OTTO KRAUSE INCORPORATED

# MOTOR VEHICLE ACCIDENT: CLAIM FOR DAMAGE TO YOUR VEHICLE

*Client information questionnaire for the recovery of the damage to your vehicle from the party at fault. This form does not deal with claims for bodily injury.*

## IMPORTANT — PLEASE READ THIS BEFORE COMPLETING THIS FORM

This form is intended for a person who does not intend to claim the damage to his or her vehicle from his or her own short-term insurer, and who wishes instead to recover it directly from the driver or owner who caused the collision.

If your vehicle is insured, our advice is that you approach your insurer first. Once you have been indemnified by your insurer, the claim against the wrongdoer passes to the insurer by subrogation and it is the insurer, and not you, who recovers it. More importantly, almost every short-term policy obliges you to report the incident, to refrain from admitting liability, and not to settle with or release the other party without the insurer's written consent. Steps taken outside those conditions may entitle your insurer to reject your claim.

Instructing an attorney is not itself a breach of your policy. What can prejudice you is settling, compromising or accepting payment from the other driver, giving any release or acknowledgement, or failing to notify your insurer as the policy requires. Please therefore speak to your insurer, or to us, before taking any such step.

| | |
|---|---|
| **Client name** | |
| **File / matter reference** | |
| **Attorney dealing** | |
| **Date completed and returned** | |

## HOW TO COMPLETE THIS QUESTIONNAIRE

This questionnaire may be completed on your computer. Click into any shaded block and type your answer. The block will expand as you type. It is not necessary to print the document or to complete it by hand. When you have finished, save the document and e-mail it back to this office.

Please complete the questions concerning dates, the other driver and the other vehicle first, and return the form to us as soon as you are able. Evidence in these matters disappears quickly, and the other party is easier to trace in the days after the collision than in the months afterwards.

Where you are unsure of an answer, leave the block blank rather than guessing. What you record here will be used to draft the particulars of claim, and a detail which is wrong is harder to correct later than one which was left open.

You are welcome to contact our offices directly at any stage should you experience any difficulty with any of the questions.

## IF YOUR VEHICLE IS INSURED, READ THIS FIRST

This is the most important page in this document, and it is worth a few minutes of your time before you go further.

A short-term insurance policy is a contract of indemnity. When your insurer pays for the damage to your vehicle, the law transfers to the insurer, by what is called subrogation, the right to recover that money from the person who caused the collision. The insurer then pursues that claim, usually in your name and through its own recovery attorneys, and you are obliged not to do anything which prejudices it. If you have already been paid by your insurer, the claim for the repair cost is no longer yours to pursue.

Every short-term policy also contains conditions which regulate what you may and may not do after an accident. They differ from insurer to insurer, but they almost always require you to report the incident within a stated period whether or not you intend to claim, to send the insurer any letter of demand or summons you receive, to refrain from admitting liability, and not to negotiate, settle, compromise or accept payment from the other party without the insurer's written consent. A breach of a condition of that kind may entitle the insurer to reject your claim, and in some cases to do so without having to show that it suffered any actual prejudice.

We want to be precise about this, because the point is often put too widely. Consulting an attorney does not breach your policy, and you are entitled to legal advice at any time. What can cost you your cover is the conduct which follows: settling with the other driver, signing an acknowledgement or a release, accepting a cash payment, admitting fault, or simply failing to tell your insurer that the accident happened. If you have insurance and are considering any of those things, speak to your insurer or to us first.

There is a middle position which many clients do not know about. Even where you do claim from your insurer, certain losses are not covered and remain yours to recover from the wrongdoer. The most common are your excess, the cost of hiring a replacement vehicle beyond what the policy allows, loss of use where you did not hire, the diminution in the value of a repaired vehicle, and towing and storage charges which the insurer did not meet. Many insurers permit their policyholders to pursue those uninsured losses, and some recover the excess on your behalf. We are able to assist with a claim of that kind alongside your insurer's own recovery, provided it is done in a manner consistent with your policy.

If your insurer has rejected your claim and you believe the rejection to be unfair, you may complain to the National Financial Ombud Scheme South Africa, which since 1 March 2024 has taken over the work of the former Ombudsman for Short-Term Insurance. The service is free of charge. We are happy to advise you on whether that route or a claim against the wrongdoer is the better one in your circumstances.

