

GENESIS ONE

BUSINESS INSURANCE POLICY WORDING

THE INSURER

Tokio Marine & Nichido Fire Insurance Co., Ltd. (Tokio Marine & Nichido) ABN 80 000 438 291, AFS 246548 is the insurance company that issues this insurance policy.

Tokio Marine & Nichido's Managing Agent in Australia is Tokio Marine Management (Australasia) Pty. Ltd. ABN 69 001 488 455 (Tokio Marine Management). As managing agent, Tokio Marine Management holds Tokio Marine & Nichido's Power of Attorney that allows it to perform all of the functions of the insurance company on Tokio Marine & Nichido's behalf. Tokio Marine Management is a wholly owned subsidiary of Tokio Marine & Nichido. Genesis Underwriting acts under authority given to it by Tokio Marine & Nichido Fire Insurance Co Ltd.

COMPLAINTS HANDLING & GENERAL INSURANCE CODE OF PRACTICE

Tokio Marine & Nichido is a signatory to the General Insurance Code of Practice.

The Code of Practice informs the customers of the standards of service to be expected from the Insurance Industry. The objectives of the Code of Practice are to :

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers;
- commit insurers and the professionals they rely upon to higher standards of customer service..

Complaint And Dispute Resolution Procedure

We are committed to providing an efficient and fair dispute resolution process. We offer an Internal Dispute Resolution (IDR) process in the event that a customer is not satisfied with the outcome or any aspect of Our products or services, whether that is Your Policy, or a Claim.

To start the process, just call Us or send a letter to the National Underwriting Manager or the National Claims Manager. All matters will be treated in strict confidence.

What Is A Dispute?

A dispute is when there has been an expression of dissatisfaction in a product or service provided by Us or by Our Service Providers that has not been resolved after initial contact, and there has been a request that the complaint be remedied by Us.

Who Should Use The IDR Process?

If You are a customer, and

- You feel We have not treated You fairly; or
- You are unhappy with Your Policy terms or conditions, or with a claim; or
- You have a complaint about the safeguarding of Your personal

You should contact Us immediately to enable Us to work towards a mutually agreed solution.

How Does The IDR Process Work?

If You are dissatisfied with a decision made by Us on any of Our products and services and have been unable to reach an agreement, You will be given the opportunity to contact the Department Manager (Underwriting or Claims).

We will endeavour to resolve the matter in a fair manner.

If that is not possible, We will contact You within one business day advising You what We have done or will be doing to resolve Your complaint.

In the event that You are still not entirely satisfied, and We cannot agree, We will treat Your complaint as a dispute and Your information and the details of Your complaint will be referred to the Compliance Manager, who has the appropriate experience, knowledge and authority to deal with the dispute and make a decision.

If Your Problem Is Not Resolved

If, despite Our best efforts, this does not resolve the problem to Your satisfaction, You have several other avenues open to You:

1. The Small Claims Courts and Tribunals deal with matters where small amounts are involved. In these courts no lawyers are involved and the costs are minimal.
2. Mediation may be arranged where You and Tokio Marine & Nichido both agree on an independent person being appointed to assist in solving the problem.
3. When all else fails and the amount involved is more substantial, You may utilise the formal legal process available through the Australian Court System.

DUTY OF DISCLOSURE – What you must tell us

Under the Insurance Contracts Act 1984 (the Act), you have a Duty of Disclosure. You are required before you enter into, renew, vary, extend or reinstate your Policy, to tell us everything you know and that a reasonable person in the circumstances could be expected to know, is a matter that is relevant to our decision whether to insure you, and anyone else to be insured under the Policy, and if so, on what terms.

You do not have to tell us about any matter

- that diminishes the risk
- that is of common knowledge
- that we know or should know in the ordinary course of our business as an Insurer, or
- which we indicate we do not want to know.

If you do not comply with your Duty of Disclosure we may reduce or refuse to pay a claim or cancel your Policy. If your non-disclosure is fraudulent we may treat this Policy as never having worked.

PRIVACY POLICY

Your Privacy And The Law

Genesis Underwriting Pty Ltd (Genesis) is dedicated to upholding your privacy and protecting your personal information. We are bound in Australia by the Privacy Act 1988 (Cth) and its associated Australian Privacy Principles, along with any other applicable privacy laws and codes, when collecting, using, disclosing, holding, handling and transferring any personal information. Where practical and legally permissible to do so, you have the option of providing information to us and dealing with us anonymously or by using a pseudonym.

Genesis has ongoing practices, procedures and systems in place to ensure that we manage personal information in an open and transparent way.

Further information about these practices, procedures and systems are contained in our Privacy Policy set out below.

We may update this Privacy Policy from time to time. Any updates can be accessed via our website or by contacting our office to request a hard copy be sent to you (which will be provided at no cost). We encourage you to periodically review this Privacy Policy so that you will be aware of our privacy practices. This Privacy Policy was last updated on 12 March 2014.

Collecting Your Personal Information

– What is personal information?

Information or opinion that allows others to identify you is generally considered personal information. This may include your name, contact details, gender, as well as your health and risk profile information.

– Under which circumstances do we collect your personal information?

We will generally collect personal information which is reasonably necessary to offer and maintain our products and services and those offered by Genesis including provision of insurance (involving underwriting of insurance products) and claims management, and other forms of insurance related services.

We may also collect personal information to enable development and identification of products and services that may interest you, to conduct market or customer satisfaction research or to develop, establish and manage alliances or

arrangements with other organisations in relation to the promotion, administration and use of our respective products and services.

– What information can we collect from you?

The type of product or service you request from Genesis will inform the type of information we collect from you. Generally, however, we may collect information such as your name, contact details, date of birth, gender, financial and employment details and information pertaining to risk coverage.

We may also need to collect sensitive information about you for some of our products and services. We will generally only collect and hold such sensitive information where reasonably necessary to perform our engagement and with your consent.

– What if you don't provide us with your information, or provide us with inaccurate or incomplete information?

If the information we request is not provided accurately or at all, we or those involved with the provision of the service or product may not be able to provide the appropriate type or level of service or product.

– How do we collect this information?

Unless it is not reasonable or practicable under the circumstances, we will collect information directly from you. This may occur, for instance, when you use our website, or when you contact us through telephone, facsimile, email, online or hard copy communication in order to complete a product or service application or any other kind of administrative form.

Otherwise, we may also collect your information from other, third parties such as Authorised Representatives or other third parties such as additional insurance companies, insurance brokers or agents, credit organisations, motor vehicle and driver licensing authorities, financial institutions, medical professionals, third parties who may be arranging insurance cover for a group that you are a part of, law enforcement or investigative intermediaries, dispute resolution, statutory and regulatory bodies, marketing lists and industry databases or publicly available sources. Upon your request, we will take reasonable steps to let you know how we have sourced your personal information unless it is obvious from the circumstances that you would know or would reasonably expect us to have the information (such as where we are dealing with your advisors).

– Are there any other ways we can collect your personal information?

We may also collect information by online means when you visit the Genesis website

Genesis may collect information during your visit to a Genesis or affiliated website through the use of cookie technology. An affiliated website will include a website administered by our capacity provider on various other products or services. By using the Genesis or affiliate website and associated microsites, you agree to the processing of your personal information as explained in this Privacy Policy or associated Privacy Statements or Notices, including placing cookies on your device.

We collect personal information from the Genesis or affiliated websites to fulfil your request for products and services and to improve your online experience. We always endeavour to limit the amount of information collected to support the intended purpose of the collection.

We may ask you for some or all of the following types of information when you register for events, request services, manage accounts, access various content and features or directly visit our websites or affiliate websites:

- contact information, such as name, e-mail address, postal address, phone number and mobile number;
- user name, password, password reminder questions and password answers;
- communication preferences, such as which newsletters you would like to receive;
- search queries;
- contact information about others when you refer a friend to a particular site or service (note: this information is used solely to facilitate requested communications); and
- information posted in community discussions and other interactive online features.

In some instances, Genesis or its affiliates automatically collect certain types of information when you visit our websites and through e-mails that we may exchange. Automated technologies may include the use of web server logs to collect IP addresses, cookies and web beacons. The collection of this information aims to allow us to improve the effectiveness of the Genesis website, affiliate websites and our marketing activities.

The Genesis website may contain links to other sites which are outside our control and are not covered by this Privacy Policy. If you access other sites using the links provided, the operators of these sites may collect information from you which will be used by them in accordance with their privacy statement.

We encourage you to read the privacy statements on other websites you visit. Genesis is not responsible for the content or

privacy practices of linked sites or any use of those sites.

Please be aware that the Genesis website may contain links to sites maintained by other entities that are not or maybe governed by this Privacy Policy but by other privacy arrangements that may differ slightly from this Policy. We encourage you to review the privacy policy or statement of each website you visit.

Using And Disclosing Your Personal Information

– How can your personal information be used?

We will generally only use and disclose your personal information for the purpose that it was collected, any related purpose that you would reasonably expect us to use or disclose it for, or as permitted under this Privacy Policy or under law. Genesis otherwise has a duty to maintain the confidentiality of its client's information unless disclosure is permitted with your consent or compelled under law.

Your information may be used for the following purposes:

- to provide information, products or services you requested;
- to determine your eligibility and process applications for products and services that you have requested;
- to provide information and services as requested by clients;
- to understand and assess your ongoing needs and offer products and services to meet those needs;
- to carry out client communication, service, billing and administration;
- to administer claims;
- to conduct data analysis;
- to obtain and update credit information with appropriate third parties, such as credit reporting agencies, where transactions are made on credit;
- to execute monitoring and training;
- to develop new services;
- to market products and services; and
- to conduct processing necessary to fulfil other contractual obligations for the individual.

We will only use and disclose your sensitive information for the purpose it was collected or for any other directly related purpose that you would reasonably expect us to use it for. With your consent, we may use or disclose your information for additional purposes from time to time.

