

# GENESIS

GENERAL LIABILITY AND PRODUCTS WORDING



LLOYD'S

Coverholder at LLOYD'S

# THE INSURER

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This Policy is underwritten by certain underwriters at Lloyds, effected through Genesis Underwriting Pty Ltd as the coverholder.

## COMPLAINTS HANDLING & GENERAL INSURANCE CODE OF PRACTICE

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Lloyd's is a signatory to the General Insurance Code of Practice. Lloyd's and Genesis strive to comply with the requirements of the Code. More information about the Code can be found at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

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:

- (a) to commit to high standards of service;
- (b) to promote better, more informed relations between us and you;
- (c) to maintain and promote trust and confidence in the general insurance industry;
- (d) to provide fair and effective mechanisms for the resolution of Complaints and disputes between us and you;
- (e) and to promote continuous improvement of the general insurance industry through education and training.

### Complaint 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 Compliance Manager whose contact details are as follows:

Genesis Underwriting Pty Ltd  
Attn: Anthony Jodrell  
Po Box 1369 Manly NSW 1655  
Phone (02) 8412 3500  
Facsimile (02) 8412 3599

All matters will be treated in strict confidence.

### What Is A Complaint?

A complaint 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.

### What to do if you have a Complaint?

We will do everything possible to provide a quality service to you. However, we recognize that occasionally there may be some aspect of Our service or a decision We have made that You wish to query or draw to Our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to Your complaint.

This Insurance complies with the Insurance Council of Australia's General Insurance Code of Practice. Any enquiry or complaint relating to this insurance should be referred in the first instance to Genesis. Genesis contact details are as follows:

Genesis Underwriting Pty Ltd  
Attn: Anthony Jodrell  
Po Box 1369  
Manly NSW 1655  
Phone (02) 8412 3500  
Facsimile (02) 8412 3599

We will respond to you within 15 working days. If this does not resolve the matter or You are not satisfied with the way the complaint has been dealt with, You should contact:

**Lloyd's Underwriters General Representative in Australia**

Level 9  
1 O'Connell Street  
Sydney NSW 2000

Telephone (02)8298 0783

Facsimile (02) 8298 0788

Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

If your complaint is not resolved in a manner satisfactory to you or we do not resolve your complaint within 45 calendar days, you may refer the matter to Financial Ombudsman Service Australia (FOSA) or Australian Financial Complaints Authority (AFCA) as follows:

**For complaints lodged on or before 31 October 2018**

You may refer the matter to FOSA. FOSA can be contacted by post GPO Box 3, Melbourne VIC 3001, phone 1800 367 287 or email [info@fos.org.au](mailto:info@fos.org.au). More information can be found on their website [www.fos.org.au](http://www.fos.org.au)

**For complaints lodged on or after 1 November 2018**

You may refer the matter to AFCA. AFCA can be contacted by post GPO Box 3, Melbourne VIC 3001, phone 1800 931 678 or email [info@afca.org.au](mailto:info@afca.org.au). More information can be found on their website [www.afca.org.au](http://www.afca.org.au)

FOSA and AFCA are independent bodies that operate nationally in Australia and aim to resolve disputes. FOSA and AFCA provide fair and independent financial services complaint resolution that is free to consumers. Your dispute must be referred to FOSA or AFCA within 2 years of the date of our final decision. Determinations made by FOSA and AFCA are binding upon us.

If Your complaint is not eligible for FOSA or AFCA, it may be eligible for referral to the UK Financial Ombudsman Service. Such referral must occur within 6 months of the final decision by the Complaints team at Lloyd's. Further details will be provided with their final decision to you.

The Underwriters accepting this insurance agree that:

(i) if a dispute arises under this insurance it will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon the Underwriters may be served upon;

**Lloyd's Underwriters General Representative in Australia**

Level 9  
1 O'Connell Street  
Sydney NSW 2000

who has authority to accept service and to appear on the Underwriters' behalf;

(iii) if a suit is instituted against any of the Underwriters all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this insurance IMMEDIATE NOTICE should be given to Genesis Underwriting Pty Ltd.

# 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 have this duty until we agree to insure you.

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

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## Your Privacy And The Law

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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

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### *– 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.

## Using and Disclosing Your Personal Information

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### – 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.

## Resolving Your Privacy Issues

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### – 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 Anthony Jodrell:

**Privacy Officer**  
Genesis Underwriting Pty Ltd

Po Box 1369  
Manly NSW 1655  
Phone: 02 8412 3500  
Fax - 02 8412 3599

# Lloyd's Certificate of Insurance

Effected through Genesis Underwriting Pty Ltd (the Coverholder)

The certificate is issued by the Coverholder in accordance with the authority granted to them by certain Underwriters at Lloyd's under the agreement noted to in the certificate.