## THIS FORM DOES NOT DEAL WITH INJURY TO PERSONS

This questionnaire concerns damage to property — your vehicle, and what was in it. It does not deal with a claim for bodily injury or for the death of a person in a motor vehicle accident.

Claims of that kind lie against the Road Accident Fund and not against the other driver, they are governed by their own statute, and they are subject to time limits and lodgement requirements which are quite different from those which apply to a property claim. Some of those periods are considerably shorter, and a claim which is not lodged in the prescribed form and within the prescribed period is lost.

If anybody was injured or killed in the collision, whether in your vehicle or in the other, please tell us at once and we shall attend to that claim separately and without delay. Do not wait until this form has been completed.

## WHAT YOU HAVE TO PROVE

A claim for damage to a vehicle is a claim in delict. To succeed you must prove four things: that the other driver was negligent, that the negligence was wrongful, that it caused the collision, and that you suffered a loss in money as a result. The burden rests on you, and it is discharged on a balance of probabilities — that is, that your version is more likely than not.

Negligence is measured against what a reasonable driver would have done. In practice the grounds relied upon are familiar ones: failing to keep a proper lookout, travelling too fast for the circumstances, failing to apply brakes timeously or at all, failing to keep the vehicle under proper control, entering an intersection when it was unsafe to do so, disregarding a traffic signal or a stop sign, changing lanes or overtaking without first satisfying oneself that it was safe, and following too closely. The questions in Part D are designed to identify which of these apply to your collision.

You must also be the person who suffered the loss. Ordinarily that means the owner of the vehicle. If your vehicle is subject to an instalment sale or a lease, the bank remains the owner until the last instalment is paid, and although you generally still have a claim because you bear the risk and the loss, we may need a cession or confirmation from the bank. Please tell us if the vehicle is financed.

Finally, be aware of apportionment. If the court finds that you were also partly to blame, your damages are reduced in proportion to your share of the fault. A finding that you were thirty per cent negligent means you recover seventy per cent of your loss. It is therefore important that you tell us frankly what you yourself did, including anything which you think may be held against you.

## WHAT YOU MAY CLAIM

The purpose of the claim is to put you in the position you would have been in had the collision not occurred. In practice the following are recoverable, subject to proof.

| Head of damages | What it means and what is needed to prove it |
|---|---|
| Cost of repair | Where the vehicle is economically repairable, the reasonable cost of restoring it. Two or three independent quotations are ordinarily required, and an assessor's report is often decisive. |
| Market value less salvage | Where the vehicle is uneconomical to repair, the market value immediately before the collision, less whatever the wreck is worth. Both figures must be established by evidence. |
| Towing and storage | The reasonable charges actually incurred, supported by invoices. |
| Car hire | The reasonable cost of hiring a comparable vehicle for the period reasonably required, supported by the hire agreement and invoices. |
| Loss of use | Where no replacement was hired, a claim may still lie for the loss of the use of the vehicle, but it must be established and it is not automatic. |
| Diminution in value | Where a repaired vehicle is worth less than it was before, the difference may be claimed. Expert evidence is generally required. |
| Excess | Where you claimed from your insurer, the excess you paid remains your own loss and is recoverable from the wrongdoer. |
| Contents of the vehicle | Property damaged or destroyed in the collision, on proof of value. |
| Interest and costs | Interest at the prescribed rate, ordinarily from the date of demand or of service of the summons, together with the costs of the action. |

## TIME LIMITS AND PRACTICAL POINTS

A claim of this kind prescribes three years after the date of the collision. That period sounds generous and it is not. Tracing an uninsured defendant, obtaining the accident report, securing an assessor's report and issuing and serving a summons all take time, and a summons which is issued but not served does not stop prescription running.

Please also bear the following in mind. Report the accident to the South African Police Service and obtain the accident report number — a collision which was never reported is very much harder to prove. Photograph the vehicles, the damage, the road and the position of the vehicles before they are moved, if it is safe to do so. Obtain the name, identity number, address, telephone number and vehicle registration of the other driver, and the name of the owner if the driver is not the owner. Take the names and numbers of any witnesses at the scene, because they will not be found afterwards. Do not have the vehicle repaired before it has been inspected and quoted upon, and keep every invoice.