– *Who can access your personal information?*

We may disclose your information to other companies who provide capacity or services to Genesis and the following affiliates or third party service providers to assist us in providing, managing and administering our services and products:

- insurance services and insurance products - business partners, including insurers, reinsurers, insurance agents, insurance brokers, other insurance intermediaries, insurance reference bureaus, medical service providers, fraud detection agencies, other advisers such as loss adjusters, lawyers, auditors and accountants and others involved in the claim handling process;
- banking and finance products - business partners, including credit and fraud reporting agencies, debt collection agencies, insurers and reinsurers,
- any Authorised Representatives;
- authorised service providers;
- external IT service providers, infrastructure and other third parties where required by law; and

– *Can your information be used for direct marketing?*

As indicated above, unless you notify us otherwise, we may use your personal information to let you know about products and services from Genesis or our affiliates and business partners that we think may be of interest to you. You can choose not to receive this information from us (including product or service offerings from us on behalf of our affiliates and business partners) or related bodies by contacting our Privacy Officer through the details contained at the end of this Privacy Policy or your Genesis representative.

Cross Border Disclosures Of Your Personal Information

– *What is our approach to disclosing your information to third party and overseas recipients?*

Genesis may disclose personal information to third parties who we believe are necessary to assist us in providing the relevant services and products to our clients or to enable them to offer their products and services to you. For instance, we disclose personal information to the relevant product provider and their representatives, our agents and contractors and related companies (including any Authorised Representatives). We generally limit, however, the use and disclosure of any personal information provided by us to such third parties for the specific purpose for which it was supplied.

In addition to our affiliates, we may also disclose personal information to third parties such as our contractors, agents and service providers when we outsource certain functions,

including market research, direct marketing, claims handling and recruitment. Our affiliates and third parties may be based locally or they may be overseas where we have a presence or engage such parties, including but not limited to Japan, Australia, New Zealand, United Kingdom.

Disclosure may also be made to government, law enforcement, dispute resolution, statutory or regulatory bodies, or as required by law.

We will make every effort to ensure that we only have business dealings with third parties that value privacy and information security the same way as us. However, by providing us with your consent to collect, use, disclose and hold your information in accordance with this Privacy Policy, you acknowledge that we will no longer be required to take reasonable steps to ensure the overseas recipient's compliance with the relevant Act (Australian) in relation to the handling of your information and we will not be liable to you for any breach of any Australian privacy law by these overseas recipients under the relevant Act (Australian) or otherwise, and on this basis, you consent to such disclosure.

– *How do we hold your information?*

Your information may be held in hard copy documents, as electronic data, or in our software or systems.

– *What is our information security policy?*

We take reasonable steps to protect personal information from misuse, interference and loss and implement physical, technical and administrative security standards to secure and protect your personal information from unauthorised access, modification or disclosure.

Steps we take include implementing and imposing:

- confidentiality requirements on our employees and other representatives, as well as third parties;
- policies on document storage security;
- security measures for access to our systems;
- only providing access to information once proper identification has been given;
- controlling access to our premises; and
- website protection security measures.

Further information about our data security practices can be provided on request. Notwithstanding the above you should be aware that no data protection and security measures are completely secure. Despite all the measures we have put in place, we cannot guarantee the security of your information, particularly in relation to transmissions over the Internet. Accordingly, any information which you transmit to us is transmitted at your own risk. You must take care to ensure you protect your information (for instance, by protecting your

usernames and passwords, policy details etc.) and you should notify us as soon as possible after you become aware of any security breaches.

Accessing And Correcting Your Personal Information

– *How can I access and correct my information?*

We take reasonable steps to ensure your personal information that we collect, hold and disclose is accurate, up to date and complete. However, we also rely on you to let us know of any changes or corrections required to your information. You should contact us at any time to update your personal information or advise us that the information we hold is not accurate, up to date or complete.

You can access or update your personal information, including opting out of receiving any marketing from Genesis, in the following ways:

- if you have created a profile or an account on our website or App, you can update your information once you login;
- contact your Genesis representative or our Privacy Officer on the contact details at the end of this Privacy Policy;
- if you receive electronic communications, such as an e-newsletter, you may unsubscribe at any time by following the instructions included in the communication;
- if you previously chose to receive push notifications on your mobile device, you may manage your preferences either through your device or the application settings. Alternatively, you may uninstall the application by using the uninstall process available on your mobile device; and
- in relation to cookies, you may adjust your browser settings to accept or refuse cookies.

If we do not provide you with access or refuse to update your information, we will provide you with the reason for refusal and inform you of any exceptions relied upon.

Your request to provide information will be dealt with in a reasonable time from receipt of your request and we may recover from you our reasonable cost of supplying you with this information.

Resolving Your Privacy Issues

– *Privacy complaints*

If you wish to speak with someone or raise a complaint about a breach of the Act or this Privacy Policy, you may contact your Genesis representative or contact our Privacy Officer directly on the contact details below.

You may also contact the Privacy Officer should you have any other questions or would like further information about our privacy and information handling practices.

We will respond to you as soon as reasonably possible.

– *Genesis Privacy Officer Contact Details Attn:*

Privacy Officer

Genesis Underwriting Pty Ltd

Po Box 1369

Manly NSW 1655

Phone: 02 8412 3500

Fax - 02 8412 3599

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Section 1 – Material Loss or Damage

1. The Indemnity

1.1 In the event of any physical loss, destruction or damage (hereinafter in Section 1 referred to as 'Damage' with 'Damaged' having a corresponding meaning) not otherwise excluded happening at the Situation to the Property Insured described in Section 1, We will, subject to the provisions of this Policy including the limitation on Our liability, indemnify You in accordance with the applicable Basis of Settlement.

1.2 Subject to Our liability not being increased beyond the Limit(s) of Liability already stated herein, We will also indemnify You for:-

- (a) architects', surveyors', consulting engineers', legal and other fees and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon Damage to property hereby insured but not such costs, fees and salary for preparing any claim hereunder.
- (b) any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any building(s) insured hereunder; provided that We shall not be liable for payment of any fines and/or penalties imposed upon You by any such Authorities.
- (c) costs and expenses necessarily and reasonably incurred for the purpose of extinguishing fire at or in the vicinity of Property Insured or threatening to involve such property or for the purpose of preventing or diminishing imminent Damage to property hereby insured by any other peril insured against by this Policy, including Damage to gain access and the cost of replenishment of firefighting appliances and charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines.
- (d) costs and expenses necessarily and reasonably incurred for the temporary protection and safety of property hereby insured pending repair or replacement consequent upon Damage recoverable hereunder.
- (e) costs of replacing locks and/or keys and/or combinations where if as a result of burglary, theft or any attempt thereat the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations.
- (f) costs and expenses necessarily and reasonably incurred in respect of:
 - (i) the removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon Damage to property insured by this Policy and occasioned by a peril insured against;
 - (ii) Your legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 10.6, in relation to premises, roadways, services, railways or waterways or others, consequent upon Damage to the Property Insured by a peril hereby insured against, for such costs together with the cost of cleaning; provided that such liability was not assumed by You under an agreement entered into after the commencement of the Period of Insurance or any renewal thereof unless liability would have attached in the absence of such agreement.

Provided that the insurance under this section does not extend to any liability that You may incur as a consequence of pollution of any kind.

- (iii) the demolition and removal of any property belonging to You which is no longer useful for the purpose it was intended, providing such demolition and removal is necessary for the purpose of the reinstatement or replacement of Property Insured under this section and is consequent upon Damage to the Property Insured by a peril hereby insured against.

- (g) Damage to clothing and tools of trade belonging to Your directors and employees whilst on the Premises.

Provided that the insurance under Clauses 1.2 (b) to 1.2 (g) inclusive above shall not be subject to application of any Co-Insurance clause or memorandum contained in this Policy.

2. **“The Property Insured” means:**

All real and personal property of every kind and description (except as hereinafter excluded) belonging to You or for which You are responsible, or have assumed responsibility to insure prior to the occurrence of any Damage, including all such property in which You may acquire an insurable interest during the Period of Insurance.

It is understood and agreed that the term ‘personal property’ shall include Money (which shall mean current coin, bank notes, currency notes, cheques, credit card sales and/or discount house vouchers, postal orders, money orders, unused postage and revenue stamps and including the value of stamps contained in franking machines) whilst contained in the Situation and whilst in transit to and from the Situation anywhere in Australia, including whilst contained in the night safe of any bank or financial institution where You transact business, and in Your personal custody and/or the custody of persons authorised by You whilst contained in their private residences.

3. **Basis of Settlement Applicable to Section 1**

3.1. **On buildings, machinery, plant and all other property and contents (other than those specified below):**

The cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement or Replacement and Extra Cost of Reinstatement Memoranda as set out herein.

Provided that if You elect to claim the indemnity value of any Damaged property, We will pay to You the value of such property at the time of the happening of the Damage or at Our option reinstate, replace or repair such property or any part thereof. In any event We will pay costs incurred by You in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.

3.2. **On raw materials, supplies and other merchandise not manufactured by You:**

The replacement cost at the time and the place of replacement or, if such property is not replaced, the value thereof at the time and place of the Damage.

3.3. **On material in process of manufacture:**

The replacement value of the raw materials and the value of labour and other overhead charges expended thereon at the time and the place of the Damage.

3.4. **On finished goods:**

The replacement value of the raw materials and the value of labour and other overhead charges expended thereon before any allowance for profit or the cost of re-stocking such goods, whichever is the lesser.

3.5. **On computer systems records including computer software, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description:**

The cost of reinstating, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to You of the said information; or, if such is not required, the replacement cost of materials as blank stationery at the time and place of the Damage.

3.6. **On patterns, models, moulds, dies or casts:**

The cost of repair or replacement (if actually replaced) otherwise the indemnity value to You of such property.

3.7. On glass;

the cost of repairing or replacing the broken glass including: temporary shuttering and/or hiring of security service pending replacement of broken glass, signwriting or ornamentation on glass, replacement burglar alarm tapes on glass, removing and refixing of window and show case frames and fittings and heat reflecting material or process on glass.

3.8. On Your directors' and employees' clothing and tools of trade;

the replacement cost at the time of replacement subject to due allowance for wear and tear, depreciation and betterment.

3.9. On empty premises awaiting demolition;

the salvage value of the building materials and/or landlords fixtures and fittings.

4. Memoranda Applicable to Section 1

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

4.1. Interests of Other Parties

The insurable interest of only those lessors, financiers, trustees, mortgagees, owners and all other parties specifically noted in Your records shall be automatically included without notification or specification; the nature and extent of such interest to be disclosed in the event of Damage.

Where the insurance covers the interest of more than one party, any act or neglect of an individual party will not prejudice the rights of the remaining party/parties; provided the remaining party/parties shall, immediately on becoming aware of any act or neglect whereby the risk of Damage has increased, give notice in writing to Us and on demand pay such reasonable additional premium as We may require.

