

EMERGENCY ASSISTANCE INDEMNITY AGREEMENT

THIS AGREEMENT is made on the _____ day of _____ 2002

BY participants in the National Bulk Tanker Association Inc. Scheme for emergency response assistance.

THE SCHEME

1. The National Bulk Tanker Association Inc. (“**NBTA**”) wishes to improve procedures among its members for mutual assistance and co-operation in the control and cleanup of product spill emergencies should they occur. The procedures will involve the making available by one or more members of the NBTA to the member company affected by such emergency:
 - material and equipment; and where specified,
 - personnel;at the disposal of the NBTA member, necessary for the containment and cleanup of the emergency (“**the Scheme**”).
2. Participants in the Scheme will be listed in a Mutual Aid Assistance Directory (“**the Directory**”). Participants listed in the Directory will be companies who are:
 - prepared to commit their resources to assisting in the provision of emergency response activities in the control and cleanup of product spill emergencies; and
 - interested in receiving emergency response assistance from one or more participants in the event that they face an emergency.
 - Not using this as primary emergency response
 - Complying to emergency response requirements of the Dangerous Goods Act and other statutory requirements
3. A participant in the Scheme, may on 30 days written notice to the Executive Director of the NBTA, with copies to all participants listed in the Directory, withdraw from being a participant.
4. The Directory will contain lists of participating companies, relevant contact personnel, areas of specialty and indicate the type of equipment available from each participant.
5. **Emergency procedures** – any participant affected by an emergency may, if assistance is desired, make a written request to other participants for materials, equipment and/or personnel. This request should preferably be in the form outlined in the Schedule. The nearest identified participants having the required items should be approached first for assistance.
6. **Conditions of assistance** – the conditions under which assistance is provided on all occasions have been agreed upon in advance by the participants and are outlined below.

INTRODUCTION

- A. Definitions:
- **Company** – the party requiring assistance.
 - **Rescuer** – the party providing assistance.
 - **Property** – includes real estate, materials and equipment.
- B. Both the Company and the Rescuer are listed in the Directory of members of the NBTA (as updated from time to time) as participants in the scheme to improve procedures for mutual assistance and co-operation to respond to product spill emergencies.
- C. The Rescuer has equipment and/or personnel that are available to help the Company respond to the incident. The Company wishes to appoint the Rescuer to provide assistance.
- D. The Company wishes to indemnify and hold the Rescuer harmless to the extent set out below where the Rescuer provides emergency assistance to the Company.

THE PARTIES HAVE AGREED AS FOLLOWS:

In consideration of the Rescuer providing emergency assistance to respond to the incident, the Company and the rescuer agrees as follows:

1. ASSISTANCE TO BE PROVIDED

- 1.1 Following a request by the Company for assistance, the Rescuer is only required to provide such assistance as it specifically agrees to provide. The Rescuer will use its best efforts to assist the company. However, the Rescuer will not be obliged to provide assistance nor incur liability where, in the Rescuer's sole discretion, it is unable to assist.

2. PERSONAL INJURY AND PROPERTY DAMAGE INDEMNITY

- 2.1 Where the Rescuer provides emergency response assistance to the Company arising out of the incident, the Company will indemnify and hold the Rescuer harmless from and against any and all liability, loss, damage, expense, cause of action, suit, claim or judgment, including reasonable expenses and legal fees attributable to:

2.1.1 the death, injury or medical condition of any person (including employees of the Rescuer); or

2.1.2 damage to or destruction of any property, however it is caused;

arising in any way out of the Rescuer's assistance in providing equipment and/or personnel to assist in the emergency response. This indemnity is limited to the extent to which the acts or omissions of the Rescuer, its employees or agents contribute to the death, injury, medical condition, damage to or destruction of any property.

3. LOST PRODUCT AND ENVIRONMENTAL CONSEQUENCES INDEMNITY

3.1 The Company will indemnify and hold the Rescuer harmless from and against any and all liability, loss, damage, expense, cause of action, suit, claim or a judgment including reasonable expenses and legal fees relating to lost product, contamination, environmental damage, fines and cleanup charges arising in any way out of the emergency assistance provided by the Rescuer.

4. OUT OF POCKET EMPLOYEE EXPENSES

4.1 The Company agrees to reimburse the Rescuer for all direct and indirect expenses reasonably incurred by the rescuer in connection with the Rescuer's employees providing the services. These expenses will include but not be limited to:

4.1.1 Salaries, wages (including overtime), benefits and taxes; and

4.1.2 all transportation, accommodation, meals, long distance calls and renting or cleaning of protective clothing used by employees of the Rescuer.