One further caution, which is a practical one rather than a legal one. A judgment is worth only what the defendant can pay. Where the other driver is uninsured and without means, an action may cost more than it recovers. We shall give you our honest view on that before you incur costs, and where the prospects of recovery are poor we shall say so.

## THE PRINCIPAL STEPS

**Consultation and instructions.** We take your instructions, consider the merits and advise you on the prospects, on the likely cost and on whether the claim is worth pursuing against this particular defendant.

**The insurance position.** We establish whether you are insured, whether the incident has been reported, whether your insurer has indemnified you and, if so, which of your losses remain yours to recover.

**Gathering the evidence.** The accident report is obtained from the police, the docket is inspected where charges were laid, statements are taken from witnesses and photographs and any dashcam footage are collected.

**Quantifying the loss.** Quotations, an assessor's report, a valuation or a salvage figure, and the invoices for towing, storage and hire are assembled so that every amount claimed can be proved.

**The letter of demand.** A letter of demand is addressed to the driver and, where applicable, to the owner and to the insurer of the other vehicle, calling for payment within a stated period. Interest ordinarily runs from this demand.

**Negotiation.** Many of these claims are settled at this stage, particularly where the other vehicle is insured and liability is not seriously in dispute.

**Summons.** If payment is not forthcoming, summons is issued in the appropriate court and served by the sheriff. The particulars of claim set out the collision, the grounds of negligence relied upon and each head of damages.

**The defended action.** Where the claim is defended, a plea is delivered, documents are discovered, and the matter is prepared for trial. A counterclaim by the other driver is common.

**Trial.** Evidence is led on how the collision occurred and on the amount of the loss. The court apportions fault where both drivers were negligent.

**Judgment and recovery.** Judgment is obtained and, if it is not paid, a warrant of execution is issued and the sheriff attends to the attachment and sale of the defendant's property.

## PART A: YOUR PARTICULARS

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| **Full names and surname (as per identity document)** | |
| **Identity number (or passport number and nationality)** | |
| **Residential address** | |
| **Postal address (if different)** | |
| **Cellphone number** | |
| **Alternative telephone number** | |
| **E-mail address** | |
| **Occupation and employer** | |
| **Preferred language (English / Afrikaans / other)** | |

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| **Are you claiming in your own name, or on behalf of a company, close corporation, trust or other person? Give the full name and registration number of that entity** | |
| **Are you registered for value-added tax, and are you able to claim the tax on the repairs as an input credit? (If so, the claim is calculated exclusive of that tax)** | |

## PART B: YOUR VEHICLE

| | |
|---|---|
| **Make and model** | |
| **Year of manufacture** | |
| **Registration number** | |
| **Engine and chassis (VIN) numbers** | |
| **Colour** | |
| **Odometer reading at the date of the collision** | |
| **In whose name is the vehicle registered?** | |
| **Are you the owner? If not, who is, and what is your interest in the vehicle?** | |
| **Is the vehicle subject to an instalment sale, lease or rental agreement? Give the name of the bank or financier and the account number** | |
| **What was the approximate market value of the vehicle immediately before the collision?** | |
| **Was the vehicle in a roadworthy condition, and was the licence current?** | |
| **Had the vehicle been involved in any previous accident, and had it previously been repaired?** | |
| **Who was driving your vehicle at the time of the collision?** | |
| **If you were not the driver, what was the driver's relationship to you, and was the driver authorised to use the vehicle?** | |
| **Was the driver in possession of a valid driving licence, and was it the correct code for the vehicle?** | |
| **Who else was in your vehicle?** | |

## PART C: THE OTHER VEHICLE, ITS DRIVER AND ITS OWNER

*Give us as much of this as you have. Where you do not have a detail we may be able to obtain it from the accident report or from the traffic authorities.*

**The driver of the other vehicle**

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| **Full names and surname** | |
| **Identity number** | |
| **Residential address** | |
| **Contact number and e-mail address** | |
| **Driving licence number, if noted** | |
| **Did the driver appear to be under the influence of alcohol or drugs? On what do you base that?** | |
| **What did the driver say at the scene? Record it as closely as you can remember** | |