Notwithstanding the foregoing paragraph it is understood and agreed that in the event of any of the parties referred to herein being entitled to the benefits of any 'Concessions Agreement', which it may have entered into with Us, the said 'Concessions Agreement' will take precedence over the foregoing paragraph.

4.2. Branded Goods

Any salvage of branded goods and/or merchandise, Your own or held by You in trust or on commission, and/or goods sold but not delivered, shall not be disposed of by sale without Your consent. If such salvage is not disposed of by sale then the Damage will be assessed at the value agreed between You and Us after brands, labels or names have been removed by You or on Your behalf.

4.3. Declared Values

The Schedule of Declared Values at each Situation (in accordance with the applicable Basis of Settlement) attaches to and forms part of this Policy for the purpose of the application of Co-Insurance.

4.4. Reinstatement or Replacement

(Unless otherwise specifically mentioned herein, this memorandum is applicable to buildings, machinery, plant and all other property and contents as specified in item 3.1 of the Basis of Settlement)

The basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the Damaged property insured at the time of its reinstatement; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Policy.

For the purpose of the insurance under this memorandum 'reinstatement' shall mean:-

- (a) Where property is lost or destroyed: in the case of a building, the rebuilding thereof or in the case of property other than a building, the replacement thereof by similar property; in either case in a condition equal to, but not better or more extensive than, its condition when new.

- (b) Where property is Damaged: the repair of the Damage and the restoration of the Damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new.

Provisions

- (i) The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to Your requirements, but subject to Our liability not being thereby increased), must be commenced and carried out with reasonable despatch, failing which We shall not be liable to make any payment greater than the indemnity value of the Damaged property at the time of the happening of the Damage.
- (ii) When any property insured to which this memorandum applies is Damaged in part only, Our liability shall not exceed the sum representing the cost which We could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- (iii) Property insured under this memorandum is separately subject to the following Co-Insurance Clause:-

In the event of Damage to any property insured hereunder at any situation caused by any peril or event hereby insured against, We shall be liable for no greater proportion of such Damage than the amount that Your declaration of value of property insured at such situation on the day of the commencement of the Period of Insurance bears to the sum representing eighty-five percent (85%) of the cost which would have been incurred in reinstatement if the whole of such property had been destroyed on that day, but not exceeding the Limit of Liability expressed in the Schedule; provided that if the sum actually incurred or expended in rebuilding or replacing the Damaged property, within the meaning of clause (a) of the above mentioned definition of "reinstatement", exceeds the amount which would have been payable under this Policy if this memorandum had not been incorporated herein, but is less than the cost of reinstatement as above defined, then the sum so actually incurred or expended shall, for all purposes of this memorandum, be deemed to be the cost of reinstatement of the property.

Provided further that the above clause shall not apply if the amount of the Damage does not exceed five percent (5%) of the amount of Your declaration as mentioned above.

- (iv) No payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred; provided that where You reinstate or replace any lost or destroyed property at a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.
- (v) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by You or on Your behalf shall be on a similar reinstatement basis.

4.5. Extra Cost Of Reinstatement

(Unless otherwise specifically mentioned herein, this memorandum is applicable to buildings, machinery, plant and all other property and contents as specified in item 3.1 of the Basis of Settlement)

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of Damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Policy.

Provisions

- (i) The work of reinstatement (which may be carried out wholly or partially upon any other site(s), if the requirements of the aforesaid Act, Regulation or By-Law so necessitate, subject to Our liability not being thereby increased), must be commenced and carried out with reasonable despatch, failing which We shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein.
- (ii) The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which You had been required to comply prior to the happening of the Damage.
- (iii) Co-Insurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for Co-Insurance purposes in terms set out in any clause contained in this Policy.
- (iv) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by You or on Your behalf shall be on a similar basis.
- (v) If the cost of reinstatement of Damaged property insured is less than fifty percent (50%) of that which would have been the cost of reinstatement if such property had been destroyed, the amount recoverable hereunder shall be limited to:-
 - (1) the extra cost necessarily incurred in reinstating only that portion Damaged; or
 - (2) whilst applying to such property insured, the sub limit stated herein;

whichever is the greater. In the event of a Sub Limit not being stated in this Policy, Our liability shall be limited to the amount as described in sub paragraph (1) of this Provision (v).

4.6. Floor Space Ratio Index (Plot Ratio)

Subject to the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Policy, in the event of any building(s) being Damaged so as to constitute total loss or constructive total loss and, as a result of the exercise of Statutory powers and/or authority by any Government Departments, Local Government or any other Statutory Authorities, reinstatement is only permissible subject to a reduced floor space ratio index:-

We agree to pay in addition to any amount payable on reinstatement of such building(s) the difference between:-

- (a) the actual cost of reinstatement incurred in accordance with the reduced floor space ratio index; and
- (b) the cost of reinstatement which would have been incurred had a reduced floor space ratio index not been applicable.

In arriving at the amount payable under 4.6 (a) and 4.6 (b) above any payments made by Us shall include the extra cost of reinstatement, including demolition or dismantling of the insured property, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority.

Any payment made for the difference between 4.6 (a) and 4.6 (b) above shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on Your behalf in the reinstatement of the building(s).

4.7. Acquired Companies

This Policy extends to include property located in Australia belonging to companies and other organisations in which You acquire a controlling interest during the currency of this Policy; subject to You declaring details of such acquisition within a reasonable period following the date of acquisition. Provided the business of the new acquisition shall be similar to the Business as stated in the Schedule.

For the purposes of this memorandum a controlling interest shall, in the case of a company, mean the acquisition of shares carrying more than fifty per cent (50%) of votes capable of being cast at a general meeting of ordinary shareholders in such company.

4.8. Co-Insurance

Unless otherwise stated herein to the contrary, this Policy is subject to the following Co-Insurance Memorandum:

- (a) In the event of Damage to property insured hereunder at any situation caused by any event hereby insured against, We shall be liable for no greater proportion of such Damage than the amount of Your declaration of value of such property on the day of the commencement of the Period of Insurance bears to the sum representing eighty-five percent (85%) of the actual value of property insured at such situation on the day of commencement of the Period of Insurance but not exceeding the Limit of Liability expressed in the Schedule.
- (b) Provided that clause 4.8 (a) above shall not apply if the amount of the Damage does not exceed five percent (5%) of the amount of Your declaration as mentioned above.
- (c) It is expressly understood and agreed that the provisions of this Co-Insurance Memorandum shall not apply in respect of that part of any claim which is made under the provisions of the Reinstatement or Replacement Memorandum.

Section 2 – Business Interruption

5. The Indemnity

- 5.1. In the event of any building or any other property or any part thereof used by You at the Premises for the purpose of the Business being physically lost, destroyed or damaged by any cause or event not hereinafter excluded (loss, destruction or damage so caused being hereinafter termed 'Damage') and the Business carried on by You being in consequence thereof interrupted or interfered with, We will, subject to the provisions of this Policy including the limitation on Our liability, pay to You the amount of loss resulting from such interruption or interference in accordance with the applicable Basis of Settlement.
- 5.2. Provided that We will not be liable for any loss under this section unless Your property lost, destroyed or damaged is insured against such Damage (loss arising out of destruction or damage by explosion of Boilers and/or Economisers excepted) and the insurer or insurers by which such property is insured shall have paid for, or admitted liability in respect of, such Damage unless no such payment shall have been made or liability shall not have been admitted therefor solely owing to the operation of a provision in such insurance excluding liability for loss below a specified amount.

6. Basis of Settlement Applicable to Section 2

6.1. Item No. 1 – Gross Profit

The insurance under this item is limited to loss of Gross Profit due to: (a) Reduction in Turnover and (b) Increase in Cost of Working and the amount payable as indemnity thereunder shall be:

(i) **In respect of Reduction in Turnover:**

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Turnover,

(ii) **In respect of Increase in Cost of Working:**

the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Provided that if the Declared Value of Gross Profit at the commencement of each Period of Insurance is less than the sum produced by applying the Rate of Gross Profit to the Annual Turnover (or its proportionately increased multiple where the Indemnity Period exceeds twelve (12) months), the amount payable hereunder shall be proportionately reduced.

6.2. Item No. 2 – Claims Preparation Costs and Professional Fees

The insurance under this item is to cover such reasonable professional fees as may be payable by You, and such other reasonable expenses necessarily incurred by You and not otherwise recoverable, for preparation of claims under the Your Material Damage and Consequential Loss insurance policies and We shall indemnify You for such reasonable fees and expenses.

6.3. Item No. 3 – Pay-Roll (Dual Basis)

The insurance under this item is limited to loss in respect of Pay-Roll and the amount payable as indemnity thereunder shall be:-

(a) In respect of Reduction in Turnover:

- (i) during the portion of the Indemnity Period beginning with the occurrence of the Damage and ending not later than the number of weeks thereafter specified in the Schedule: the sum produced by applying the Rate of Pay-Roll to the Shortage in Turnover during the said portion of the Indemnity Period less any saving during the said portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Pay-Roll paid;
- (ii) during the remaining portion of the Indemnity Period: the sum produced by applying the Rate of Pay-Roll to the Shortage in Turnover during the said remaining portion of the Indemnity Period less any saving during the said remaining portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Pay-Roll paid; but not exceeding the sum produced by applying the percentage of the Rate of Pay-Roll specified in the Schedule to the Shortage in Turnover during the said remaining portion of the Indemnity Period, increased by such amount as is deducted for savings under the terms of Clause 6.3 (a);

Note:

At Your option the number of weeks referred to in Clause 6.3 (a) above may be increased to the number of weeks specified in the Schedule under the heading 'Consolidated Period'; provided that the amount arrived at under the provisions of Clause 6.3 (b) shall not exceed such amount as is deducted under Clause 6.3 (a) for savings effected during the said increased number of weeks.

(b) In respect of Increase in Cost of Working:

So much of the additional expenditure described in Clause 6.1 (b) of Item No. 1 as exceeds the amount payable thereunder, but not more than the additional amount which would have been payable in respect of Reduction in Turnover under the provisions of Clauses 6.3 (a)(i) and 6.3(a)(ii) of this item had such expenditure not been incurred;

Provided that if the Declared Value of Insured Pay-Roll at the commencement of each Period of Insurance be less than the sum produced by applying the Pay-Roll Limits to the sum produced by applying the Rate of Pay-Roll to the Annual Turnover (or a proportionately increased multiple thereof, where the Indemnity Period exceeds twelve (12) months) the amount payable shall be proportionately reduced.

