return a pro rata portion of the Premium (after adjustment in accordance with Condition 7 if necessary) for the unexpired part of the Period of Insurance;</li> <li>(b) by the Insured on 7 days' notice and provided no claim has arisen during the current Period of Insurance, the Insured shall be entitled to the difference if any (after adjustment in accordance with Condition 7 if necessary) between the premium paid and the premium calculated at the Company's short period rate for the time the policy had been in force.</li> </ul>  |
| <b>Premium Adjustment</b>       | 8.  | <p>If the premium for this Policy has been calculated on any estimates given by the Insured, the Insured shall keep an accurate record containing all relevant particulars and shall at any reasonable time allow the Company to inspect such record and following the expiry of each Period of Insurance shall supply to the Company a correct statement so that the premium for that period shall be calculated and the difference paid by or allowed to the Insured as the case may be.</p>  |
| <b>Statutory Requirements</b>   | 9.  | <p>This Policy does not cover liability in respect of claims made or actions instituted within any country state or territory outside Malaysia that require insurance to be insured or secured with an insurer or organisation licensed in that country state or territory to grant such insurance.</p>   |
| <b>Disputes</b>                 | 10. | <p>All disputes arising out of or under this Policy shall be subject to determination by any court of competent jurisdiction within the country in which this Policy was issued according to the law applicable to that jurisdiction.</p>   |

- Condition Precedent**
11. The validity of this policy is subject to the condition precedent that:
- (a) For the risk insured, the named insured has never had any insurance terminated in the last twelve (12) months due solely or in part to a breach of any premium payment condition; or
  - (b) If the named insured has declared that it has breached any premium payment condition in respect of a previous policy taken up with another insurer in the last twelve (12) months:
    - (i) The named insured has fully paid all outstanding premium for time on risk calculated by the previous insurer based on the customary short period rate in respect of the previous policy; and
    - (ii) A copy of the written confirmation from the previous insurer to this effect is first provided by the named insured to the company before cover incepts.
- Contracts (Rights of Third Parties) ACT2001**
12. A person who is not a party to this policy contract shall have no right under the CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 2001 to enforce any of its terms.
- Premium Payment Warranty**
13. (a) Notwithstanding anything herein contained but subject to clause 2 hereof, it is hereby agreed and declared that if the period of insurance is sixty (60) days or more, any premium due must be paid and actually received in full by the company (or the intermediary through whom this policy was effected) within sixty (60) days of the:
- (i) Inception date of the coverage under the policy, renewal certificate or cover note; or
  - (ii) Effective date of each endorsement, if any, issued under the policy, renewal certificate or cover note.
- (b) In the event that any premium due is not paid and actually received in full by the company (or the intermediary through whom this policy was effected) within the sixty (60) day period referred to above, then:
- (i) The cover under the policy, renewal certificate, cover note or endorsement is automatically terminated immediately after the expiry of the said sixty (60) days period;
  - (ii) The automatic termination of the cover shall be without prejudice to any liability incurred within the said sixty (60) days period; and
  - (iii) The company shall be entitled to a pro-rata time on risk premium subject to a minimum of RM25.00.
- (c) If the period of insurance is less than sixty (60) days, any premium due must be paid and actually received in full by the company (or the intermediary through whom this policy was effected) within the period of insurance.

**IMPORTANT NOTICE:**

The following are channels available for complaints on insurance related matters. You can contact our Complaint Unit for assistance at 03-7861 8400 or the following authorised bodies:

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| <p>1. FINANCIAL MEDIATION BUREAU (FMB)<br/>LEVEL 25, DATARAN KEWANGAN DARUL<br/>TAKAFUL<br/>NO. 4, JALAN SULTAN SULAIMAN<br/>50000 KUALA LUMPUR<br/>TEL : 03-2272 2811<br/>FAX : 03-2274 5752</p> | <p>2. LAMAN INFORMASI NASIHAT DAN KHIDMAT (LINK)<br/>BANK NEGARA MALAYSIA<br/>P.O BOX 10922<br/>50929 KUALA LUMPUR<br/>TEL: 1-300-88-5465 (LINK)<br/>FAX: 03-2174 1515</p> |
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