**The other vehicle and its owner**

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| **Make, model and colour** | |
| **Registration number** | |
| **Is the driver the owner? If not, who is the owner?** | |
| **Was the vehicle a company vehicle, a delivery vehicle, a taxi, a bus or a truck? Give the name on the vehicle if there was one** | |
| **Was the driver on duty or apparently acting in the course of employment at the time?** | |
| **Is the other vehicle insured? Give the name of the insurer and any claim or reference number you were given** | |
| **Has the other driver, the owner or their insurer contacted you? Give particulars of what was said or offered** | |
| **Has any offer of settlement been made or accepted, or have you signed anything?** | |

## PART D: HOW THE COLLISION OCCURRED

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| **Date of the collision** | |
| **Time of the collision** | |
| **Precise place of the collision (street names, the intersection, the direction of travel, the kilometre marker or the nearest landmark)** | |
| **In which town or district did it occur, and which magistrate's court district is that?** | |

**Describe how the collision happened, in your own words and in the order in which things occurred. Say where you were coming from and going to, in which lane you were travelling, at what speed, what you first saw of the other vehicle, what you did, and where the vehicles came to rest.**

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| **At what speed were you travelling?** | |
| **At what speed do you estimate the other vehicle was travelling?** | |
| **What was the speed limit at that point?** | |
| **Which part of your vehicle struck, or was struck by, which part of the other vehicle?** | |
| **Did you apply your brakes, hoot or take any evasive action? What and when?** | |
| **Could you have done anything to avoid the collision?** | |
| **What do you say the other driver did wrong?** | |
| **Does the other driver blame you, and on what basis?** | |

**Please draw a rough sketch of the scene showing the road, the lanes, any traffic signal or sign, the direction each vehicle was travelling and the point of impact. You may draw it by hand and photograph it, or describe it in words in the block below.**

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## PART E: THE ROAD AND THE CONDITIONS

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| How many lanes were there in each direction, and were they marked? | |
| Was the road tarred, gravel or otherwise surfaced, and what was its condition? | |
| Was the road level, on an incline, straight or on a bend? | |
| Was the collision at an intersection? Was it controlled by a traffic signal, a stop sign, a yield sign or nothing at all? | |
| If controlled by a traffic signal, what colour was it for you, and what do you say it was for the other driver? | |
| Was the traffic signal working? | |
| What were the weather conditions? | |
| Was the road surface wet or dry? | |
| Was it daylight, dusk, dark or dawn? Were street lights burning, and were your headlights on? | |
| Was visibility obstructed in any way — by a parked vehicle, vegetation, a hill, a building or the sun? | |
| How busy was the traffic? | |
| Were there any roadworks, potholes or debris? | |

## PART F: POLICE, TRAFFIC AUTHORITIES AND PROSECUTIONS

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| Was the collision reported to the South African Police Service? On what date and at which station? | |
| Accident report (AR) number | |
| Case number, if any | |
| Did the police or a traffic officer attend at the scene? Give the name and force number if you have it | |
| Was the other driver charged with any offence? With what, and what was the outcome? | |
| Were you charged with any offence? With what, and what was the outcome? | |
| Was either driver tested for alcohol? | |

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| **Was an ambulance, fire brigade or tow-in service called? By whom?** | |
| **Were the vehicles moved before the police arrived? By whom and why?** | |

## PART G: WITNESSES AND EVIDENCE

| Full name of witness | Contact number | Where the witness was and what he or she saw |
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| **Do you have photographs of the scene, the vehicles or the damage? How many, and when were they taken?** | |
| **Is there dashcam footage from your vehicle or from any other vehicle?** | |
| **Is there any closed circuit television or traffic camera in the vicinity which may have recorded the collision?** | |
| **Did any passenger in either vehicle see what happened?** | |
| **Did anyone at the scene make any admission or apology?** | |

## PART H: YOUR DAMAGES

**Set out each amount you claim. Where you do not yet have a figure, leave it blank and we shall assist you in obtaining it.**

| Head of damages | Amount (R) | Is it supported by an invoice or quotation? |
|---|---|---|
| Cost of repairing the vehicle | | |
| Market value before the collision, if uneconomical to repair | | |
| Value of the salvage or wreck | | |
| Towing charges | | |
| Storage charges | | |
| Car hire | | |
| Loss of use, where no vehicle was hired | | |
| Diminution in the value of the repaired vehicle | | |
| Insurance excess paid | | |