6.4. Item No. 4 – Additional / Increase in Cost of Working

The insurance under this item is limited to increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction in Turnover and/or resuming and/or maintaining normal business operations and/or services.

7. Definitions Applicable to Section 2

7.1 Gross Profit:

The amount by which:-

- (a) the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed
- (b) the sum of the amount of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses as set out in the Schedule.

Note: The amounts of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with Your normal accountancy methods, due provision being made for depreciation.

7.2 Turnover:

The money (less discounts, if any, allowed) paid or payable to You for goods sold and delivered and for services rendered in course of the Business at the Premises.

7.3 Indemnity Period:

The period beginning with the occurrence of the Damage and ending not later than the number of months specified in the Schedule thereafter during which the results of the Business shall be affected in consequence of the Damage.

7.4 Pay-Roll:

The remuneration (including but not limited to Pay-Roll tax, bonuses, holiday pay, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) of all employees.

7.5 Shortage in Turnover:

The amount by which the Turnover during a period shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period.

7.6 Rate of Gross Profit

The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the Damage

7.7 Annual Turnover

The Turnover during the twelve (12) months immediately before the date of the Damage

7.8 Standard Turnover

The Turnover during that period in the twelve (12) months immediately before the date of the Damage which corresponds with the Indemnity Period

7.9 Rate of Pay-Roll

The rate of Pay-Roll to Turnover during the financial year immediately before the date of the Damage

to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the date of the Damage or which would have affected the Business had the Damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage

7.10 Uninsured Working Expenses

The working expenses of Your Business which You have elected not to insure under this Section, and which are listed in the Schedule.

8. Memoranda Applicable to Section 2

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

8.1 Turnover Elsewhere After Damage

If during the Indemnity Period goods shall be sold or services shall be rendered elsewhere than at the Premises for the benefit of the Business either by You or by others on Your behalf, the money paid or payable in respect of such sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

8.2 Departmental Clause

If the Business be conducted in departments the independent trading results of which are ascertainable, the provisions of Clauses (a) and (b) of Item Nos. 1 and 3 shall apply separately to each department affected by the Damage.

8.3 **New Business**

In the event of Damage occurring at the Premises before the completion of the first year's trading of the Business, the terms 'Rate of Gross Profit', 'Annual Turnover', 'Standard Turnover' and 'Rate of Pay-Roll' shall bear the following meanings and not as within stated.

8.4 **Rate of Gross Profit**

The rate of Gross Profit earned on the Turnover during the period between the date of the commencement of the Business and the date of the Damage

)
)
) to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in

8.5 **Annual Turnover**

The proportional equivalent, for a period of twelve (12) months, of the Turnover realised between the date of the commencement of the Business and the date of the Damage

)
) or other circumstances affecting the Business either before or after the date of the Damage or which would have affected the Business had the

8.6 **Standard Turnover**

The proportional equivalent, for a period equal to the Indemnity Period, for the Turnover realised during the period between the date of the commencement of the Business and the date of the Damage

)
) Damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been

8.7 **Rate of Pay-Roll**

The rate of Pay-Roll to Turnover during the period between the date of the commencement of the Business and the date of the Damage

)
) period after the Damage

8.8 **Accumulated Stocks**

In adjusting any loss, account shall be taken and equitable allowance made if any Shortage in Turnover due to the Damage is postponed by reason of the Turnover being temporarily maintained from accumulated stocks of finished goods.

8.9 **Books Of Account**

Any particulars or details contained in Your books of account or other business books or documents which may be required by Us for the purpose of investigating or verifying any claim hereunder may be produced and certified by Your auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates. The words and expressions used herein shall have the meanings usually attached to them in Your books and accounts unless otherwise defined in this Policy.

8.10 **Public Utilities Extension**

Any loss resulting from interruption of or interference with the Business in consequence of damage to property, caused by a peril damage as a result of which is insured hereunder, at any electricity station or sub-station, gas works or water works of a public supply undertaking which is situated on or immediately adjacent to the Premises shall be deemed to be loss resulting from Damage to property used by You at the Premises.

8.11 **1 Turnover/Output Alternative**

At Your option the term 'Output' may be substituted for the term 'Turnover' and, for the purpose of this Policy, 'Output' shall mean the sale and/or invoice value of goods manufactured and/or processed by You in course of the Business at the Premises. Provided that only one such meaning shall be operative in connection with any one event involving Damage.

If the meaning set out above be used, the memorandum 'Turnover Elsewhere After Damage' shall be altered to read as follows:-

'If during the Indemnity Period goods shall be manufactured and/or processed other than at the Premises for the benefit of the Business either by You or by others on Your behalf, the sale and/or invoice value of the goods so manufactured and/or processed shall be brought into account in arriving at the Output during the Indemnity Period.'

8.12 Computer

This Policy extends to include loss (not otherwise recoverable) resulting from interruption of or interference with the Business occasioned by Damage to computer installations, including ancillary equipment and data processing media utilised by You anywhere in Australia.

8.13 Salvage Sale

If, following Damage giving rise to a claim under this Policy, You shall hold a salvage sale during the Indemnity Period:

(a) Clause 6.1 (i) of Item No. 1 of this Section shall, for the purpose of such claim, read as follows:

(i) **In respect of Reduction in Turnover:**

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale.

(b) Definition 7.5 – “Shortage in Turnover” shall, for the purpose of such claim, read as follows:

7.5 Shortage in Turnover:

The amount by which the Turnover during a period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which shall be deducted the Pay-Roll paid during the period of the salvage sale.

8.14 Premises In The Vicinity (Prevention Of Access)

Loss as insured by this Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of the Premises caused by a peril, damage as a result of which is insured hereunder, which shall prevent or hinder the use thereof or access thereto, whether Your Premises or Your property therein shall be damaged or not, shall be deemed to be loss resulting from Damage to property used by You at the Premises.

Loss as insured by this Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of and forming part of or contained in the complex of which the Premises forms part caused by a peril, damage as a result of which is insured hereunder, which results in a cessation or diminution of trade due to temporary falling away of potential custom, whether Your Premises or Your property therein shall be damaged or not, shall be deemed to be loss resulting from Damage to property used by You at the Premises.

8.15 Registered Vehicles and/or Trailers

Notwithstanding the provisions of Property Exclusion 9.5, this Policy extends to include loss resulting from interruption of or interference with the Business occasioned by Damage to registered vehicles and/or trailers whilst such vehicles or trailers are at the Premises owned or occupied by You; provided always that this Policy does not cover loss resulting from physical loss, destruction of or damage to such vehicles and/or trailers whilst they are being used on any public highway or thoroughfare.

Exclusions Applicable to Sections 1 and 2

9. Property Exclusions

This Policy does not cover physical loss, destruction of or damage to the following property or loss under Section 2 resulting therefrom:-

- 9.1 property (except Money) whilst in transit other than during the incidental movement of such property within situations occupied by You. This exclusion shall not apply during temporary removal of property (other than stock and/or merchandise) and unregistered motor vehicles to any situation in Australia but, whilst such property is in transit, cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest.
- 9.2 Money:
- (a) whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured excepting the excess amount over and above such more specific insurance which excess is held to be covered hereunder;

Provided that where in the ordinary course of business You enter into an agreement with such carriers and such agreement provides that You shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result of any event hereby insured against, this insurance shall operate as if this Property Exclusion 9.2 (a) had been deleted.
 - (b) stolen from an unlocked and unattended vehicle;
 - (c) stolen from a safe or strongroom opened by a key or by use of details of a combination, either of which has been left at the Situation outside business hours, unless such key or combination details have been properly secured;
 - (d) where the loss is not discovered within five (5) working days of the event;
 - (e) where the loss arises out of:
 - (i) kidnapping;
 - (ii) bomb threat;
 - (iii) hoax;
 - (iv) extortion;or any attempt thereat.
- 9.3 jewellery, furs, bullion, precious metals or precious stones other than as stock and/or merchandise of the Business.
- 9.4
- (a) any locomotive or rolling stock or watercraft other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder whilst any watercraft is on water;
 - (b) any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.
- 9.5 vehicles or trailers registered or licensed to travel on a public road; provided that this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by You.
- 9.6 livestock, animals, birds or fish.
- 9.7 standing timber, growing crops and pastures.

- 9.8 land; provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy.
- 9.9 bridges, canals, roadways and tunnels, railway tracks (other than on the premises occupied or used by You), dams and reservoirs (other than tanks) and their contents.
- 9.10 docks, wharves and piers not forming part of any building.
- 9.11 mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy.
- 9.12 property during the course of, and as a result of, its processing.
- 9.13
- (a) gates, fences, retaining walls, textile awnings and blinds;
 - (b) property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof;
- caused by wind, rainwater or hail.
- 9.14
- (a) property undergoing construction, erection, alteration or addition when the value of work exceeds ten per cent (10%) of the Limit of Liability or five hundred thousand dollars (\$500,000) whichever is the lesser;
 - (b) empty premises undergoing demolition.
- 9.15 oil and gas drilling and/or production rigs whilst offshore.
- 9.16 all Machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electro-mechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.
- Provided that Property Exclusion 9.16 shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded herein which results from any of the events referred to in this exclusion.
- For the purpose of Property Exclusion 9.16, 'Machinery' means:
- any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.
- 9.17 any boiler (other than a boiler used for domestic purposes), economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof; provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property which may be damaged as a result of such loss, destruction or damage.
- 9.18 resulting from pollution or contamination except (unless otherwise excluded) loss or destruction of or damage to property or any part thereof used by the Insured at the premises for the purpose of the business caused by:-

- (a) Pollution or contamination at the premises which itself results from fire, lightning, explosion, aircraft or other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons, earthquake, storm, flood, bursting overflowing discharging or leaking of water tanks, apparatus or pipes, sprinkler leakage or impact by any road vehicle or animal.
- (b) Any of the Perils listed in (a) above which itself results from pollution or contamination.

9.19 (a) Electronic Data

- (i) Total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of ELECTRONIC DATA,
- (ii) Error in creating, amending, entering, deleting or using ELECTRONIC DATA, or
- (iii) Total or partial inability or failure to receive, send, access or use ELECTRONIC DATA for any time or at all.