5. GROSS NEGLIGENCE/RECKLESS CONDUCT

5.1 This Agreement by the Company to indemnify and hold the Rescuer harmless against all liabilities, claims and expenses identified, whether arising from or related to strict liability, negligent acts or omissions of the Rescuer, its employees or agents, or legal obligations of any other type, will not include an indemnity or holding the Rescuer harmless for acts of gross negligence or reckless conduct or wilful misconduct of the rescuer or its officers, employees, agents or sub contractors.

6. ACTS OR OMISSIONS COVERED BY INDEMNITY

6.1 The indemnity provided by the Company to the Rescuer will apply to all liabilities arising from acts or omissions of the Rescuer from the time the Rescuer arrives at the site of the incident, at the Company's request, until such time as the Rescuer completes the services it is engaged to perform.

7. INDEMNITY NOT LIMITED TO INSURANCE COVERAGE

7.1 The Company agrees that the indemnities in this Agreement will not be limited, restricted, or in any way affected by the amount of insurance that the Company holds.

8. COMPANY'S INSURANCE COVERAGE

8.1 The Company warrants that it is capable of meeting the financial obligations associated with the indemnification in this Agreement by having in place and keeping in place at all times for the duration of this Agreement one of the following:

8.1.1 Insurance coverage, noting the involvement in the NBTA Emergency Assistance program with a third-party insurer in an amount not less than \$20million or as designated by the Scheme.

8.1.2 Insurance coverage is defined as:

- Public and product liability of not less than the amount defined above
- Motor vehicle property damage for an amount as defined
- Currency of all statute requirements

9. BUSINESS INTERRUPTION

9.1 Neither party will be liable one to the other for any indirect or consequential losses or damages arising out of loss of use, loss of profit or business interruption.

10. MISCELLANEOUS

10.1 This Agreement, its performance and enforcement will be governed by the Local Law of the State of Australia in which the incident occurs.

10.2 The headings of the clauses in this Agreement are inserted for convenience only and will not be deemed to be part of this Agreement or considered in construing this Agreement.

10.3 The Rescuer agrees to comply with all relevant Federal, State and Local Laws and Regulations, including but not limited to those relating to the safety and welfare of employees.

10.4 The Rescuer agrees to comply with all directions given by the relevant statutory authority responsible for environment protection issues.

10.5 Nothing in this Agreement will entitle any person or entity not a party to this Agreement to any claims, causes of action, remedy or right of any kind arising out of the services provided pursuant to this Agreement.

EXECUTED AS AN AGREEMENT in the following manner:

(The undersigned certify that they are authorised on behalf of the party identified to enter into this Agreement and agree that the terms of this Agreement will apply, whether they are in fact the Company requiring assistance or the Rescuer providing assistance):

SIGNED for and on behalf of)	
ABC PTY LTD)	
(A.B.N.))	
in the presence of:		_____
		Signature of Company Officer

_____	_____
(Witness)	Name (please PRINT)

	Title

	Date

SIGNED for and on behalf of)	
XYZ PTY LTD)	
(A.B.N.))	
in the presence of:		_____
		Signature of Company Officer

_____	_____
(Witness)	Name (please PRINT)

	Title

	Date

SIGNED for and on behalf of)	
DEF PTY LTD)	
(A.B.N.))	
in the presence of:		_____
		Signature of Company Officer

_____	_____
(Witness)	Name (please PRINT)

	Title

	Date

SIGNED for and on behalf of

GHI PTY LTD

(A.B.N.

in the presence of:

)

)

)

)

Signature of Company Officer

(Witness)

Name (please PRINT)

Title

Date

SCHEDULE

REQUEST FOR EMERGENCY ASSISTANCE

The Company requires assistance with response activities associated with an incident at _____ [location] involving _____ [describe incident].

This assistance will be provided in accordance with the conditions outlined in the Emergency Assistance Indemnity Agreement, which has already been signed by both parties.

The Company requests and the Rescuer agrees to provide services focussed on:

- A. Rendering the environment safe, as the first priority.
- B. Preserving equipment, as the second priority.
- C. Preserving product, as the third priority.

Other specific services to be provided are:

EXECUTED AS AN AGREEMENT in the following manner:

(The undersigned certify that they are authorised on behalf of the party identified to enter into this Agreement).

SIGNED for and on behalf of the Company,)
ABC PTY LTD)
(A.B.N.))
in the presence of: _____ Signature of Company Officer

(Witness) Name (please PRINT)

Title

Date

SIGNED for and on behalf of the Rescuer,)
XYZ PTY LTD)
(A.B.N.))
in the presence of: _____ Signature of Company Officer

(Witness) Name (please PRINT)

Title

Date