| Head of damages | Amount (R) | Is it supported by an invoice or quotation? |
|---|---|---|
| Contents of the vehicle damaged or destroyed | | |
| Assessor's or valuation fees | | |
| Other (specify) | | |
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| **Total amount claimed** | |
| **How many quotations have you obtained, and from whom?** | |
| **Has the vehicle been repaired? If so, by whom, when, and has the account been paid?** | |
| **If the vehicle has been written off, who holds the wreck and what has been offered for it?** | |
| **Has an assessor inspected the vehicle? On whose instructions?** | |
| **Where is the vehicle now, and is it available for inspection?** | |
| **For how long were you without the use of the vehicle?** | |
| **Did you hire a replacement? From whom, for how long, and at what rate?** | |
| **If you did not hire a replacement, how did you manage, and what did it cost you?** | |
| **Do you use the vehicle for business, and did the loss of it cause you any further loss?** | |

## PART I: YOUR INSURANCE POSITION

*Please answer this Part fully, even if you do not intend to claim from your insurer. It determines what you are entitled to recover and how we may proceed.*

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| **Was your vehicle insured at the time of the collision?** | |
| **If insured, give the name of the insurer, the broker and the policy number** | |
| **Was the cover comprehensive, or limited to third party, fire and theft?** | |

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| **Have you reported the collision to your insurer? On what date?** | |
| **If you have not reported it, why not?** | |
| **Have you claimed from your insurer? What was the outcome?** | |
| **If the claim was rejected, on what ground, and do you have the letter of rejection?** | |
| **If your insurer has paid, what did it pay and what remains unpaid?** | |
| **What is the amount of your excess, and have you paid it?** | |
| **Has your insurer told you that it is pursuing a recovery against the other driver?** | |
| **Has your insurer consented to your instructing us, or have you discussed it with them?** | |
| **Do you understand that if your insurer indemnifies you, the claim for that loss passes to the insurer and only your uninsured losses remain yours to recover?** | |

## PART J: STEPS ALREADY TAKEN

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| **Have you written to, telephoned or messaged the other driver or owner? Give the dates and what was said** | |
| **Has a letter of demand been sent by anyone on your behalf? On what date?** | |
| **Has the other party made any payment, offer or admission?** | |
| **Have you received a letter of demand or a summons from the other party? On what date, and have you sent it to your insurer?** | |
| **Has any claim been lodged with the other driver's insurer? Give the claim number and the outcome** | |
| **Have you consulted any other attorney or claims agent about this matter?** | |
| **Is anyone else claiming against you arising out of the same collision?** | |

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| **Was anybody injured or killed in the collision, whether in your vehicle or in the other? (If so, please tell us immediately, as separate time limits apply)** | |

## PART K: ANY OTHER INFORMATION

Please set out anything else you consider relevant, including anything which the other driver may raise against you. It is far better that we hear it from you now than for the first time in the plea.

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## PART L: DECLARATION BY THE CLIENT

I, the undersigned, confirm that the information furnished in this questionnaire is true and correct to the best of my knowledge and belief. I understand that it will be used to prepare the letter of demand and the particulars of claim, and that any affidavit or evidence given by me will be under oath. I confirm that I have read the notice concerning short-term insurance which appears at the beginning of this document and that I understand it. I undertake to inform my attorneys forthwith should any of the information change or should I become aware that any of it is incorrect or incomplete.

| | |
|---|---|
| **Full names** | |
| **Signature (you may type your name here and sign the printed copy at our offices, or attach a scanned signature)** | |
| **Place** | |
| **Date** | |

## ANNEXURE: DOCUMENTS TO BE FORWARDED IN DUE COURSE

| Document | Available? (Yes / No / Will obtain) |
|---|---|
| Your identity document and driving licence | |
| Registration certificate of your vehicle | |
| Instalment sale, lease or finance agreement, if the vehicle is financed | |
| Accident report (AR) obtained from the police | |
| Photographs of the scene, the vehicles and the damage | |
| Dashcam or other footage | |

| Document | Available? (Yes / No / Will obtain) |
|---|---|
| Quotations for the repair of the vehicle | |
| Assessor’s or valuation report | |
| Repair invoice and proof of payment | |
| Towing and storage invoices | |
| Car hire agreement and invoices | |
| Your insurance policy schedule and the policy wording | |
| Correspondence with your insurer, including any letter of rejection | |
| Proof of payment of your excess | |
| Correspondence with the other driver, owner or their insurer | |
| Statements or contact details of any witness | |
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