From any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or processing by electronic or electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

- b) However, in the event that a peril listed below (being a peril insured by this Policy but for this exclusion) is caused by any of the matters described in paragraph (a) above, this Policy, subject to all its provisions, will insure:

- (i) Physical loss or damage or destruction to Property insured directly caused by such listed peril, and/or
- (ii) Consequential loss insured by this Policy.

Further, this exclusion does not apply in the event that a peril listed below (being a peril insured by this Policy but for this exclusion) causes any of the matters described in paragraph

- (a) above.

Fire, Explosion, Lightning, Windstorm, Hail, Tornado, Cyclone, Hurricane, Earthquake, Volcano, Tsunami, Flood, Freezing, Weight of Snow, Impact by Aircraft or other aerial objects dropped therefrom, Impact by any Road Vehicle or Animal, Bursting Overflowing Discharging or Leaking of water Tanks Apparatus or Pipes, or Theft of Electronic Data solely where such Theft is accompanied by Theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data.

- c) For the purposes of the Basis of Settlement provision in this Policy, computer systems records includes Electronic Data as defined in paragraph (a) above.

Any Terrorism Exclusion in this Policy or any endorsement thereto prevails over this endorsement

Perils Exclusions

We shall not be liable under Sections 1 and/or 2 in respect of:-

10.1 physical loss, destruction or damage occasioned by or happening through:

- (a) flood, which shall mean the inundation of normally dry land by water escaping or released from the normal confines of any natural watercourse or lake whether or not altered or modified or of any reservoir, canal or dam;
- (b) water from or action by the sea, tidal wave or high water.

Provided that Perils Exclusions 10.1 (a) and 10.1 (b) shall not apply if loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance.

10.2 physical loss, destruction or damage occasioned by or happening through:

- (a) moths, termites or other insects, vermin, rust or oxidation, mildew, mould, pollution or contamination, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour, texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom).
- (b) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good.
- (c) error or omission in design, plan or specification or failure of design.
- (d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration.
- (e) faulty materials or faulty workmanship.

Provided that this Perils Exclusions 10.2 (a) to 10.2 (e) shall not apply to subsequent loss, destruction of or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

10.3 physical loss, destruction or damage occasioned by or happening through:

- (a) incorrect siting of buildings consequent upon:
 - (i) error in architectural design or specification;
 - (ii) faulty workmanship;
 - (iii) non-compliance by You (or by anyone acting on Your behalf) with the necessary permits issued by Government, Public or Local Authorities.
- (b) demolitions ordered by Government or Public or Local Authorities due to failure on the part of You or Your agents to obtain the necessary permits required.

10.4 physical loss, destruction or damage occasioned by or happening through:

- (a) theft of property (other than Money in transit) in the open air.
- (b) unexplained or inventory shortage, disappearance resulting from clerical or accounting errors, shortages in the supply or delivery of materials to or from You.
- (c) spontaneous combustion.
- (d) spontaneous fermentation or heating or any process involving the direct application of heat.

Provided that Perils Exclusions 10.4 (c) and 10.4 (d) shall be limited to the item or items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation or heating or process involving the direct application of heat.

10.5 physical loss, destruction or damage occasioned by or happening through:

(a)

- (i) fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting, data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means involving the Property Insured by You or any of Your employees acting alone or in collusion with any other person(s).
- (ii) access by any person(s) other than You or Your employee(s) to Your computer system via data communication media that terminate in Your computer system.

Provided that Perils Exclusions 10.5 (a)(i) and 10.5 (a)(ii) shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by any of Your employees or theft of Money whilst in transit.

(b)

- (i) the cessation of work whether total or partial;
- (ii) the cessation, interruption or retarding of any process or operation;

as a result of strikes, labour disturbances or locked out workers.

Provided that Perils Exclusions 10.5 (b)(i) and 10.5 (b)(ii) shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons.

(c) erosion, subsidence, earth movement or collapse resulting therefrom.

(d) kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat.

Provided that Perils Exclusions 10.5 (a) to 10.5 (d) shall not apply to subsequent loss, destruction of or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

10.6 any legal liability of whatsoever nature other than as herein provided.

10.7 consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as herein provided in Section 2.

Memoranda Applicable to Sections 1 and 2

11. Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

11.1 Amount of Policy not reduced by Loss

The insurance under:

- (a) Section 1; and
- (b) Section 2 and/or each item of Section 2 of this Policy and the Indemnity Period;

shall be automatically reinstated in the event of any loss in consideration of Your payment of a pro rata additional premium calculated on the amount of the loss settlement at the rate(s) agreed for the Period of Insurance.

11.2 Event

Only for the purpose of the application of any Deductible: all loss, destruction or damage resulting from earthquake occurring during each period of seventy two (72) consecutive hours shall be considered as one event whether such earthquake is continuous or sporadic in its sweep and/or scope and the loss, destruction or damage was due to the same seismological conditions. Each event shall be deemed to have commenced on the first happening of any such loss, destruction or damage not within the period of any previous event.

11.3 Subrogation Waiver

We agree to waive any rights and remedies or relief to which We may become entitled by subrogation against:

- (a) any corporation or organisation (including its directors, officers or employees) owned or controlled by You or any Insured named herein or subsidiary to You or any Insured named herein or any co-owner of property insured hereunder;
- (b) any Insured named or described by this Policy (including its directors, officers or employees).

11.4 Adjustment of Premium

- (a) The Premium shown is provisional and is calculated on the Declared Values of:

- (i) Property Insured,
- (ii) Gross Profit and Insured Pay-Roll;

on the day of commencement of each Period of Insurance.

- (b) You undertake to declare to Us within a reasonable time after the day of expiry of the Period of Insurance:
- (i) the value of Property Insured on the day of expiry of the Period of Insurance. For the purpose of this declaration, stock-in-trade and/or merchandise shall be taken at its average value during the Period of Insurance;
 - (ii) the amount of the Gross Profit earned and Pay-Roll paid, in accordance with the cover afforded in the respective items of Section 2, in the course of the Business during the accounting period of twelve (12) months most nearly concurrent with the Period of Insurance.

- (c) The provisional premium shall be adjusted by payment to Us of an additional premium or by allowance to You of a return premium, as the case may be, calculated at the agreed rate on:
 - (i) fifty percent (50%) of the difference between property declared in accordance with Clauses 11.4 (a)(i) and 11.4 (b)(i);
 - (ii) the full agreed rate hereunder on the difference between the amounts declared under Clauses 11.4 (a)(ii) and 11.4 (b)(ii).
- (d) It is agreed to make allowance for any abnormal fluctuation in values and to charge a premium commensurate with the risk; such premium to be agreed between the parties to this agreement.
- (e) The Declaration of Values at the expiry of the Period of Insurance declared in accordance with this memorandum shall not be reduced as the result of loss, destruction or damage in respect of which a claim has been paid or is payable under this Policy.

Conditions - Applicable to Sections 1 and 2

12. The following Conditions apply to Sections 1 and 2 of this Policy.

12.1 Misrepresentation and Non-Disclosure

If You:

- (a) failed to disclose any matter which You were under a duty to disclose to Us; or
- (b) made a misrepresentation to Us before this Policy was entered into;

and if We would not have entered into this Policy for the same premium and on the same terms and Conditions expressed in this Policy but for the failure to disclose or the misrepresentation, then:

- (c) Our liability in respect of any claim will be reduced to an amount to place Us in the same position in which the We would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
- (d) if the non-disclosure or misrepresentation was fraudulent, We may avoid this Policy.

12.2 Alteration

We shall not be liable for loss, destruction of or damage to any property insured hereunder caused or contributed to by any alteration after the commencement of this Policy:

- (a) by removal of such Property from the Premises other than as provided under the terms of Property Exclusion 9.1;
- (b) in the trade or processes of manufacture carried on at the Premises or whereby the nature of the occupation or other circumstances affecting the Premises and/or Your property therein contained shall be changed in such a way as to increase the risk of loss, destruction or damage;
- (c) whereby any premises containing any property insured hereunder shall become unoccupied, and so remain for a period of more than thirty days; or
- (d) whereby Your interest ceases except by will or the operation of law.

Provided that any such alteration, upon coming to the knowledge of Your officer responsible for insurance, shall be immediately notified to Us and, if agreed to by Us in writing, an appropriate additional premium paid if required.

12.3 **Sprinkler Installations**

Applicable to owned premises or installations for which You are responsible.

You warrant that in such of the Premises as are protected or as are required by law to be protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the Premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

You further warrant that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS 1851 (Part 3 – Automatic Sprinkler Installation) by the installing engineers or firm or, failing this, by a person or organisation who must be approved by Us to carry out such maintenance.

Notice of all alterations and additions to the automatic sprinkler installation shall be given by You to Us as soon as reasonably practicable.

12.4 **Other Insurance**

You shall give written notice as soon as practicable to Us of any other insurance or insurances effected covering the Property Insured.

12.5 **Notification of Claims**

- (a) On the happening of any loss, destruction or damage, You shall forthwith give notice thereof in writing to Us and shall (within thirty (30) days after such loss, destruction or damage or such further time as We may in writing allow), at Your own expense, deliver to Us a claim, in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged and of the amount of loss, destruction or damage thereto, having regard to their value at the time of the loss, destruction or damage, together with details of any other insurances on any property hereby insured.
- (b) You shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business or to avoid or diminish the loss and shall also deliver to Us a statement in writing of any claim certified by Your auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.
- (c) No claim under this Policy shall be payable unless You have complied with the terms of this condition.

12.6 **Fraud**

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by You or anyone acting on Your behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the wilful act or with Your connivance, We, without prejudice to any other right(s) We might have under this Policy, shall be entitled to refuse to pay such claim.

12.7 **Reinstatement**

If We elect or become bound to reinstate or replace any property, You shall at Your own expense, produce and deliver to Us all such plans, documents and information as We may reasonably require. We shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend more than the applicable Limit of Liability.

12.8 Our Rights

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Policy We and every person authorised by Us may, without thereby incurring any liability, and without diminishing Our right to rely upon any Conditions of this Policy, enter, take or keep possession of any building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to Us any of the property hereby insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

This condition shall be evidence of the leave and licence of You to Us so to do. If You or anyone acting on Your behalf shall not comply with Our requirements or shall hinder or obstruct Us in doing any of the abovementioned acts, then all benefits under this Policy shall be forfeited. You shall not in any case be entitled to abandon any property to Us whether taken possession of by Us or not.