This certificate confirms that on receipt of payment of the premium noted as payable in the schedule, certain Underwriters at Lloyd's have agreed to insure You, in accordance with wording attached to this certificate.

You or Your representative can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Underwriters at Lloyd's is liable by requesting them from the coverholder. In the event of loss, each Underwriter (and their executors and administrators) is only liable for their own share of the loss.

In accepting this insurance, the Underwriters have relied on the information and statements that you have provided in the proposal form or quotation slip. You should read this Certificate, Schedule and policy wording carefully and if it is not correct contact Genesis Underwriting Pty Ltd.

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# General and Products Liability

## 1. Insuring Clauses

### 1.1. 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.

### 1.2. 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, including loss of salaries or wages because of Your attendance at hearings or trials at Our request; 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) bonds to release attachments for amounts not exceeding the applicable Limit of Liability which applies to this section of this Policy but We shall have no obligation to apply for or furnish any such bond.
  - (ii) 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 surgical and/or medical 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 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.
- (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.
  - (iii) 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.
  - (iv) any enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.

Provided that Our liability under clauses 1.2 (f) (iii) and 1.2 (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.

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments.

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.

In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the expense of such defence incurred with Our written consent (which consent shall not be unreasonably delayed or withheld).

### **1.3. Limits of Liability and Excess**

Subject to:

- (a) General Condition 7.3 - Claims Preparation Expenses;
- (b) Clause 1.2 - Defence Costs and Supplementary Payments; and
- (c) Exclusion Clause 3.19 (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.

## **2. 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 North America 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:
  - (i) Personal Injury and/or Property Damage arising out of the discharge, dispersal, emission, release or escape of Pollutants;
  - (ii) the cost of removing, nullifying or clean-up of Pollutants;
  - (iii) the cost of preventing the escape of Pollutants;
  - (iv) 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.

## **3. Exclusions Applicable**

We do not cover any liability:

### **3.1 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.

### **3.2 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 ten (10) metres in length, whilst such Watercraft or Hovercraft is on, in or under water. Provided that Exclusion 3.2 (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.
  - (iv) hand propelled or sailing craft exceeding ten (10) metres in length, whilst such craft is in territorial waters.

### **3.3 Aircraft Products**

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

### **3.4 Asbestos**

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

### **3.5 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 3.5 shall not apply to claims:

- (a) for Personal Injury and/or Property Damage arising from such breach of duty.
- (b) 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.
- (c) arising out of advice or service given gratuitously.
- (d) arising out of advice given in respect to the use or storage of Your Products.

### **3.6 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 3.6 (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) liabilities assumed by You under any written contract made or entered into with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities; or
- (iv) liabilities assumed by You under any written contract with any railway authority for the loading, unloading and/or transport of Your Products, including contracts relating to the operation of railway sidings; or
- (v) terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
- (vi) liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

### **3.7 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.

### **3.8 Electronic Data**

arising out of:

- (a) the communication, display, distribution or publication of Electronic Data; provided that this Exclusion 3.8 (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.

### **3.9 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.

Provided that this section of this Policy will respond to the extent that Your liability would not be covered under any such policy, fund, scheme or self-insurance arrangement had You complied with its obligations pursuant to such law.

- (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 3.6 - 'Contractual Liability', Exclusions 3.9 (a) and 3.9 (b) shall not apply with respect to liability of others assumed by the Named Insured under a written contract or agreement.

For the purpose of Exclusions 3.9 (a) and 3.9 (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.

### **3.10 Faulty Workmanship**

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

### **3.11 Fines, Penalties, Punitive, Exemplary or Aggravated Damages**

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

### **3.12 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.

### **3.13 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.

### **3.14 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 3.14 (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.

### **3.15 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 3.15 (a) and 3.15 (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.

### **3.16 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.

### **3.17 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.

### **3.18 Property Owned by You**

for Property Damage to property owned by You.

### **3.19 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 3.6 - 'Contractual Liability', any property (except property that You own) not mentioned in clauses 3.19 (a) to 3.19 (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 3.19 (e) shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.

### **3.20 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 3.20 (a) and 3.20 (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) damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road, caused by the weight of such Vehicle or of the load carried thereon or therein.
- (h) any Vehicle temporarily in Your custody for the purpose of parking.
- (i) Property Damage caused by or arising out of the movement of any Vehicle (which is required to be Conditionally Registered in accordance with the law of any State or Territory in Australia) in the event of Your inadvertent and unintentional failure to effect Conditional Registration.

## **4. Conditions Applicable**

### **4.1 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.

### **4.2 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.



#### **4.3 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.

#### **4.4 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.

#### **4.5 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.

#### **4.6 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.

#### **4.7 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.

#### **4.8 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.

#### **4.9 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.

#### **4.10 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.

#### **4.11 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.

#### **4.12 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 nondisclosure 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.