12.9 Subrogation

- (a) Any person claiming under this Policy shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by Us for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which We shall be or would become entitled or subrogated upon Us paying for or making good any destruction or damage under this Policy or paying any moneys under Section 2 of this Policy.
- (b) If We make any recovery as a result of such action, You may only recover from Us any amount by which the amount recovered by Us exceeded the amount paid to You by Us in relation to the loss.

12.10 Precautions to Prevent Loss

You shall take all reasonable precautions to prevent loss, destruction or damage to the property insured by this Policy.

12.11 Your Action after Theft or Damage

You shall, upon becoming aware of any loss by theft or of any wilful or malicious damage which may give rise to a claim under this Policy, take all practicable steps to trace and recover any missing property and to discover by whom the property was stolen or damaged, including reporting the matter to the police and any other responsible authority.

12.12 Termination of Cover under Section 2

- (a) Notwithstanding anything contained herein to the contrary, if during any period in respect of which this Policy is in force:
 - (i) You cease to carry on the Business or any part of the Business is disposed of, permanently discontinued or Your interest in the Business or such part thereof ceases otherwise than by death; or
 - (ii) You (being a corporation) is placed in liquidation (or provisional liquidation), are placed under Official Management, enter into a Scheme of Arrangement, have Receivers and/or Managers appointed over Your assets or undertaking(s); or
 - (iii) You (being a natural person) become bankrupt or enter into a scheme of arrangement or compromise or composition with creditors;then the insurance cover provided under Section 2 of this Policy in respect of such Business or part of such Business shall automatically and forthwith cease.
- (b) In the event of the Indemnity Period having begun to run in respect of any claim relating to such Business or part thereof, the Indemnity Period shall thereupon be at an end, unless its continuance be admitted by memorandum signed by Us or on Our behalf.

12.13 **Observance of Terms and Conditions**

The due observance and fulfilment of these Conditions and the other terms of this Policy by You, insofar as the same are capable of being construed as such, are conditions precedent to any liability of Us to make any payment under this Policy.

12.14 **Progress Payments**

Provided that liability has been admitted, progress payments on account of any claim may be made to You at such intervals and for such amounts as may be agreed upon production of a report by the Loss Adjuster (if appointed) provided such payment(s) shall be deducted from the amount finally determined upon adjustment of the claim.

Section 3 – General and Products Liability

13. Insuring Clauses

13.1. The Indemnity

We agree (subject to the terms, Conditions, Exclusions, Definitions and Limits of Liability applicable to this Section and the General Definitions, General Exclusions and General Conditions of this Policy) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

- (a) Personal Injury; and/or
- (b) Property Damage; and/or
- (c) Advertising Injury;

happening during the Period of Insurance in connection with the Business or in connection with Your Products and/or work performed by You or on Your behalf within the Territorial Limits and caused by or resulting from an Occurrence.

13.2. Defence Costs and Supplementary Payments

With respect to the indemnity provided by this section of this Policy, We will:

- (a) defend, in Your name and on Your behalf, any claim or suit against You alleging such Personal Injury, Property Damage or Advertising Injury and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent.
- (b) pay all charges, expenses and legal costs incurred by Us and/or by You at Our written request or with Our written consent (which consent shall not be unreasonably delayed or withheld):
 - (i) in the investigation, defence or settlement of such claim or suit, or
 - (ii) in bringing or defending appeals in connection with such claim or suit.
- (c) pay:
 - (i) all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit; and
 - (ii) pre-judgment interest awarded against You on that part of the judgment payable by Us; and
 - (iii) all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon.
- (d) pay premiums on:
 - (i) appeal bonds and/or security for costs required in any suit but We shall have no obligation to apply for or furnish any such bonds and/or security for costs.

- (e) pay expenses incurred by You for:
 - (i) rendering first aid and/or therapeutic relief to others at the time of any Personal Injury (other than any medical expenses which we are prevented from paying by any law).
 - (ii) temporary protection of damaged or undamaged property of any other person or party, including temporary repairs, shoring up and/or underpinning thereof.
 - (iii) purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority as a result of an occurrence under this policy
- (f) pay all legal costs incurred by You with Our consent (which consent shall not be unreasonably delayed or withheld) for representation of You at:
 - (i) any Coronial Inquest or Inquiry.
 - (ii) any proceedings in any court or tribunal in connection with liability insured against by this section of this Policy.
 - (ii) any Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry into circumstances relating to any Occurrence, claim or potential claim which would be the subject of indemnity under this section of this Policy.
 - (iii) any enquiry, prosecution or hearing of a disciplinary nature held before a outside legally constituted enquiry board, committee, licensing authority or the like.

Provided that Our liability under clauses 13.2 (f) (iii) and 13.2 (f) (iv) shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability which applies to this section of this Policy.

Where We are prevented by law or otherwise from making payments on Your behalf, We will indemnify You for legal liability incurred to the extent that such liability is covered by this section of this Policy.

13.3. **Limits of Liability and Excess**

Subject to:

- (a) General Condition 20.3 - Claims Preparation Expenses;
- (b) Clause 13.2 - Defence Costs and Supplementary Payments; and
- (c) Exclusion Clause 15.19 (e) below;

for General Liability - the Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims arising out of any one Occurrence.

For Products Liability - the Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance.

The applicable Limit of Liability will not be reduced by the amount of any Excess payable by You.

14. **Optional Extension - Products Exported to North America with Your Knowledge**

(Applicable only where this Optional Extension is shown as covered in the Schedule)

The cover provided by this section of this Policy is extended to include any judgment, award or settlement made within Commonwealth of Australia or any order made anywhere in the World to enforce such judgment, award or settlement either in whole or in part, subject to the following additional terms and exclusions in respect of any such judgment, award or settlement:

- (a) cover only applies in respect of Your legal liability in respect of Personal Injury and/or Property Damage that arises out of any Products exported to North America.
- (b) cover is not provided for:
 - (iii) Personal Injury and/or Property Damage arising out of the discharge, dispersal, emission, release or escape of Pollutants;
 - (iv) the cost of removing, nullifying or clean-up of Pollutants;
 - (v) the cost of preventing the escape of Pollutants;
 - (vi) Personal Injury and/or Property Damage arising directly or indirectly from the existence of asbestos;
- (c) any claim for Compensation if in North America You have:
 - (i) any assets other than Products;
 - (ii) a related or subsidiary company;
 - (iii) any person or entity with power of attorney;
 - (iv) any franchisor.

15. **Exclusions Applicable to Section 3**

We do not cover any liability:

15.1 **Advertising Injury**

for Advertising Injury:

- (a) resulting from statements made at Your direction with knowledge that such statements are false.
- (b) resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
- (c) resulting from any incorrect description of the price of Your Products or services.
- (d) failure of Your Products or services to conform with advertised performance, quality, fitness or durability.
- (e) incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

15.2 **Aircraft, Hovercraft or Watercraft**

for Personal Injury and/or Property Damage arising from:

- (a) the ownership, maintenance, operation or use by You of any Aircraft.
- (b) the ownership, operation or use by You of any Watercraft or Hovercraft exceeding eight (8) metres in length, whilst such Watercraft or Hovercraft is on, in or under water.

Provided that Exclusion 15.2 (b) shall not apply with regard to claims arising out of:

- (i) Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable.
- (ii) Hovercraft owned or operated by others and used by You for business entertainment.
- (iii) Watercraft owned by others and used by You for business entertainment.

15.3 **Aircraft Products**

arising out of any Products which, with Your knowledge, are intended for incorporation into the structure, machinery or controls of any Aircraft.

15.4 **Asbestos**

directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

15.5 **Breach of Professional Duty**

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this Exclusion 15.5 shall not apply to claims:

- (a) arising out of the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.
- (b) arising out of advice or service given gratuitously.
- (c) arising out of advice given in respect to the use or storage of Your Products.

15.6 **Contractual Liability**

which has been assumed by You under any contract or agreement that requires You to:

- (a) effect insurance over property; either real or personal.
- (b) assume liability for Personal Injury and/or Property Damage regardless of fault; provided that this Exclusion 15.6 (b) will not apply with regard to:
 - (i) liabilities which would be implied by law in the absence of such contract or agreement; or
 - (ii) liabilities assumed by You any written rental and/or lease and/or hiring agreement of real and/or personal property, other than with respect to any term or condition contained in such rental, lease and/or hiring agreement that requires You to insure such property; or

- (iii) terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
- (iv) liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

15.7 **Damage to Products**

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to the specific part and only that part of such product to which the damage is directly attributable.

15.8 **Electronic Data**

arising out of:

- (a) the communication, display, distribution or publication of Electronic Data; provided that this Exclusion 15.8 (a) does not apply to Personal Injury and/or Advertising Injury arising therefrom;
- (b) the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of Electronic Data;
- (c) error in creating, amending, entering, deleting or using Electronic Data;
- (d) the total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

15.9 **Employers Liability**

- (a) for Bodily Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self-insurance pursuant to or required by any legislation relating to Workers' Compensation or Accident Compensation whether or not such policy, fund, scheme or self-insurance has been effected.
- (b) imposed by:
 - (i) the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement.
 - (ii) any law relating to Employment Practices.

Notwithstanding Exclusion clause 15.6 – 'Contractual Liability', Exclusions 15.9 (a) and 15.9 (b) shall not apply with respect to liability of others assumed by the Named Insured under a written contract or agreement, provide such contract is declared and accepted by the insurer.

For the purpose of Exclusions 15.9 (a) and 15.9 (b):

- (1) the term 'Worker' means any person deemed to be employed by You pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be Workers.
- (2) the term 'Bodily Injury' means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

15.10 Faulty Workmanship

for the cost of performing, completing, correcting or improving any work undertaken by You.

15.11 Fines, Penalties, Punitive, Exemplary or Aggravated Damages

for any fines, penalties, punitive, exemplary or aggravated damages.

15.12 Libel, Slander or Defamation of Character

for libel, slander or defamation of character:

- (a) resulting from statements made prior to the commencement of the Period of Insurance.
- (b) resulting from statements made at Your direction with knowledge that such statements are false.
- (c) incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

15.13 Liquidated Damages

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

15.14 Loss of Use

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

- (a) a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- (b) failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 15.14 (b) shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such products or work have been put to use by any person or organisation other than You.

15.15 Pollution

- (a) for Personal Injury and/or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of any Pollutants into or upon land, the atmosphere or any water course or body of water.
- (b) for any costs and expenses incurred in preventing the discharge, dispersal, release, seepage or escape of, or testing and monitoring for, containing, removing, nullifying, or cleaning up of, any Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than North America, Exclusions 15.15 (a) and 15.15 (b) shall not apply where such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

15.16 **Product Guarantee**

for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

15.17 **Product Recall**

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by the Named Insured because of any known, alleged or suspected defect or deficiency in such Products.

15.18 **Property Owned by You**

for Property Damage to property owned by You.

15.19 **Property in Your Care, Custody or Control**

for Property Damage to property in Your physical or legal care, custody or control; but this exclusion shall not apply with regard to:

- (a) the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors.
- (b) premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of Your Business, provided that the liability does not arise from Your failure to insure such premises or property as required by any lease or rental agreement.
- (c)
 - (i) premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business; or
 - (ii) any other property temporarily in Your possession for the purpose of being worked upon;but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work.
- (d) any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your Business.
- (e) Notwithstanding Exclusion clause 15.6 – 'Contractual Liability', any property (except property that You own) not mentioned in clauses 15.19 (a) to 15.19 (d) above whilst in Your physical or legal care, custody or control whether or not You have accepted or assumed legal liability for such property. Provided that Our liability under this clause 15.19 (e) shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.

15.20 **Vehicles**

for Personal Injury and/or Property Damage arising out of the ownership, possession or use by You of any Vehicle:

- (a) which is registered or which is required under any legislation to be registered, or
- (b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected);

But Exclusions 15.20 (a) and 15.20 (b) shall not apply to:

- (c) Personal Injury where:
 - (i) that compulsory liability insurance or statutory indemnity does not provide indemnity, and

- (ii) the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.
- (d) any Vehicle (including any tool or plant forming part of or attached to or used in connection with such vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Worksite.
- (e) the delivery or collection of goods to or from any Vehicle.
- (f) the loading or unloading of any Vehicle.
- (g) any Vehicle temporarily in Your custody for the purpose of parking.

15.21 Child molestation

The molestation or interference with a minor or minors by

- a. **You** or any person comprising You
- b. any of Your employees, or
- c. any person performing any voluntary work on Your behalf

Further, we shall not have any duty to defend any action, suit or proceedings brought against You (or any other person or body corporate who might otherwise but for the provisions of this clause be entitled to indemnity under this policy) which either directly or vicariously seeks compensation in respect of such molestation or interference as above or from any personal injury resultant therefrom

16. **Conditions Applicable to Section 3**

16.1 **Notification of Occurrence, Claim or Suit**

You shall give:

- (a) written notice to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this section of this Policy.
- (b) all such additional information that We may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or Occurrence shall be forwarded to Us as soon as practicable after they are received by You.
- (c) written notice (including facsimile transmission) must be given to Us via Your insurance intermediary.

16.2 **Your Duties in the event of an Occurrence, Claim or Suit**

- (a) You shall not, without Our written consent (which consent shall not be unreasonably delayed or withheld), make any admission, offer, promise or payment in connection with any Occurrence or claim.
- (b) You shall use the best endeavours to preserve all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We have had an opportunity of inspection.
- (c) You shall, when so requested, provide Us with details of any other insurances current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury and covering any of the liability insured by this Policy.

16.3 **Our Rights Regarding Claims**

- (a) Following the happening of any Occurrence in respect of which a claim is, or may be, made under this section of this Policy, We shall have full discretion in the conduct of any proceedings in connection with any claim. You shall give such information and assistance that We may reasonably require in the prosecution, defence or settlement of any claim.
- (b) We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
 - (i) the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability in respect thereof); or
 - (ii) any lesser sum for which the claim(s) can be settled.
- (c) Upon making such payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for Defence Costs and Supplementary Payments:
 - (i) recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
 - (ii) incurred by Us, or by You with Our written consent, prior to the date of such payment.

16.4 Foreign Currency

If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the cash rate of exchange published in the Australian Financial Review on the date the award was made or settlement was agreed upon; subject always to the applicable Limit of Liability.

16.5 Adjustment Of Premium

If the first premium or any renewal premium for this section of this Policy or any part thereof shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow Us to inspect such record.

You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may require as soon as reasonably practicable. The premium for such period shall thereupon be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this section of this Policy.

16.6 Alteration Of Risk

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each Period of Insurance, that shall come to the knowledge of Your officer responsible for insurance matters, shall be notified to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium as We may require.

16.7 Bankruptcy or Insolvency

In the event that You should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

16.8 Breach of Condition or Warranty

Your rights under this section of this Policy shall not be prejudiced by any unintentional and/or inadvertent:

- (a) breach of a condition or warranty without Your knowledge or consent; or

- (b) error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of "You, Your, Insured"; or
- (c) error in name, description or situation of property; or
- (d) failure to report any property and/or entity and/or insurable exposure in which You have an interest.

Provided always that, upon discovery of any such fact or circumstances referred to above, Your officer responsible for insurance matters shall give written notice thereof to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium that We may require.

16.9 Inspection and Audit

We shall be permitted, but not obligated, to inspect Your premises and operations at any reasonable time.

Neither Our right to make inspections, nor Our failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit Your books and records at any time during the currency of this section of this Policy and within three (3) years after the final termination of this section of this Policy but only with regard to matters which in Our opinion are relevant to this section of this Policy.

16.10 Reasonable Precautions

You must:

- (a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.
- (b) take reasonable precautions:
 - (i) to prevent Personal Injury and/or Property Damage or Advertising Injury.
 - (ii) to prevent the manufacture, sale or supply of defective Products.
- (c) to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.
- (d) at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or have reason to suspect.

16.11 Release

Where You are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or any landlord or any other persons or parties from liability for loss, destruction or damage or legal liability insured against under this section of this Policy, such release is allowed without prejudice to this insurance.

We agree to waive all Our rights of subrogation against any such Authority or persons or parties in the event of any Occurrence for which a claim for indemnity may be made under this section of this Policy.

16.12 Severability and Cross Liability

This section of this Policy, including any amendment, renewal or variation or Endorsement to or of it, shall be construed as if each person, corporation, entity or other organisation entitled to claim on it, whether a party to the contract of insurance or not, had made a proposal, application or request for this section of this Policy, or amendment, or renewal, or variation or Endorsement, in respect of their interest only. Further any information or knowledge possessed by a person, corporation, entity or other organisation entitled to claim on this section of this Policy, whether possessed before or after the

contract was entered into, shall not be imputed to any other person, corporation, entity or other organisation.

We will not seek any relief whatsoever (including cancellation of this section of this Policy) for non-disclosure or misrepresentation or both against a person, corporation, entity or other organisation entitled to claim under this section of this Policy unless We would have been entitled to that relief had the person claiming been the only person covered by this section of this Policy.

Further neither the inclusion of more than one Insured under this section of this Policy nor any act, omission, breach or default by an Insured shall in any way affect the rights of any other Insured, it being intended that this section of this Policy should be construed as if a separate contract of insurance had been entered into by each Insured; but not so as to increase Our liability under this section of this Policy.

16.13 **Subrogation and Allocation of the Proceeds of Recoveries**

Subject to Condition 16.14 'Subrogation Waiver', any corporation, entity, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying You in respect of legal liability under this insurance.

Should You incur any legal liability which is not covered by this insurance:

- (a) due to the application of an Excess; and/or
- (b) where the amounts of any judgments or settlements exceed the applicable Limit of Liability;

You will be entitled to the first call on the proceeds of all recoveries made, by either You or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to reimburse Us.

16.14 **Subrogation Waiver**

Notwithstanding Condition 16.13, We hereby agree to waive all Our rights of subrogation under this section of this Policy against:

- (a) each of the parties described under Definition 17.24 ("You, Your, Insured").
- (b) any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this section of this Policy. Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.

17. **Definitions Applicable to Section 3**

For the purpose of determining the cover provided by this section of this Policy:

17.1 **"Advertising Injury"** means:

Injury arising out of:

- (a) libel, slander or defamation of character; or
- (b) any breach of the misleading or deceptive conduct provisions of the Competition and Consumer Act 2010 (Commonwealth) or Schedule 2 to the Competition and Consumer Act 2010 (The Australian Consumer Law) or any Fair Trading or similar legislation of any country, state or territory; or
- (c) any infringement of copyright or passing off of title or slogan; or

- (d) unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or
- (e) invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

17.2 “Aircraft” means:

any craft or object designed to travel through air or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

17.3 “Business” means:

the business as described in the Schedule and/or as further described in any more specific underwriting information provided to Us, at the time when this insurance was proposed to Us or at the time of any renewal of this section of this Policy, and shall also include:

- (a) any prior operations or activities which you have declared to us, which have ceased or have been disposed of but for which You may retain a legal liability.
- (b) the ownership of premises and/or the tenancy thereof by You.
- (c) the maintenance or repair of Your premises or facilities or property for which such responsibility exists.
- (d) participation in any exhibition by You or on Your behalf.
- (e) the hire or loan of plant and/or equipment to other parties.
- (f) conducted tours of Your premises , if not for reward unless declared to us.
- (g) the provision of any sponsorships, charities, galas, security, first aid, medical, ambulance or firefighting services by You or on Your behalf.
- (h) private work undertaken by Your employees for any of Your directors, partners, proprietors, officers or executives.
- (i) the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your employees.

17.4 “Compensation” means:

monies paid or agreed to be paid by judgment, award or settlement in respect of:

- (a) Personal Injury; or
- (b) Property Damage; or
- (c) Advertising Injury.

Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

17.5 “Electronic Data” means:

facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for such equipment.

17.6 “Employment Practices” means:

any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly related to employment by the Insured.

17.7 **“Excess”** means:

the first amount of each claim or series of claims arising out of any one Occurrence for which You are responsible.

The Excess(es) applicable to this section of this Policy appear in the Schedule.

The Excess(es) applies to all amounts for which We will be liable, including the indemnity provided by Insuring Clause 13.2 - Defence Costs and Supplementary Payments.