#### **4.13 Subrogation and Allocation of the Proceeds of Recoveries**

Subject to Condition 4.14 '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.

#### **4.14 Subrogation Waiver**

Notwithstanding Condition 4.13, 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 5.24 ("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.

## 5. Definitions Applicable

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

### 5.1 “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.

### 5.2 “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.

### 5.3 “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 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.
- (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.

### 5.4 “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.

**5.5 “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.

**5.6 “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.

**5.7 “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 1.2 - Defence Costs and Supplementary Payments.

**5.8 “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.

**5.9 “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.

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

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

**5.11 “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.

**5.12 “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.

**5.13 “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 5.14 (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.

**5.14 “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.

**5.15 “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.

**5.16 “Products” means:**

anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, resupplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in the Business), 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.

**5.17 “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.

**5.18 “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.

**5.19 “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.

**5.20 “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.

**5.21 “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.

**5.22 “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.

**5.23 “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.

## 5.24 “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 5.24 (h) (i) and 5.24 (h) (ii) above.
- (i) any joint venture companies and partnerships 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

5. The following General Definitions apply to all Sections of this Policy unless they are defined differently in any individual section.

**5.25 “Australia” means:**

the Commonwealth of Australia including any of its dependencies and Territories.

**5.26 “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.

**5.27 “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.

**5.28 “Schedule” means:**

the most current Schedule of Insurance or any future renewal Schedule, including any endorsements issued by us in connection with this Policy.

**5.29 “Security” means:**

various Underwriters at Lloyd’s, 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.

**5.30 “We/Us/Our” means:**

Certain Underwriters at Lloyd’s, London.

# General Exclusions

6. The following exclusions apply to all sections of this Policy unless expressly stated otherwise in any section.

## **6.1 Sanction Limitation and Exclusion Clause**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall 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 expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## 6.2 War and Civil War Exclusion Clause

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

## 6.3 Radioactive Contamination and Explosive Nuclear Assemblies Exclusion Clause

This Policy does not cover:

- (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- (b) any legal liability of whatsoever nature  
directly or indirectly caused by or contributed to by or arising from
  - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
  - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## 6.4 Biological or Chemical Materials Exclusion

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

## 6.5 Australian Terrorism Insurance Act 2003 Notice

The Underwriters have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any “eligible terrorism loss” as defined in ATIA.

Any coverage established by ATIA is only in respect of any “eligible terrorism loss” resulting from a “terrorist act” which is a “declared terrorist incident” as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a “declared terrorist incident”.

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a “reduction percentage” as defined in ATIA which results in a cap on the Underwriter’s liability for payment for “eligible terrorism losses”.

## 6.6 Electronic Date Recognition exclusion ( EDRE)

This Policy does not cover any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

- (a) the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non- computer equipment, whether the property of the Insured or not; or
- (b) any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

This clause applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

## 6.7 Terrorism Exclusion Endorsement

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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

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

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

# General Conditions

7. 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.

## 7.1 Assignment

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

## 7.2 Cancellation

- (a) This Policy may be cancelled at any time at the request of the Insured, in which case We will retain the customary short-period rate for the time this Policy has been in force.
- (b) We may also cancel this Policy by giving the Insured written notice to that effect where:
- (i) the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
  - (ii) the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
  - (iii) the person who was the Insured at the time when this Policy was entered into made a misrepresentation to Us during the negotiations for this Policy but before it was entered into;
  - (iv) the Insured or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the Premium;
  - (v) the Insured has made a fraudulent claim under this Policy or any other policy of insurance (whether with Us or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
  - (vi) the Insured failed to notify Us of any specific act or omission where such notification is required under the terms of this Policy; or
  - (vii) the Insured acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers Us to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
- (c) Our notice of cancellation takes effect at the earlier of the following times:
- (i) The time when another policy of insurance between the Insured and Us or some other insurer, being a policy that is intended by the Insured to replace this Policy, is entered into; or
  - (ii) 4:00pm on the 15th (fifteenth) business day after the day on which notice was given to the Insured.

In the event that We cancel(s) this Policy, We will repay to the Insured a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

Should the Policy be cancelled as per (a), we will also charge an administration fee of \$100 plus GST to cover the costs incurred in the processing of the cancellation of the policy.

### **7.3 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.

### **7.4 Currency**

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

### **7.4 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:

- (e) not registered for GST, the amount We pay is the applicable Limit(s) or Sub Limit(s) of Liability including GST.
- (f) 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.

### **7.5 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 24 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.

## **7.6 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.

## **7.7 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.

## **7.8 Several Liability Notice**

The subscribing insurers' obligation under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.