17.8 **“General Liability”** means:

Your legal liability in respect of Personal Injury and/or Property Damage or Advertising Injury caused by or arising out of an Occurrence happening in connection with the Business other than Products Liability.

17.9 **“Hovercraft”** means:

any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air provided by a downward blast.

17.10 **“Medical Persons”** includes but is not limited to:

medical practitioners, medical nurses, dentists and first aid attendants.

17.11 **“Named Insured”** means:

- (a) the person(s), corporations and/or other organisations specified in the Schedule as “The Named Insured”;
- (b) all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of The Named Insured incorporated in Australia and/or any other organisations under the control of The Named Insured;
- (c) all subsidiary and/or controlled corporations (including subsidiaries thereof) of The Named Insured and/or any other organisations under the control of The Named Insured incorporated in Australia and which are constituted or acquired by The Named Insured during the Period of Insurance.
- (d) every subsidiary and/or controlled corporation and/or other organisation of The Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary or controlled corporation or organisation caused by or arising out of Occurrences insured against by this section of this Policy, which occurred prior to the date of divestment.

17.12 **“North America”** means:

- (a) the United States of America and the Dominion of Canada;
- (b) any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- (c) any country or territory subject to the laws of the United States of America or the Dominion of Canada.

17.13 **“Occurrence”** means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage or Advertising Injury that is neither expected nor intended (except for the matters set out in clause 17.14 (e)) from Your standpoint.

With respect to Personal Injury and/or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

17.14 **“Personal Injury”** means:

- (a) bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;
- (b) false arrest, false imprisonment, wrongful detention, wrongful entry, wrongful eviction, malicious prosecution or humiliation;
- (c) libel, slander, defamation of character or invasion of privacy, unless arising out of Advertising Injury;
- (d) discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by You or at Your direction, but only with respect to liability other than fines and penalties imposed by law;
- (e) assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

17.15 **“Pollutants”** means:

any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. ‘Waste material’ includes materials that are intended to be recycled, reconditioned or reclaimed.

17.16 **“Products”** means:

anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf, including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which, by law or otherwise, You are deemed to have manufactured in the course of the Business including discontinued products.

Provided always that for the purpose of this insurance the term “Products” shall not be deemed to include:

- (a) food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit;
- (b) any vending machine or any other property rented to or located for use of others but not sold by You;

and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

17.17 **“Products Liability”** means:

Your legal liability in respect of Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such products; but only where such Personal Injury and/or Property Damage occurs away from premises

owned or leased by or rented to You and after physical possession of such products has been relinquished to others.

17.18 **“Property Damage”** means:

- (a) physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or
- (b) loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.

17.19 **“Territorial Limits”** means:

- (a) anywhere in the World except North America.
- (b) North America, but only with respect to:
 - (i) overseas business visits by any of Your directors, partners, officers, executives or employees, who are non-resident in North America, but not where they perform manual work in North America.
 - (ii) Products exported to North America without Your knowledge.

17.20 **“Tool of Trade”** means:

a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your premises or on any Worksite. Tool of Trade does not include any Vehicle whilst travelling to or from a Worksite or Vehicles that are used to carry goods to or from any premises.

17.21 **“Vehicle”** means:

any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

17.22 **“Watercraft”** means:

any vessel, craft or thing made or intended to float on or in or travel on or through water, other than model boats.

17.23 **“Worksite”** means:

any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You shall use in connection with such work.

17.24 **“You, Your, Insured”**

Each of the following is an Insured to the extent specified below:

- (a) the Named Insured.
- (b) every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the Named Insured (including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the Business) while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities.
- (c) any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such employee superannuation fund or pension scheme which is not administered by corporate fund managers.

- (d) every principal in respect of the principal's liability arising out of:
 - (i) the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this section of this Policy.
 - (ii) any Products sold or supplied by the Named Insured, but only in respect of the Named Insured's own acts or omissions in connection with such products and in any event only for such coverage and Limits of Liability as are provided by this section of this Policy.
- (e) every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of any law, agreement or permit (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by such law, agreement or permit and in any event only for such coverage and Limits of Liability as are provided by this section of this Policy.
- (f) every officer, member, employee or voluntary helper of the Named Insured's canteen, social and/or sporting clubs, security, first aid, medical, ambulance or firefighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities as such.
- (g) any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured's employees for such person and any employee whilst actually undertaking such work.
- (h) the estates, legal representatives, heirs or assigns of:
 - (i) any deceased or insolvent persons, or
 - (ii) persons who are unable to manage their own affairs by reason of mental disorder or incapacity,

who would otherwise be indemnified by this section of this Policy, but only in respect of liability incurred by such persons as described in clauses 17.24 (h) (i) and 17.24 (h) (ii) above.
- (i) any joint venture companies and partnerships, declared to us and shown in the schedule to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this section of this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this section of this Policy.

General Definitions

18. The following General Definitions apply to all Sections of this Policy unless they are defined differently in any individual section.
- 18.1 **“Australia”** means:
- the Commonwealth of Australia including any of its dependencies and Territories.
- 18.2 **“Period of Insurance”** means:
- the period set forth in the Schedule, or any shorter period arising as a result of cancellation of this Policy, and any extension thereof which may be agreed in writing between You and Us.
- 18.3 **“Policy”** means:
- includes this document, the Schedule and any endorsement or memoranda affixed and any future documents issued (either at inception or during the Period of Insurance) to You which amends this Policy wording or Schedule; and the Proposal.
- 18.4 **“Schedule”** means:
- the most current Schedule of Insurance or any future renewal Schedule, including any endorsements issued by us in connection with this Policy.
- 18.5 **“Security”** means:
- various Underwriters at Tokio Marine & Nichido, each of whom (including their executors and administrators) is only liable for their share of any Claim, loss, liability or expense payable under this Policy.
- 18.6 **“We/Us/Our”** means:
- Genesis Underwriting Pty Ltd acting under a binder as an agent of the Security.

General Exclusions

19. The following exclusions apply to all sections of this Policy unless expressly stated otherwise in any section.
- 19.1 **War, terrorism, radioactivity**
- a) War
1. Any loss or damage occasioned by or through or in consequence directly or indirectly of any of the following occurrences namely:
- a) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war;
- b) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.
- b) Terrorism
2. notwithstanding any provision to the contrary within this insurance contract or any endorsement thereto, it is agreed that this insurance contract excludes death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any act of terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- i) involves violence against one or more persons; or
- ii) involves damage to property; or
- iii) endangers life other than that of the person committing the action; or
- iv) creates a risk to health or safety of the public or a section of the public; or
- v) is designed to interfere with or to disrupt an electronic system.

This Insurance contract also excludes death, injury, illness, loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

c) **Radioactivity**

Radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

Provided that this Exclusion 19.1 (c) shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above.

General Conditions

20. The following General Conditions apply to all Sections of this Policy. You should also refer to each section to see whether any additional conditions apply.

20.1 **Assignment**

This Policy and any rights hereunder cannot be assigned without Our prior written consent.

20.2 **Cancelling Your Policy**

(a) **How You may cancel this Policy**

- (i) You may cancel this Policy at any time by telling Us in writing that You want to cancel it. You can do this by giving the notice to Your insurance intermediary.

- (ii) Where 'You' involves more than one person, We will only cancel this Policy when a written agreement to cancel this Policy is received from all persons named as the Insured.

(b) **How We may cancel this Policy**

- (i) We may cancel this Policy in any of the circumstances permitted by law by informing You in writing, in which case cancellation takes place at the time You enter into another contract of insurance intended to replace this Policy, or at 4.00 pm on the 30th day after delivery of the notice to You, whichever is the earlier.
- (ii) We will give You this notice in person or send it to Your address last known to us.

(c) **The premium**

We will refund to You the proportion of the premium for the remaining Period of Insurance.

(d) **Premium Funders**

If the premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, a refund will be made to the premium funding company of the proportionate part of the premium applicable to the unexpired Period of Insurance.

20.3 Claims Preparation Expenses

We will pay for costs necessarily and reasonably incurred for the preparation of a claim for which we agree to indemnify You under this Policy. The most we will pay is \$25,000 in total, unless a specific amount is included in the particular section of this Policy. Provided that before You incur these claim preparation costs You obtain our written approval to incur these costs. This benefit is in addition to any applicable Limit or Sub Limit of Liability.

20.4 Currency

All amounts under this Policy are expressed and payable in Australian dollars.

20.5 How Goods and Services Tax (GST) affects any payments We make

The amount of premium payable by You for this Policy includes an amount on account of the GST on the premium.

When We pay a claim, Your GST status will determine the amount We pay.

When You are:

- (a) not registered for GST, the amount We pay is the applicable Limit(s) or Sub Limit(s) of Liability including GST.
- (b) registered for GST, We will pay the applicable Limit(s) or Sub Limit(s) of Liability and where You are liable to pay an amount for GST in respect of an acquisition relevant to Your claim (such as services to repair a Damaged item insured under the Policy) We will pay for the GST amount.

We will reduce the GST amount We pay for by the amount of any input tax credits to which You are or would be entitled if You made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through Your Business Activity Statement (BAS).

You must advise Us of Your correct Australian Business Number and Taxable Percentage.

Any GST liability arising from Your incorrect advice is payable by You.

Where the amount of Your claim is greater than the applicable Limit(s) or Sub Limit(s) of Liability, We will only pay an amount for GST (less Your entitlement for Input Tax Credit) applicable to the amount of the loss settlement. This means that if these amounts are not sufficient to cover Your loss, We will only pay the GST relating to Our settlement of the claim.

We will (where relevant) pay You on Your claim by reference to the GST exclusive amount of any supply made by any business of Yours which is relevant to Your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is Your entitlement to an Input Tax Credit on Your premium as a percentage of the total GST on that premium.

20.6 Interpretation of words

Some of the words used in this Policy have special defined meanings. These words commence with capital letters and are listed under either the "General Definitions" section on page 47 or in the definitions section in the applicable section of this Policy.

The headings in each section are not part of this Policy. Their purpose is to provide You with a general guide about the context of the text.

In this Policy, words importing the singular include the plural and the plural the singular, and any gender includes reference to all other genders unless the context requires an alternative construction.

20.7 Jurisdiction

This contract of insurance shall be governed by and construed in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.

20.8 Sanctions clause

We shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would contravene any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia.