

# GENESIS ONE

BUSINESS INSURANCE POLICY WORDING



AFSL 450191

ABN 35 163 862 502

LLOYD'S

Coverholder at LLOYD'S

# THE INSURER

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

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (“the Code”), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyds has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Genesis Underwriting Agency or Anthony Jodrell, in the first instance:

Genesis Underwriting Pty Ltd  
Attention Anthony Jodrell  
5 Waimea Street,  
North Balgowlah NSW 2093  
Phone (02) 8412 3500

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd’s Australia who will determine whether it will be reviewed by their office or the Lloyd’s UK Complaints team. Lloyd’s contact details are:

Lloyd’s Australia Limited  
Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)  
Telephone: (02) 8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001  
Website: [www.afca.org.au](http://www.afca.org.au)

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance 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  
Suite 1603  
Level 16  
1 Macquarie Place  
Sydney NSW 2000

who has authority to accept service 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 Agency Pty Ltd  
Anthony Jodrell  
5 Waimea Street,  
North Balgowlah NSW 2093  
Phone (02) 8412 3500

The amount of Premium specified herein is the amount due to the Underwriters and any commission allowed by them is to be regarded as remuneration of the Broker/Coverholder placing this Insurance.

This Certificate is issued by the Coverholder shown above in accordance with the authority granted to them by certain Underwriters at Lloyd's under the Agreement referred to in the Schedule.



IN WITNESS WHEREOF this Certificate has been signed at BROOKVALE NSW

This 10th day of June 2021 by Anthony Jodrell Managing Director 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

## 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 affiliated website through the use of cookie technology.

## 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.

## 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

Anthony Jodrell: Privacy Officer  
Genesis Underwriting Pty Ltd  
5 Waimea Street,  
North Balgowlah NSW 2093  
Phone: 02 8412 3500

## 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.

# TABLE OF CONTENTS

<b>Section 1 - Material Loss or Damage</b>	<b>8</b>
1. The Indemnity	8
2. "The Property" Insured	8
3. Basis of Settlement Application to Section 1	9
4. Memoranda Applicable to Section 1	9
<b>Section 2 - Consequential Loss</b>	<b>13</b>
5. The Indemnity	13
6. Basis of Settlement Application to Section 2	13
7. Definitions Applicable to Section 2	14
8. Memoranda Applicable to Section 2	15
<b>Exclusions Applicable to Sections 1 and 2</b>	<b>17</b>
9. Property Exclusions	17
10. Perils Exclusions	18
<b>Memoranda Applicable to Sections 1 and 2</b>	<b>20</b>
<b>Conditions - Applicable to Sections 1 and 2</b>	<b>21</b>
<b>Section 3 - General and Products Liability</b>	<b>24</b>
13. Insuring Clauses	24
13.1 The Indemnity	24
13.2 Defence Costs and Supplementary Payments	24
13.3 Limits of Liability and Excess	25
14. Optional Extension - Products Exported to North America with Your Knowledge	25
15. Exclusions Applicable to Section 3	26
16. Conditions Applicable to Section 3	29
17. Definitions Applicable to Section 3	32
<b>General Definitions</b>	<b>36</b>
<b>General Exclusions</b>	<b>37</b>
<b>General Conditions</b>	<b>39</b>
<b>Endorsements Applicable to Section 1 and 2 of this Policy</b>	<b>42</b>
<b>The Schedule</b>	<b>42</b>
<b>Section 1 - Material Loss Or Damage</b>	<b>43</b>
The Indemnity	43
The Property Insured	45
Basis of Settlement Applicable to Section 1	46
Memoranda Applicable to Section 1	50
<b>Section 2 - Consequential Loss Insurance</b>	<b>57</b>
Exclusions Applicable to Sections 1 and 2	69
Memoranda Applicable to Sections 1 and 2	80
Conditions Applicable to Sections 1 and 2	81

# 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 of 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 – Consequential Loss

## 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:

**(a)** 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,

**(b)** 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) (i);

**Note:**

At Your option the number of weeks referred to in Clause 6.3 (a) (i) 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(a) (ii) shall not exceed such amount as is deducted under Clause 6.3 (a) (i) 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

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

### 7.9 Rate of Pay-Roll

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

### 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

### 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

### 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

### 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.

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

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

(a) 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 out of the proceeds 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.

This Exclusion 9.17 shall not apply to Section 2 as specifically stated therein.

## 10. 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 coowner 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.

#### **12.5 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.

#### **12.6 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.

#### **12.7 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.

#### **12.8 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.

#### **12.9 Precautions to Prevent Loss**

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

#### **12.10 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.

#### **12.11 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.

#### **12.12 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.

#### **12.13 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, 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 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.

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).

### 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 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.

## 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 ten (10) 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.
- (iv) hand propelled or sailing craft exceeding eight (10) metres in length, whilst such craft is in territorial waters.

### 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) 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.

### 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) 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.

### 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.

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.

Not with standing 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.

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) 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.

### **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 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.

#### **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 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.

**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, 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.

**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 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 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.

**18.6 “We/Us/Our” means:**

Certain Underwriters at Lloyd’s, London.

# 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

This Policy excludes loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

### (a) War

War, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power 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; or

### (b) Any act(s) of Terrorism

For the purpose of this Exclusion 19.1 (b), 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:

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

### (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 19.1(a), 19.1(b) or 19.1(c) above.

## 19.2 Biological or Chemical Materials

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 to pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

## 19.3 Asbestos

Liability for any loss cost or expense directly or indirectly arising out of or resulting as a consequence of or related to the manufacture mining processing ownership distribution testing remediation removal storage disposal sale transportation use of or exposure to asbestos or silica or polychlorinated biphenyls or materials or products containing such substances (or any other component building material hazardous to health) whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

## 19.4 Fraudulent Claims Clause (Australia)

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Assured or anyone acting on the Assured's behalf to obtain any benefit under this Policy, or if any loss hereunder be occasioned by the wilful act or with the connivance of the Assured, the Underwriters, without prejudice to any other right(s) they might have under this Policy, shall be entitled to refuse to pay such claim.

### **19.5. Microorganism Exclusion (Absolute)**

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mould, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

this Exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, clean up, abatement, disposal, relocation or steps taken to address medical or legal concerns. This Exclusion replaces and supercedes any provision in the Policy that provides insurance, in whole or in part, for these matters

### **19.6. Terrorism Exclusion Endorsement (Amended)**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, injury, 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 organisation(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, injury, 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, injury, 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.

### **19.7. Electronic Data 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 in 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 any sequence to the loss, damage, cost, claim or expense.

# 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 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;
- (i)** the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
- (ii)** 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;
- (iii)** 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;
- (iv)** 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;
- (v)** the Insured failed to notify Us of any specific act or omission where such notification is required under the terms of this Policy; or
- (vi)** 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.

## **(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 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, Australia, United Kingdom or United States of America.

#### **20.9 Several Liability**

The subscribing insurers' obligations 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 its obligations.

#### **20.10 Australia 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”.

# Endorsements Applicable to Sections 1 and 2 of this Policy

## The Schedule

The Schedule Applicable to Sections 1 and 2 is hereby extended to include the following Definitions:

### 1. Definition of “Accidental Damage”

“Accidental Damage” means Damage caused by any peril or circumstance not specifically insured or excluded by this Policy. Without limiting the generality of the foregoing, for the purpose of any Limit or Sub-Limit of Liability or Deductible as shown in the Schedule, the term Accidental Damage excludes fire, lightning, thunderbolt, meteorite, earthquake, subterranean fire, volcanic eruption and/or hydrothermal activity; impact, aircraft and/or other aerial devices and/or articles dropped or falling therefrom and/or impact by space debris and/or sonic boom; explosion, implosion or collapse; smoke and/or soot and/or smut and/or steam; spontaneous fermentation and/or overheating, spontaneous combustion; erosion, subsidence, earth movement or collapse resulting therefrom or landslip; flood, water from or action by the sea, tsunami, tidal wave or high water; storm, tempest, wind, hurricane, typhoon, tornado, cyclone, storm surge, rainwater, hail, sleet, snow and/or ice; water or other liquids or substances discharged, overflowing or leaking from apparatus, appliances, pipes, tanks, sprinkler and/or any other systems at the premises or elsewhere; the acts of persons taking part in any riots or civil commotions or of strikers or locked out workers or of persons taking part in labour disturbances or of malicious persons or the acts of any lawfully constituted authority in connection with the foregoing acts or in connection with any conflagration or other catastrophe; burglary, theft, loss of Money, fraudulent or dishonest act(s), breakage of glass, mechanical, electrical, electro-mechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind, or any other event specifically mentioned under any other of the Sub-Limits of Liability in this Policy.

### 2. Definition of “Debris”

For the purpose of:

- a. Clauses 1.2 (f)(i) and 1.2 (f)(ii) of The Indemnity - Section 1; and
- b. Endorsement 57 - ‘Decontamination Costs’;

“Debris” or “debris” means the residue of Damaged Property Insured excluding any material which is itself a Pollutant and which is deposited beyond the boundaries of the Situation.

### 3. Definition of “Indemnity Value”

“Indemnity Value” means the cost necessary to rebuild, replace, repair or restore (as the case may be) Property Insured to a condition substantially the same as its condition at the time of the Damage, but not better or more extensive than that condition, taking into consideration its age, wear and tear and remaining useful life having regard to the nature and location of such property and the purposes for which it is owned, maintained or used by You.

# Section 1 – Material Loss Or Damage

## The Indemnity

### 4. Statutory Liability to pay fire brigade attendance charges

Clause 1.2 (c) of The Indemnity – Section 1 is extended to include statutory charges payable by You to a fire brigade or firefighting authority for attendance at a fire or chemical emergency involving the Premises. No Deductible shall apply in respect of any claim made under this endorsement.

### 5. Exploratory Costs

Clause 1.2 (c) of The Indemnity – Section 1 is extended to include exploratory costs necessarily and reasonably incurred by You to prevent imminent damage or diminish damage to Property Insured by any peril insured against by this Policy. No Deductible shall apply in respect of any claim made under this endorsement.

### 6. Damage Diminution And Accidental Discharge Costs

**6.1** In Clause 1.2 (c) of The Indemnity – Section 1, the words “for the purpose of preventing or diminishing imminent Damage to property hereby insured” are amended to read “for the purpose preventing imminent Damage or minimising Damage to Property Insured”.

**6.2** Clause 1.2 (c) of The Indemnity – Section 1 is extended to include costs and expenses incurred by You to switch off and re-set alarms following an occurrence caused by any insured peril or event.

**6.3** The Indemnity under Clause 1.2 (c) of The Indemnity – Section 1 shall apply whether or not Damage occurs to Property Insured in circumstances giving rise to indemnity under Section 1 of this Policy.

**6.4** Clause 1.2 (c) of The Indemnity – Section 1 is extended to include such reasonable costs, including travelling expenses, incurred by You to avert or minimise losses by perils insured by this Policy, including the protection, safeguard or recovery of Property Insured.

No Deductible shall apply in respect of any claim made under this endorsement.

### 7. Locks and Keys

Clause 1.2 (e) of The Indemnity – Section 1 is hereby amended to read as follows:

1.2 (e) cost of replacing locks, keys and/or magnetic keys and/or electronic access cards and/or combinations where (if as a result of theft or any attempted theft) the keys, magnetic keys and/or electronic access cards are stolen and/or details of combinations have become known, or if there are reasonable grounds to believe the keys, magnetic keys and/or electronic access cards may have been duplicated. We will also pay costs and expenses necessarily and reasonably incurred for opening safes and/or strongrooms as a result of the theft of keys and/or magnetic keys and/or combinations becoming known.

### 8. Demolition and Removal of Owned Property

The words “which is no longer useful for the purpose it was intended” are deleted from Clause 1.2 (f)(iii) of The Indemnity – Section 1.

### 9. Reinstatement of Undamaged Property

Clause 1.2 (f)(iii) of The Indemnity – Section 1 is extended to include the cost of reinstating any property belonging to You which has been necessarily demolished and removed for the purpose of the reinstatement or replacement of Property Insured Damaged by any peril or event insured against by this Policy.

### 10. Personal Property of Employees And Others

The wording of Clause 1.2 (g) of The Indemnity – Section 1 is amended to read:

1.2 (g) Damage to personal property, tools and effects (excluding Money) of Your directors, partners, proprietors and employees whilst on Your Premises; personal property (excluding Money) of Your welfare, sport and social clubs whilst at the Situation; and damage to visitors’ personal property and effects (excluding Money) whilst on Your premises, but only to the extent that such property is not otherwise insured. Provided that Our liability shall not exceed the sub-limit stated in the Schedule against “Personal Property of Employees and Others”.

Provided further that the indemnity provided by this clause 1.2 (g) shall not be subject to:

(i) Clause 4.8 – “Co-insurance” or Provision (iii) of Clause 4.4 – “Reinstatement or Replacement” in Section 1 of this Policy.

(ii) any Deductible referred to in the Schedule.

### **11. Accompanied Baggage In Australia**

The following clause is added to The Indemnity - Section 1:

Damage occurring anywhere in Australia, other than on Your premises or the premises of Your directors or employees, to personal property, tools and effects (excluding Money) belonging to Your directors and employees whilst they are engaged on Your business to the extent that such property is not otherwise insured.

Provided that the indemnity afforded by this endorsement:

(i) shall be limited to the sub-limit stated in the Schedule against "Accompanied Baggage in Australia"; and

(ii) shall not be subject to any Deductible referred to in the Schedule.

### **12. Award Liability for Employees Clothing and/or Tools**

The following clause is added to The Indemnity - Section 1:

Your legal liability to indemnify employees, under the terms of any Federal or State Award or Determination, for Damage to employees' clothing and/or tools, notwithstanding Perils Exclusion Clause 10.6, to the extent that such property is not otherwise insured. No Deductible shall apply to the cover afforded by this endorsement.

### **13. Cost of Clearing Blocked Drains, Pipes, Filters and Pumps**

The following clause is added to The Indemnity - Section 1:

The Indemnity - Section 1 is extended to include costs necessarily and reasonably incurred by You in the clearance of blocked pipes, drains, gutters, sewers, filters, pumping equipment and the like during the Period of Insurance, including exploratory costs, at or in the vicinity of Your Premises, whether or not there has been Damage, provided that this extension shall not cover normal maintenance costs.

Provided that the indemnity afforded by this endorsement:

(i) shall not be subject to Provision (iii) of Clause 4.4 - "Reinstatement or Replacement" or Clause 4.8 - "Co-insurance" in Section 1 of this Policy;

(ii) shall be limited to the sub-limit stated in the Schedule against "Cost clearing blocked drains, pipes, filters and pumps"; and

(iii) shall not be subject to any Deductible referred to in the Schedule.

### **14. Liability to make Enquiries**

The following clause is added to The Indemnity - Section 1:

The Indemnity - Section 1 is extended to include costs and expenses incurred by You in respect of any legal liability to make enquiries consequent upon Damage to Property Insured.

Provided that the indemnity afforded by this endorsement:

(i) shall be limited to the sub-limit stated in the Schedule against "Liability to make Enquiries"; and

(ii) shall not be subject to any Deductible referred to in the Schedule.

### **15. Statutory Inquiries**

The following clause is added to The Indemnity - Section 1:

The Indemnity - Section 1 is extended to include costs and expenses incurred by You in connection with Statutory Inquiries following Damage to Property Insured.

Provided that the indemnity afforded by this endorsement:

(i) shall be limited to the sub-limit stated in the Schedule against "Statutory Inquiries"; and

(ii) shall not be subject to any Deductible referred to in the Schedule.

The term "Statutory Inquiries" shall mean any judicial, coronial or other form of inquiry or hearing established by or at the direction of any government, semi-government, local or planning authority as a direct result of Damage to Property Insured.

### **16. Unpacking Expenses**

The following clause is added to The Indemnity - Section 1:

The Indemnity - Section 1 is extended to include costs and expenses incurred by You in taking inventory (including unpacking, repacking and restocking) to identify, quantify and value any Property Insured consequent upon Damage by any peril or event insured against by this Policy, including examination of property not belonging to You but in Your care, custody or control.

Provided that the indemnity afforded by this endorsement:

- (i) shall be limited to the sub-limit stated in the Schedule against "Unpacking Expenses"; and
- (ii) shall not be subject to any Deductible referred to in the Schedule.

#### **17. Liability for Duty**

The following clause is added to The Indemnity - Section 1:

The Indemnity - Section 1 is extended to include Your liability for customs, excise and other duties which You may become liable to pay in the event of Damage to the Property Insured and/or Your liability to compensate others who may become liable for such customs, excise or other duties.

#### **18. Landscaping**

The following clause is added to The Indemnity - Section 1:

Notwithstanding Property Exclusion Clauses 9.7, 9.8 and 9.13 (b), this Policy extends to include Damage to landscaping; which term shall mean lawns and gardens, plots including rockwork, paving and ornamentation pertaining thereto, ornamental plants, shrubs and trees.

Provided that the indemnity afforded by this endorsement:

- (i) shall be limited to the sub-limit stated in the Schedule against "Landscaping"; and
- (ii) shall not be subject to any Deductible referred to in the Schedule.

#### **19. Expediting Expenses**

The following clause is added to The Indemnity - Section 1:

The Indemnity - Section 1 is extended to include costs and expenses incurred by You for express carriage rates and extra payments for overtime, night, Sunday or holiday working incurred in connection with expediting the repair or reinstatement of the Property Insured directly or indirectly arising from Damage caused by any peril or event insured against by this Policy other than Damage caused by the circumstances described in Endorsement 112 - Boiler and/or Pressure Vessel Explosion, Endorsement 113 - "Machinery Breakdown (Physical Damage and expediting costs)", Endorsement 114 - "Spoilage of Goods in Cold Storage" and Endorsement 115 - "EDP Breakdown".

Provided that the indemnity afforded by this endorsement:

- (i) shall be limited to the sub-limit stated in the Schedule against "Expediting Expenses"; and
- (ii) shall not be subject to any Deductible referred to in the Schedule.

#### **20. Amended Proviso**

The proviso to The Indemnity - Section 1 is amended to read:

Provided that only Clause 1.2 (a) above shall be subject to any Co-insurance clause or memorandum contained in this Policy.

### **The Property Insured**

#### **21. Property Insured**

The first paragraph of Clause 2 - "The Property Insured" is amended to read:

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 a pecuniary or economic interest or for Damage to which You become responsible or assume responsibility to insure, after the commencement of the Period of Insurance.

#### **22. Classification of Property Insured**

For the purpose of ascertaining the classification under which any property is insured, We agree to accept the designation assigned to such property by You in Your records; provided that such property is not specifically excluded by this Policy.

### **23. Money - Extended Definition**

The second paragraph of Clause 2 - "The Property Insured" is amended to read:

It is understood and agreed that the term 'personal property' shall include Money (which shall mean current coin, bank notes, currency notes, cheques, travellers cheques, securities, negotiable and nonnegotiable instruments of every kind and description, credit card sales and/or discount house vouchers, postal orders, money orders, unused postage and revenue stamps, including the value of stamps contained in franking machines, public transport tickets (excluding airline tickets), bridge or highway tokens, car wash tokens, cash boxes, alarm bags and any other portable containers used to convey money) whilst contained in the Situation and whilst in transit to and from the Situation anywhere in Australia, including whilst contained in the night safe, safe, strongroom or any safety deposit of any bank or financial institution where You transact business, or within the residence of You or any person authorised by You to have personal custody of the Money or whilst in transit between any of these places.

### **24. Inclusion of Customers' Property**

Subject to the Exclusions Applicable to Sections 1 and 2 and the Exclusions Applicable to All Sections of this Policy, this Policy extends to insure property belonging to Your customers at the Premises, to the extent that such goods are not otherwise insured.

Provided that the indemnity afforded by this endorsement shall be limited to the sub-limit stated in the Schedule against "Customers' Property".

### **25. Definition of "Constructive Total Loss"**

For the purposes of Section 1 of this Policy, there shall be deemed to be a constructive total loss when the Property Insured specified herein or any part thereof is reasonably abandoned:

- (a) because its actual total loss seems unavoidable, or
- (b) because it could not be preserved from actual total loss without an expenditure which would exceed its repaired and/or recovered value.
- (c) due to the compliance with the requirement of any Act of Parliament or Regulation made thereunder or any by-law or regulation or ruling by any competent authority It is understood and agreed that the words "actual total loss" shall mean loss, destruction or damage (and not merely physical loss, destruction or damage) of or to the Property Insured specified herein or any part thereof.

### **Basis of Settlement Applicable to Section 1**

#### **26. Buildings with Heritage Protection**

The Section 1 - Material Loss or Damage Basis of Settlement is extended to include the following clause, notwithstanding clause 3.1:

On any building or group of buildings with architectural features and/or structural materials possessing an ornamental or historical character and subject to a Heritage listing or conservation: 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, but where the original materials are not available, the basis of settlement shall be the cost necessary to replace, repair, rebuild or restore the building or group of buildings to a reasonably equivalent appearance and capacity, using the original design and suitably equivalent materials.

Where the cost of reinstating the Damage to such building or group of buildings is less than the declared value thereof, then, the basis of settlement shall be the cost of reinstatement as defined in clause (a) of the Reinstatement or Replacement Memorandum.

In no case shall Our liability under this endorsement exceed the Limit of Liability or the amount which would have been payable in erecting a new building or group of buildings of the same size and style as the destroyed or Damaged building or group of buildings when new, whichever is the lesser.

The cover provided under this endorsement shall not be subject to any Co-Insurance Clause or Co-Insurance Memorandum contained in Section 1 of this Policy.

#### **27. Notable Old Buildings Without Legal Protection**

The Section 1 - Material Loss or Damage Basis of Settlement is extended to include the following clause, notwithstanding clause 3.1:

On any building or group of buildings with architectural features and/or structural materials possessing an ornamental or historical character and which is not legally protected for preservation by national, state or local legislation or regulation: the cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement or Replacement and Extra Cost of Reinstatement Memoranda, but not

exceeding the cost of repairing or erecting a similar type of building or group of buildings of current design techniques and modern materials within the terms of this Policy.

If the cost of the repairing the Damage and restoring a partially damaged building or group of buildings exceeds the reinstatement value of the building or group of buildings if destroyed, the building or group of buildings may, at Your option be deemed to be destroyed.

If the building or group of buildings is destroyed or deemed to be destroyed, the basis of settlement shall be the cost necessary to replace the building or group of buildings with another building or group of buildings that is no more expensive but of equivalent or improved utility, using current design techniques and modern materials.

This Endorsement shall not be subject to any Co-Insurance Clause or Co-Insurance Memorandum contained in Section 1 of this Policy.

### **28. Leased Equipment (Residual Value)**

The Section 1 - Material Loss or Damage Basis of Settlement is extended to include the following clause, notwithstanding clause 3.1:

On machinery, plant and equipment leased on a Residual Value basis; in the event of actual or constructive total loss, the amount for which the lessee is contractually liable to the lessor, but not exceeding the sum represented by rent payable under such lease(s) for the period commencing on the date of the Damage and ending on the retirement date(s) of such lease(s), plus the current market value of the property immediately before the Damage or the Residual Value, whichever is the greater, less any salvage value. In the event of Damage which does not amount to a constructive total loss, the cost of repair in accordance with the provisions of Clause 4.4 - "Reinstatement or Replacement" and Clause 4.5 - "Extra Cost of Reinstatement" as set out herein.

For the purpose of this Basis of Settlement, the term "Residual Value" shall mean the minimum amount which the lessee has guaranteed that the leased property will realise, being the same amount which the lessee has agreed would be payable to acquire such property upon the retirement date(s) of the lease(s).

### **29. Election to Claim Indemnity Value**

In Section 1, Basis of Settlement Clause 3.1 is extended to include the following extra provision:

Provided further that if You elect to claim the Indemnity Value of any Damaged property, We shall be liable for no greater proportion of the loss of such property than the amount that Your declaration, made at the time of commencement of the Period of Insurance, of the value of such property bears to eighty percent (80%) of the actual value of such property at the time of commencement of the Period of Insurance but not exceeding the Limit of Liability expressed in the Schedule.

Any amount recoverable under the Extra Cost of Reinstatement Memorandum shall not be taken into account in determining Our proportion of the loss of such property.

### **30. Election to Insure for Indemnity Value**

Notwithstanding the provisions of Basis of Settlement Clause 3.1, You may elect to insure for the Indemnity Value of any property and, if so, You shall declare the value of such Property Insured accordingly.

We will settle any claim for such Property Insured on that basis or may, at Our option reinstate, replace or repair such Property Insured or any part thereof in accordance with its Indemnity Value.

In any event We will pay costs incurred in accordance with Clause 4.5 - "Extra Cost of Reinstatement".

If You have elected to insure for the Indemnity Value of any property which would otherwise be insured under Basis of Settlement 3.1, the provisions of Clause 4.8 - "Co-Insurance" shall apply to any claim for such property.

### **31. Basis of Settlement Clause 3.2**

In Section 1, Basis of Settlement Clause 3.2 is amended to read:

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

The replacement cost at the time and the place of replacement, provided that replacement shall have been carried out with reasonable despatch or, if such property is not replaced, the original cost to You of such property or the Indemnity Value, whichever is the lesser. If such property is obsolete, the Basis of Settlement (whether or not such property is replaced) shall be the original cost to You of such property or the Indemnity Value, whichever is the lesser.

### **32. Basis of Settlement Clause 3.3**

In Section 1 - Basis of Settlement clause 3.3 is amended to read:

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

The replacement cost of the raw materials and the cost of labour and other manufacturing costs expended thereon at the time and the place of the Damage.

### **33. Basis of Settlement Clause 3.4**

In Section 1, Basis of Settlement 3.4 is amended to read:

#### **3.4 On finished goods manufactured by You:**

The replacement cost of the raw materials and the cost of labour and other manufacturing costs expended thereon before any allowance for profit, calculated at the time and place of the Damage, or the cost of re-stocking such goods within a reasonable time, whichever is the lesser. If such goods are obsolete, the Basis of Settlement (whether or not such goods are replaced) shall be the original cost to You of such goods or the Indemnity Value, whichever is the lesser.

### **34. Goods sold but not delivered**

In Section 1, Basis of Settlement Clause 3.4 is hereby extended to include the following clause:

On goods sold but not delivered for which You are responsible and with regard to which, under the conditions of sale or any statute or at common law, the contract of sale is cancelled either wholly in part by reason of the Damage:

The contract price or, in the case of a partial cancellation of the contract of sale, that part of the contract price which shall have been lost to You because of the partial cancellation.

### **35. Basis of Settlement Clause 3.5**

In Section 1, Basis of Settlement Clause 3.5 is hereby amended to read:

#### **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 them, including the information contained on or in them but excluding the value to You of that information. If such reinstatement, replacement, reproduction or restoration is not required, the Basis of Settlement shall be the replacement cost of materials as blank stationery calculated at the time and place of the Damage.

### **36. Basis of Settlement Clause 3.7**

In Section 1, Basis of Settlement Clause 3.7 is hereby extended to include the following additional words: "the extra cost of compliance with regulations, e.g., Australian Standard AS 1288-1989."

### **37. Basis of Settlement Clause 3.8**

In Section 1, Basis of Settlement Clause 3.8 is hereby amended to read:

#### **On personal property, tools and effects of Your directors, employees and of visitors to Your premises:**

The replacement cost at the time and place of replacement.

### **38. Jewellery and Furs of Employees and Others**

The words "jewellery, furs" in Property Exclusion Clause 9.3 shall not apply to personal property belonging to Your employees and directors, not otherwise insured, whilst at Your premises.

### **39. Amendment To Property Exclusion 9.3 - Inclusion of Bullion, Precious Metals or Precious Stones**

(This Endorsement is inoperative unless a sub limit is stated in the Schedule against "Bullion, precious metals or precious stones")

Property Exclusion 9.3 is hereby deleted from this Policy and replaced by the following:-

**9.3** jewellery and furs other than as stock and/or merchandise of the Business.

### **40. Works of Art, Antiques and Curios**

In Section 1, Clause 3 - "Basis of Settlement" is extended to include the following additional clause:

#### **On works of art, antiques and curios, none of which form part of the stock in trade or merchandise of the Business:**

Notwithstanding the first paragraph of Basis of Settlement Clause 3.1, the cost of restoring and repairing to a condition substantially the same as before the damage plus any reduction in market value caused by the Damage. If restoration or repair is not possible: the market value immediately before the Damage or the value evidenced by the latest valuation(s) held by You. Our liability shall not exceed the amount of the sub



limit stated in the Schedule against "Works of Art, Antiques and Curios".

#### **41. Pairs and Sets**

In Section 1, Clause 3 – "Basis of Settlement" is extended to include the following additional clause:

##### **On personal property comprising a pair or set:**

Notwithstanding the first paragraph of Basis of Settlement Clause 3.1, the difference between the market or replacement value (whichever is greater) before the loss and the market or replacement value (whichever is greater) after the loss.

#### **42. Securities**

(This endorsement is only operative when a sub-limit is stated in the Schedule against "Securities" )

In Section 1, Basis of Settlement Clause 3.5 is amended by deleting the word "securities".

##### **In the case of Securities (which shall mean certificates of stock, bonds, coupons and all other types of securities) the basis of valuation shall be:**

- (a)** if the Securities can, with Our approval, be replaced, the cost of replacement paid or payable by You; or
- (b)** if the Securities cannot or are not to be replaced by You, the greater of:

- (i)** the price for which You purchased them; and

- (ii)** the closing market value on the last business day prior to the date of discovery by You of the loss or destruction of the Securities, or if the time of discovery by You is after the close of the market, their closing market value on the day of discovery by You of the loss or destruction of the Securities;

- (c)** in the case of a loss of subscription, conversion or redemption privileges through the loss of any Security, the value of such privileges immediately preceding the expiration thereof;

such valuation being in the currency in which the loss was sustained. Losses sustained in currencies other than Australian dollars shall be settled by converting the amount of loss to Australian dollars at the market rate at the time of settlement of the loss or such other rates as may be expressly agreed with Us.

If there is no market price or value on the relevant day stated herein, then the value shall be agreed between You and Us, or in default thereof, You and Us shall submit to arbitration and be bound by the decision of the Umpire.

# Memoranda Applicable to Section 1

## 43. Amendment to Clause 4.1 - Interests of Other Parties

Clause 4.1 - Interests of Other Parties is amended to read:

**4.1** We will indemnify any other persons or entities having any pecuniary or economic interest in the Property Insured by virtue of any financial or other agreement entered into between such persons or entities and You. We shall waive all rights of subrogation which may otherwise have existed against such other persons or entities.

The written receipts of any such other persons or entities in respect of any claims settlements under this section made in relation to their respective interests shall be a full and sufficient discharge to Us with respect thereto and shall not increase Our overall liability beyond the Limit(s) or applicable Sub Limit(s) of Liability as stated in the Schedule.

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

## 44. Amendment to Clause 4.2 - Branded Goods

Clause 4.2 - Branded Goods is extended to include the following additional paragraph:

By mutual agreement between You and Us, You can elect to have any salvaged goods and/or merchandise destroyed under supervision and such goods and/or merchandise will then be deemed to be of no salvaged value in the assessment of the claim. Salvaged goods and/or merchandise in such circumstances shall be deemed to have been destroyed by the operation of an insured peril or event.

## 45. Labels, Containers and Wrappings

Section 1 of this Policy is extended to include the following additional memorandum:

In the event of Damage affecting labels, containers or wrappings, We shall not be liable for more than an amount sufficient to pay the cost of new labels, containers or wrappings, and the cost of reconditioning the goods and/or merchandise, but in no case shall We be liable for more than the insured value of the Damaged goods and/or merchandise.

## 46. Amendment to Clause 4.3 - Declared Values

Clause 4.3 - Declared Values is extended to include the following paragraphs:

If asset movements between Situations used by You have resulted in an under declaration of value(s) at any Situation(s) and an offsetting over declaration of equivalent value(s) at any other Situation(s), then, such factors shall form part of the calculation to test the application of Co-insurance/Underinsurance.

Declared values shall not include any allowance for Extra Cost or Reinstatement and/or any costs and expenses referred to under Clause 1.2 of "The Indemnity" other than Clause 1.2 (a).

## 47. Amendments to Clause 4.4 - Reinstatement or Replacement

Clause 4.4 - Provision (i) is amended to read:

**(i)** The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out wholly or partially 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, after indemnity has been confirmed by Us, failing which We shall not be liable to make any payment greater than the amount which would have been payable under this Policy if the work of rebuilding, replacing, repairing or restoring had been commenced and carried out with reasonable despatch.

Clause 4.4 - Provision (iii) is amended to read:

**(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 percent (80%) 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 ten percent (10%) of the amount of Your declaration as mentioned above.

#### **48. Further Amendments to Clause 4.4 - Reinstatement or Replacement**

Clause 4.4 - Reinstatement or Replacement is extended to include the following additional Provisions:

**(vi)** Where any lost or destroyed property is replaced by smaller and/or cheaper property, We shall pay to You (in addition to the cost of such replacement property) the difference between the cost which would have been incurred, if the lost or destroyed property had been reinstated (in accordance with clause (a) of the definition of "reinstatement") and the cost of the said smaller and/or cheaper property.

**(vii)** Where any lost or destroyed property is reinstated or replaced with dissimilar property, whether or not such property is to be used for a similar purpose to the lost or destroyed property, We shall pay to You the cost of such dissimilar property; provided that Our liability is not thereby increased beyond the amount which would have been payable under this Policy if such lost or destroyed property had been reinstated in accordance with clause (a) of the definition of 'reinstatement'.

Provided that, where the cost of such dissimilar property is less than the cost which would have been incurred if the lost or destroyed property had been reinstated in accordance with clause (a) of the definition of 'reinstatement', We shall also pay to You the difference between the cost of such dissimilar property and the cost of reinstatement which would otherwise have been incurred.

**(viii)** Where Property Insured is Damaged but not destroyed, Our liability will not exceed the amount We could have been called upon to pay for reinstatement of such property if it had been destroyed.

**(ix)** If You elect not to rebuild, replace, restore or repair the Damaged Property Insured, We will pay You the Indemnity Value or the cost that would have been incurred if such property could have been repaired, whichever is the lesser amount.

**(x)** You shall not be bound to reinstate any destroyed building(s) (together with machinery, plant and all other contents, other than stock, therein) but may, at Your option purchase an alternative building(s) (including or excluding machinery, plant and all other contents, other than stock, therein) to replace the destroyed property insured; provided that Our liability is not thereby increased beyond the amount which would have been payable under this Policy if the destroyed property had been reinstated in accordance with the provisions of clause (a) of the definition of "reinstatement".

In the event that both the total replacement value and the total volume (measured over the roof and external walls) of the building or buildings purchased are less than both the total replacement value and the total volume (measured over the roof and external walls) of the building or buildings destroyed, then, the total amount recoverable hereunder shall include (in respect of that portion of the building volume which is not replaced) an additional amount equal to but not exceeding the equivalent proportion of the Indemnity Value of the destroyed building(s).

If both the total replacement value and the total quantity of machinery, plant and all other contents (other than stock) purchased are less than both the total replacement value and the total quantity of machinery, plant and all other contents (other than stock) destroyed, then, the total amount recoverable hereunder shall also include (in respect of that proportion of the total quantity of machinery, plant and equipment (excluding stocks) which is not replaced) an additional amount equal to but not exceeding the equivalent proportion of the Indemnity Value of the destroyed machinery, plant and all other contents (other than stock).

#### **49. Reinstatement of Damage by You**

If You reinstate any Damaged Property Insured, after obtaining Our consent, We shall pay the cost of such reinstatement including the value of labour and other overhead charges expended thereon together with a reasonable margin for profit. Our liability shall not exceed the amount which would otherwise have been payable hereunder had such reinstatement been carried out by outside contractors.

#### **50. Amendments to Clause 4.5 - Extra Cost of Reinstatement**

The first paragraph of Clause 4.5 - Extra Cost of Reinstatement is amended to read as follows:

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of Damaged and/or undamaged 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.

Clause 4.5 - Provision (i) is amended to read:

(i) The work of reinstatement (which may be carried out wholly or partially 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, after indemnity has been confirmed by Us, failing which We shall not be liable to make any payment greater than the amount which would have been payable under this Policy if the work of reinstatement had been commenced and carried out with reasonable despatch.

Clause 4.5 - Provision (v) is hereby deleted.

#### **51. Additional Extra Cost of Reinstatement**

(Applicable to buildings, machinery, plant and all other property and contents specified in Clause 3.1 under Basis of Settlement).

Section 1 of this Policy is hereby extended to include the following Additional Memorandum:-

We will also pay the additional extra cost of reinstatement (including demolition, dismantling, decommissioning, recommissioning and maintenance) of Damaged Property Insured necessarily incurred by You to comply with the requirements of any statute, regulation or by-law of any municipal or statutory authority and not otherwise recoverable under the terms and conditions of this Policy.

Such expenditure shall include, but is not limited to, costs, fees and expenses incurred by You for:

- (a) the work of demolishing or dismantling any Damaged or undamaged Property Insured and the removal, storage and/or disposal of debris as a result of such work;
- (b) the making of structural modifications or alterations to any Damaged or undamaged Property Insured;
- (c) constructing and/or erecting and fitting out of any additional structure(s) and/or providing any additional facilities (at, on, or in the vicinity of, Your premises) for the benefit of staff and/or customers and/or visitors.

Provided that the indemnity afforded by this memorandum:

(i) shall be limited in respect of each loss or series of losses arising out of any one event to \$500,000, which amount shall be separate from and additional to the Limit of Liability stated in the Schedule in respect of buildings, machinery, plant and all other property and contents specified in Clause 3.1 under Basis of Settlement.

(ii) shall not include the additional cost incurred in complying with any statute, regulation, by-law or requirement of any municipal or statutory authority with which You had been required to comply prior to the happening of the Damage;

(iii) shall not be subject to any Co-Insurance provision or memorandum which may be contained in Section 1 of this Policy.

Provided further that the work of reinstatement (which may be carried out wholly or partially upon any other site(s) and in any manner suitable to Your requirements, subject to Our liability not being thereby increased) must be commenced and carried out with reasonable despatch, after indemnity has been confirmed by Us, failing which We shall not be liable to make any payment beyond the amount which would have been payable under this memorandum if such work had been carried out with reasonable despatch.

#### **52. Amendments to Clause 4.6 - Floor Space Ratio Index (Plot Ratio)**

Clause 4.6 - "Floor Space Ratio Index (Plot Ratio)" hereby amended to read:

Subject to the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Policy, if a building being Property Insured is Damaged and reinstatement is only permissible by reason of any requirement of any law or local government or other statutory authority subject to a reduced floor space ratio index, We will pay in addition to any other amount payable on reinstatement of the building the difference between the actual cost of reinstatement incurred in accordance with the reduced floor space ratio index and the cost of reinstatement which would have been incurred had a reduced floor space ratio index not been applicable. In calculating the amount payable under this memorandum, any payment made by Us shall include the extra cost payable under the Extra Cost of Reinstatement Memorandum.

Any amount payable under this memorandum shall be paid upon completion of the rebuilding works as certified by the architect acting on Your behalf in the reinstatement of the building.

### 53. Inclusion of Output Replacement Memorandum

Section 1 of this Policy is extended to include the following additional memorandum:

Notwithstanding anything contained to the contrary in Clause 4.4 - "Reinstatement or Replacement", where any Damaged Property Insured consists of equipment, machinery or plant having a measurable function, capability or output and it is necessary to replace such property with a new item or items which perform a similar function or functions, then the Basis of Settlement for such property shall be as follows:

- (a) Where any property is to be replaced by an item or items which have the same or a lesser total function, capability or output, then the Basis of Settlement is the new installed cost of such replacement item or items that would give the same total function, capability or output as the property being replaced.
- (b) Where any property is to be replaced by an item or items which have a greater total function, capability or output and the new installed cost of such replacement item or items is no greater than the replacement value of the property being replaced, then the Basis of Settlement is the new installed cost of the replacement item or items.
- (c) Where any property is to be replaced by an item or items which have a greater total function, capability or output and the new installed cost of such replacement property is greater than the replacement value of the property being replaced, then the Basis of Settlement shall be that proportion of the new installed cost of the replacement item or items which the output of the property being replaced bears to the output of the replacement item or items. If the reinstatement value of the Damaged property is not ascertainable, then, the basis of settlement is the new installed cost of the replacement item or items.

Provided always that where any Damaged property may be properly repaired, We shall pay the cost of restoration of such Damaged property to a condition substantially the same as (but not better or more extensive than) its condition when new and Our liability shall not exceed the sum representing the cost which We could have been called upon to pay if such property had been totally destroyed.

### 54. Abandoned Undamaged Portion of a Building

If any building insured hereunder is Damaged and (due to the exercise of statutory powers or delegated legislation or authority by any government department, local government or other statutory Authority) reinstatement of such building is carried out upon another site, then the abandoned undamaged portion of such building shall be deemed to have been destroyed.

Provided that if the presence of such abandoned undamaged portion of the building increases the sale value of the original site, the increase in sale value shall be regarded as salvage and the amount thereof shall be payable to Us by You upon completion of any sale of the site or shall be deducted from the total amount otherwise payable by Us under this Policy, whichever shall occur later.

All differences relating to the amount of such increase in site value shall forthwith be referred to the decision of two registered valuers; one to be appointed by each of the parties to this Policy. If the two valuers do not agree, their differences shall be referred to the decision of a third valuer, appointed by the President of the Australian Property Institute as an expert, whose decision shall be binding.

### 55. Undamaged Foundations

When Property Insured is Damaged but its foundations are not destroyed and (due to the exercising of statutory powers or delegated legislation or authority by any government department, local government or other statutory Authority) reinstatement of the Property Insured is carried out upon another site or sites, then the abandoned foundations shall be deemed to have been destroyed.

Provided that if the presence of the abandoned foundations increases the sale value of the original site, then such increase shall be regarded as salvage and shall be payable to Us by You upon completion of the sale or shall be deducted from the total amount otherwise payable by Us under this Policy, whichever shall occur later.

All differences relating to the amount of such increase in site value shall forthwith be referred to the decision of two registered valuers; one to be appointed by each of the parties to this Policy. If the two valuers fail to agree, such differences shall be referred to the decision of a third valuer, appointed by the President of the Australian Property Institute as an expert, whose decision shall be binding.

#### Note:

The term "foundations" shall be deemed to include services such as, but not limited to, conduits, pipes, cables and wiring, which are built into footings, foundations or concrete floor slabs.

## 56. Undamaged Ancillary and/or Peripheral Equipment

Section 1 of this Policy is hereby extended to include the following Additional Memorandum:-

Where any Property Insured being machinery, plant or equipment is destroyed but ancillary and/or peripheral equipment, utilised in conjunction therewith, is either undamaged or not destroyed but is nevertheless rendered superfluous upon replacement of the destroyed Property Insured, then such ancillary and/or peripheral equipment will be considered as being destroyed and its salvage value (if any) shall be payable to Us upon completion of any sale or shall be deducted from the total amount otherwise payable by Us under this Policy, whichever shall occur later.

## 57. Decontamination Costs

This Policy is hereby extended to cover costs and expenses necessarily and reasonably incurred in respect of the cost of decontamination and/or removal of contaminated Property Insured and/or Debris, which is incurred in compliance with any law, regulation or ordinance regulating pollution or contamination, due to the actual (not suspected) presence of any pollutants or contaminants as a direct result of the Damage.

## 58. Depreciation of Undamaged Stocks

*(This endorsement is only operative when a sub-limit is stated in the Schedule against "Depreciation of Undamaged Stocks")*

Notwithstanding Property Exclusion 9.12 and Perils Exclusion 10.7, this Policy extends to include loss sustained by You resulting from depreciation in value of undamaged raw materials, work in progress or finished goods, due solely to Your inability to process raw materials and/or work in progress or to transport finished goods following Damage to Property Insured.

The amount payable as indemnity hereunder shall be the amount by which the price at which You would have sold the finished goods exceeds the proceeds of any sale of raw materials and/or work in progress and/or finished goods as scrap, less production costs saved. Provided that Our liability shall be limited to the amount of the sub-limit stated in the Schedule against "Depreciation of Undamaged Stocks" for any one loss or series of losses arising out of any one event at any one Situation.

## 59. Depreciation of Undamaged Patterns and Designs

*(This endorsement is only operative when a sub-limit is stated in the Schedule against "Depreciation of Undamaged Patterns and Designs")*

Section 1 of this Policy is hereby extended to include the following Additional Memorandum:-

Notwithstanding Perils Exclusions 10.6 and 10.7, in the event of Damage to any Property Insured caused by any peril or event insured against by this Policy, We will indemnify You for loss resulting from depreciation in the value of patterns and designs and the amount payable as indemnity hereunder shall be the cost incurred by You in creating new patterns and designs appropriate to Your needs after the aforementioned Damage. Provided that Our liability shall be limited to the amount of the sub-limit stated in the Schedule against "Depreciation of Undamaged Patterns and Designs".

## 60. Loss of Land Value

Notwithstanding the provisions of Property Exclusion 9.8 and Perils Exclusion 10.7:

- (a) In the event of the absolute refusal by any Government or Local or other Statutory Authority to allow the reinstatement of any insured premises following Damage insured against by Section 1 of this Policy, We will indemnify You for the difference between the Land Value before and after such Damage.
- (b) In the event of such Government or Local or other Statutory Authority allowing only partial reinstatement of such premises after Damage, We will indemnify You for the difference between the Land Value after such partial reinstatement and the Land Value immediately before the Damage.

In the case of the circumstances described in clause (a) or clause (b) above there shall be deducted, from the settlement payable by us, the amount of any compensation paid by such Government or Local or other Statutory Authority arising from the action referred to in clause (a) or (b) above.

### Definition of "Land Value"

"Land Value" means the sum certified by the Valuer General as being the value of the land so described in this Policy after due allowance has been made for variations in or other circumstances affecting such value either before or after the Damage or which would have affected the value had the Damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the true Land Values pertaining both before and after the Damage.

### **Special Conditions**

1. Settlement of any claim hereunder shall be made following the ruling of the Government or Local Government or other Statutory Authority resulting in the loss of Land Value. Should settlement have been made, however, and subsequently the ruling of such Government or Local Government or other Statutory Authority be changed prior to completion of the reinstatement, resulting in an increase in the Land Value, then, that part of the claim paid in excess of such revised Land Value shall be refunded to Us by You.
2. The indemnity under this endorsement shall not be subject to any Co-insurance provision or memorandum which may be contained in Section 1 of this Policy.
3. All differences relating to the Land Value arising out of this Policy shall forthwith be referred to the decision of two registered valuers; one to be appointed by each of the parties to this contract of insurance. In the event that the two registered valuers do not agree, then, such differences shall be referred to the decision of a third valuer, appointed by the President of the Australian Property Institute, who shall act as an expert and not an arbitrator, whose determination shall be final and binding upon You and Us.
4. Our liability shall be limited to the sub-limit stated in the Schedule against "Loss of Land Value".

### **61. Playing surfaces**

(This endorsement is only operative when a sub limit is shown in the Schedule against "Playing Surfaces")

We will pay for the cost of repairing Damage to outdoor playing surfaces at the Situation, caused by:

- (a) vandals or malicious persons, other than You or Your guests, directors, partners, officers, employees or members, or their guests,
- (b) fire occurring to Property Insured at the Situation for which we have admitted liability under Section 1 of this Policy; or
- (c) the action of the firefighting services, police or other emergency services in attending to their duties at the Situation.

Our liability shall be limited to the sub-limit stated in the Schedule against "Playing Surfaces".

### **62. Delayed Unpacking of Raw Materials, Supplies, Goods and/or Merchandise**

Section 1 of this Policy is hereby extended to include the following Additional Memorandum:-

Notwithstanding Property Exclusion 9.1, where consignments and/or packages of raw materials, supplies, goods and/or merchandise are not opened for inspection on arrival at Your store and/or premises, then, any concealed Damage that may have occurred in course of transit, occasioned by any peril or event not excluded by this Policy, which shall come to light when the consignments and/or packages are unpacked shall be considered as Damage recoverable under this Policy.

The amount payable as indemnity hereunder shall be determined in accordance with clause 3.2 of the Basis of Settlement.

Provided always that:

- (a) the Damage shall be discovered not later than ninety (90) days after receipt of the consignments and/or packages by You;
- (b) consignments and/or packages bearing visible signs of damage at the time of their arrival shall be inspected as soon as practicable, appropriate claim(s) shall be made against the carriers and You shall forward to Us copies of such claim(s) and any replies thereto received from carriers as soon as practicable.

### **63. Purchaser Clause**

If at the time of Damage to any Property Insured You have contracted to sell Your interest in such property and the sale has not been completed, the purchaser on completion of the purchase, if and to the extent that the Property Insured is not otherwise insured by or on behalf of the purchaser against such Damage, shall be entitled to the benefit of this Section so far as it relates to such Damage without prejudice to Your or Our rights and liabilities under this Section up to the date of completion of the purchase.

### **64. Acquired Companies**

In Section 1, Clause 4.7 - "Acquired Companies" is deleted and the following memorandum substituted for it:



This Policy extends to include:

- (a) property located in Australia belonging to companies and other organisations; a controlling interest in which is acquired by You during the Period of Insurance;
- (b) property located in Australia for Damage to which such companies or other organisations are legally responsible or for which they have assumed responsibility to insure prior to the occurrence of any Damage; and
- (c) any loss suffered by any such companies or organisations which is the subject of indemnity under Section 2 of this Policy.

You must, within one (1) month of acquisition, declare in writing to Us;

- (i) the name of the company or other organisation and the nature of its business;
- (ii) the nature and extent of the property to be insured;
- (iii) the value of the indemnity provided, calculated in accordance with the relevant Basis of Settlement clauses;

and must pay any additional premium required and comply with any reasonable directions We may make with respect to the security or safety of that property.

The business of the acquired company or other organisation must be similar to the Business stated in the Schedule.

For the purpose of this Memorandum, a controlling interest shall, in the case of a company, mean the acquisition of shares carrying more than 50% of votes capable of being cast at a general meeting of all shareholders in the company.

All such property shall be Property Insured for the purpose of the Adjustment of Premium Memorandum and You shall make declarations with respect to it accordingly and with respect to the indemnity provided under Section 2.

#### **65. Amendments to Clause 4.8 - Co-insurance**

The following amendments are made to Clause 4.8 - Co-insurance:

In Clause 4.8(a), the words "eighty-five percent (85%)" are deleted and replaced by the words "eighty percent (80%)".

In clause 4.8(b), the words "five percent (5%)" are deleted and replaced by the words "ten percent (10%)".

#### **66. Property Valued by an Authorised Valuer**

Provision (iii) of Clause 4.4 - Reinstatement or Replacement and Clause 4.8 - Co-insurance shall not apply to property, forming part of the Property Insured, which You have insured under this Policy for its full value as stated in a Valuation; provided that a copy of such Valuation is given to Us as soon as reasonably practicable after the notification of a claim under this Policy.

#### **67. Application of Deductibles**

Deductibles shall apply to the Limits and Sub Limits of Liability in accordance with the Schedule but the Limits and Sub Limits of Liability shall only be applied in excess of the relevant deductible.

#### **68. First Loss Insurance - Theft and Money**

The Co-insurance provisions expressed in:

- (a) Proviso (iii) of Clause 4.4 of the Reinstatement or Replacement Memorandum; and
- (b) Clause 4.8 - Co-insurance;

shall not apply to any claim for theft or Money to which a Sub Limit or Sub Limits of Liability apply as stated in the Schedule.



# Section 2 – Consequential Loss Insurance

## The Indemnity

### 69. Property at Outside Stores and Outworkers Premises

Clause 5.1 of The Indemnity in Section 2 is hereby extended to include the following additional statement:

Loss as insured by this Policy arising from an interruption of or interference with the Business in consequence of Damage to any property belonging to You or for Damage to which You are responsible, while such property is at any storage premises within Australia or at any situation within Australia where You have any work or process carried out by contractors, shall be deemed to be loss arising from Damage to property used by You at the Premises for the purpose of the Business.

### 70. Pressure Vessel Perils

Clause 5.2 of The Indemnity in Section 2 is deleted and the following paragraph is included in lieu thereof:

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 occasioned by or arising out of explosion, rupture, collapse, bursting, cracking or overheating of any boiler, economiser or other pressure vessel, including pipes, valves and other apparatus thereof excepted) and the insurer(s) by which such property is insured shall have paid for or admitted liability in respect of such Damage unless no payment shall have been made or liability shall not have been admitted solely owing to the operation of a provision in such insurance excluding liability for loss below a specified amount.

## Basis of Settlement

### 71. Item No. 1 - Gross Profit - 80% Average / Under-insurance

The final paragraph of Clause 6.1 is amended to read:

Provided that if the Declared Value of Gross Profit at the commencement of each Period of Insurance is less than eighty percent (80%) of 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 months), the amount payable will be proportionately reduced.

This provision will not apply if Your claim is for less than ten per cent (10%) of the Declared Value of Gross Profit.

“Rate of Gross Profit” means the proportion that the Gross Profit bears to the Turnover during the financial year immediately before the day of commencement of the Period of Insurance.

“Annual Turnover” means the Turnover during the twelve (12) months immediately before the day of commencement of the Period of Insurance.

### 72. Reduced Margin

If, in consequence of Damage giving rise to a claim under this Policy, Turnover is maintained at a reduced Rate of Gross Profit, an equitable allowance shall be made for the loss of Gross Profit resulting from an increase in the ratio to Turnover of stock usage or purchases (adjusted for stock variations). No allowance shall be made for an increase in the ratio to Turnover of any other Uninsured Working Expenses stated in the Schedule.

### 73. Item No. 2 - Claim Preparation Costs and Professional Fees

Clause 6.2 - “Claims Preparation Costs and Professional Fees” is amended to read:

We shall indemnify You for all reasonable professional fees as may be payable by You to financial advisers, accountants, loss assessors and/or business interruption claims consultants and/or valuers, and such other reasonable expenses necessarily incurred by You and not otherwise recoverable, for the preparation and negotiation of progress claims and/or final claims under Your Material Damage and Consequential Loss insurance policies and, provided that any loss is claimable under Section 2 of this Policy, including such fees and expenses for preparation and proving any claim under any suppliers guarantee or maintenance contract.

### 74. Item No. 3 - Pay-Roll - 80% Average / Under-insurance

The final paragraph of Item No. 3 is amended to read:

Provided that if the estimated value of Insured Pay-Roll declared at the commencement of the Period of Insurance is less than eighty per cent (80%) of the amount produced by applying the Pay-Roll Limits set out in the Schedule to the amount produced by applying the Rate of Pay-Roll to the Annual Turnover (or its proportionately increased multiple if the Indemnity Period exceeds twelve months) which would have been

achieved if the Damage had occurred on the day of commencement of the Period of Insurance, the amount payable hereunder shall be proportionately reduced.

This provision shall not apply if the amount of the loss does not exceed ten per cent (10%) of the estimated value of Insured Pay-Roll declared at the commencement of the Period of Insurance.

For the purposes of this Endorsement, the terms "Rate of Pay-Roll" and "Annual Turnover" shall bear the following meanings and not as otherwise defined in the Policy:

"Rate of Pay-Roll" means the proportion which the Pay-Roll bears to the Turnover during the financial year immediately before the day of commencement of the Period of Insurance.

"Annual Turnover" means the Turnover during the twelve months immediately before the day of commencement of the Period of Insurance.

#### **75. Unproductive Employees and/or Severance Payments**

Section 2 of this Policy is hereby extended to include the following additional memorandum:-

Subject to the provisions of Clauses 6.3 (a) and 6.3 (b) of Section 2:

- (a) the Pay-Roll of any employees whose services cannot be utilised in full or in part in consequence of the Damage shall be regarded as a fixed cost, the continuation or discontinuation of which shall be at Your sole discretion.
- (b) We shall indemnify You in respect of: any amounts which You may agree or shall become obliged to pay under any industrial awards or determinations or decisions reached under arbitration for severance payments and/or in lieu of notice to those employees whose services are terminated as a result of the Damage.

#### **76. Deletion of Item No. 3 - Pay-Roll (Dual Basis)**

Item No. 3 is hereby deleted from Section 2 of this Policy.

I.e., Item No. 1 - Gross Profit is extended to include 100% of Pay-Roll.

#### **77. Amendment to Item No. 1 - Gross Revenue basis**

(This endorsement is only operative when a Declared Value is shown in the Schedule against "Gross Revenue".)

The following amendments are made to Section 2 of this Policy:

The following Basis of Settlement clauses are hereby deleted:

- Clause 6.1 - Item 1 - Gross Profit
- Clause 6.3 - Item 3 - Pay-Roll (Dual Basis)
- Clause 6.4 - Item 4 Additional Increased Cost of Working

The following Definitions are hereby deleted.

- Clause 7.1 - Gross Profit
- Clause 7.2 - Turnover
- Clause 7.4 - Payroll
- Clause 7.5 - Shortage in Turnover
- Clauses 7.6 and 8.4 - Rate of Gross Profit
- Clauses 7.7 and 8.5 - Annual Turnover
- Clauses 7.8 and 8.6 - Standard Turnover
- Clauses 7.9 and 8.7 - Rate of Pay-Roll

The following Memoranda are hereby deleted.

- Clause 8.1 - Turnover Elsewhere After Damage
- Clause 8.2 - Departmental Clause
- Clause 8.3 - New Business
- Clause 8.8 - Accumulated Stocks
- Clause 8.11 - Turnover/Output Alternative
- Clause 8.13 - Salvage Sale

The following Basis of Settlement clauses are hereby included:

#### **6.1 Item No. 1 - Gross Revenue**

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

**(a)** In respect of reduction in Gross Revenue:

the amount by which the Gross Revenue during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Gross Revenue,

**(b)** In respect of increase in Cost of Working:

the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or diminishing the loss of Gross Revenue which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the loss of Gross Revenue thereby avoided,

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

Provided that if the Declared Value of Gross Revenue at the commencement of each Period of Insurance is less than eighty percent (80%) of the Annual Gross Revenue (or a proportionately increased multiple thereof if the Indemnity Period exceeds twelve (12) months) the amount payable hereunder shall be proportionately reduced. This provision will not apply if the amount of the loss does not exceed ten percent (10%) of the estimated value of Gross Revenue declared at the commencement of the Period of Insurance.

#### **6.3 Item No. 4 - Additional / Increase in Cost of Working**

The Insurance under this item is limited to the additional expenditure (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 Gross Revenue and/or other operating income and/or resuming and/or maintaining normal business operations and/or services and/or minimising the period of interruption of or interference with the Business.

The following Definitions applicable to Section 2 are hereby included:

#### **7.1 Gross Revenue**

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

#### **7.2 Standard Gross Revenue**

The Gross Revenue during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.

#### **7.3 Annual Gross Revenue**

The Gross Revenue earned during the twelve months immediately before the date of the Damage.

**7.4** Adjustments to the Standard Gross Revenue and Annual Gross Revenue 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.

The following Memoranda to Section 2 are hereby included

#### **8.1 Gross Revenue Elsewhere After Damage**

If during the Indemnity Period the Business shall be conducted 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 Gross Revenue during the Indemnity Period.

#### **8.2 New Business**

In the event of Damage occurring at the Premises before completion of the first year's trading of the Business, the terms "Standard Gross Revenue" and "Annual Gross Revenue" shall bear the following meanings and not as within stated:

### 8.3 Standard Gross Revenue

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

### 8.4 Annual Gross Revenue

The proportional equivalent, for a period of twelve months of the Gross Revenue realised during the period between the commencement of the Business and the date of the Damage

Adjustments to the Standard Gross Revenue and Annual Gross Revenue 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.

### Memoranda Applicable to Sections 1 and 2:

The following amendments are made to Clause 11.4 - 'Adjustment of Premium'.

Clause 11.4 (a)(ii) is amended to read:

(ii) Gross Revenue;

Clause 11.4 (b)(ii) is amended to read:

(ii) the amount of Gross Revenue in accordance with the cover afforded in Section 2, in the course of the Business during the accounting period of twelve (12) months most nearly concurrent with the Period of Insurance.

### 78. Amendment to Item No. 1 - Gross Rentals basis

(This endorsement is only operative when a Declared Value is shown in the Schedule against "Gross Rentals".)

The following amendments are made to Section 2 of this Policy:

The following Basis of Settlement clauses are hereby deleted:

- Clause 6.1 - Item 1 - Gross Profit
- Clause 6.3 - Item 3 - Pay-Roll (Dual Basis)
- Clause 6.4 - Item 4 Additional Increased Cost of Working

The following Definitions are hereby deleted.

- Clause 7.1 - Gross Profit
- Clause 7.2 - Turnover
- Clause 7.4 - Pay-Roll
- Clause 7.5 - Shortage in Turnover
- Clauses 7.6 and 8.4 - Rate of Gross Profit
- Clauses 7.7 and 8.5 - Annual Turnover
- Clauses 7.8 and 8.6 - Standard Turnover
- Clauses 7.9 and 8.7 - Rate of Pay-Roll

The following Memoranda are hereby deleted.

- Clause 8.1 - Turnover Elsewhere After Damage
- Clause 8.2 - Departmental Clause
- Clause 8.3 - New Business
- Clause 8.8 - Accumulated Stocks
- Clause 8.11 - Turnover/Output Alternative
- Clause 8.13 - Salvage Sale

The following Basis of Settlement clauses are hereby included:

### **6.1 Item No. 1 - Gross Rentals**

The Insurance under this Item is limited to loss of Gross Rentals due to (a). Reduction in Gross Rentals and (b). Increase in Cost of Working and the amount payable as indemnity thereunder shall be:

**(a)** In respect of reduction in Gross Rentals:

the amount by which the Gross Rentals during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Gross Rentals,

**(b)** In respect of increase in Cost of Working:

the additional expenditure necessarily and reasonably incurred for the purpose of avoiding or diminishing the loss of Gross Rentals which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the loss of Gross Rentals thereby avoided,

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

Provided that if the Declared Value of Gross Rentals at the commencement of each Period of Insurance is less than eighty percent (80%) of the Annual Gross Rentals (or a proportionately increased multiple thereof if the Indemnity Period exceeds twelve (12) months) the amount payable hereunder shall be proportionately reduced. This provision will not apply if the amount of the loss does not exceed ten percent (10%) of the estimated value of Gross Rentals declared at the commencement of the Period of Insurance.

### **6.3 Item No. 4 - Additional / Increase in Cost of Working:**

The Insurance under this item is limited to the additional expenditure (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 Gross Rentals and/or other operating income and/or resuming and/or maintaining normal business operations and/or services and/or minimising the period of interruption of or interference with the Business.

The following Definitions applicable to Section 2 are hereby included:

#### **7.1 Gross Rentals**

The money paid or payable to You by tenants in respect of rental of the premises and for services rendered by or on Your behalf in the course of the Business

#### **7.2 Standard Gross Rentals**

The Gross Rentals during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.

#### **7.3 Annual Gross Rentals**

The Gross Rentals earned during the twelve months immediately before the date of the Damage.

**7.4** Adjustments to the Standard Gross Rentals and Annual Gross Rentals 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.

The following Memoranda to Section 2 are included

#### **8.1 Gross Rentals Elsewhere After Damage**

If during the Indemnity Period the Business shall be conducted elsewhere than at the Premises for the benefit of the Business either by You or by others on Your behalf, the Gross Rentals derived from such other premises shall be brought into account in arriving at the Gross Rentals during the Indemnity Period.

#### **8.2 New Business**

In the event of Damage occurring at the Premises before completion of the first year's trading of the Business, the terms "Standard Gross Rentals " and "Annual Gross Rentals " shall bear the following meanings and not as within stated:

#### **8.3 Standard Gross Rentals**

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

#### 8.4 Annual Gross Rentals

The proportional equivalent, for a period of twelve months of the Gross Rentals realised during the period between the commencement of the Business and the date of the Damage

**8.5** Adjustments to the Standard Gross Rentals and Annual Gross Rentals 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.

#### Memoranda Applicable to Sections 1 and 2:

The following amendments are made to Clause 11.4 - 'Adjustment of Premium'.

Clause 11.4 (a)(ii) is amended to read:

**(ii)** Gross Rentals;

Clause 11.4 (b)(ii) is amended to read:

**(ii)** the amount of Gross Rentals in accordance with the cover afforded in Section 2, in the course of the Business during the accounting period of twelve (12) months most nearly concurrent with the Period of Insurance.

#### 79. Accounts Receivable

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Accounts Receivable")*

The Basis of Settlement in Section 2 is extended to include the following additional Item:

Accounts receivable

The insurance under this item is limited to the loss sustained by You in respect of all outstanding debit balances if You are unable to effect collection thereof as a direct result of Damage to records of accounts receivable. We will also pay:

- (a)** interest charges at ruling bank rates on any loan to offset impaired collections pending repayment of such amounts rendered uncollectible in consequence of the Damage;
- (b)** interest lost by You in consequence of such impaired collections;
- (c)** additional expenditure necessarily and reasonably incurred in tracing and establishing the amounts of accounts receivable;
- (d)** collection expenses in excess of normal collection costs, incurred in consequence of the Damage.

Where there is proof that a loss covered by this Policy has occurred, but You cannot accurately establish the total amount of accounts receivable outstanding at the date of Damage, such amount shall be computed as follows:

- (i)** Determine the total amount of accounts receivable outstanding on the last working day of the fiscal month which ended twelve months before the beginning of the month in which the Damage occurs;
- (ii)** Calculate the average increase or decrease in the monthly total amounts of accounts receivable outstanding on the last working day of each of the twelve months immediately preceding the month in which Damage occurs;
- (iii)** The amount determined under paragraph (a), increased or decreased by the percentage calculated in accordance with paragraph (b) shall be deemed to be the total amount of accounts receivable outstanding at the time and date of the Damage;
- (iv)** The amount determined under paragraph (c) shall be adjusted as may be necessary to provide for any demonstrable variance from the amount so determined occurring before but during the month in which the Damage occurs; due consideration also being given to normal monthly trends in receipts.
- (v)** There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by You, and an equitable amount to provide for doubtful debts.

The cover hereby granted shall be subject to the sub limit stated in the Schedule against "Accounts Receivable".

### **80. Rent and Other Expenses Receivable**

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Rent and Other Expenses Receivable")*

The Basis of Settlement in Section 2 is extended to include the following additional Item:

#### **Rent and Other Expenses Receivable**

The insurance under this item is limited to loss of rent and other expenses receivable from tenants or sub tenants and the amount payable as indemnity thereunder, in the event of Damage, shall be:

- (a)** the actual shortfall of such amounts receivable, during the Indemnity Period in consequence of the Damage, together with
- (b)** the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing such loss;

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

The cover hereby granted shall be subject to the sub limit stated in the Schedule against "Rent and Other Expenses Receivable".

### **81. Rent and Other Expenses Payable or Insurable**

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Rent and Other Expenses Payable or Insurable")*

The Basis of Settlement in Section 2 is extended to include the following additional Item:

#### **Rent and Other Expenses Payable or Insurable**

The insurance under this item is in respect of rent and other expenses payable, or insurable, by the Insured (as lessee) in accordance with the terms of any lease agreement and the amount payable as indemnity thereunder, in the event of Damage, shall be:

- (a)** such amount(s) as the Insured (as lessee) shall be legally liable to pay and/or insure or the lessor shall be legally entitled to receive, under the terms of the lease; together with
- (b)** the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the amount otherwise payable under this item.

less any sum saved during the Indemnity Period in respect of any overhead charges incurred by the Insured under the terms of the lease for maintaining the Premises in a tenantable condition (such as wages for caretaker, cost of power, lighting and the like) in consequence of the Damage.

The cover hereby granted shall be subject to the sub limit stated in the Schedule against "Rent and Other Expenses Payable or Insurable".

### **82. Contractual Fines and/or Penalties**

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Contractual Fines and/or Penalties".)*

The Basis of Settlement in Section 2 is extended to include the following additional Item:

#### **Contractual Fines and/or Penalties**

The insurance under this item is limited to fines and/or damages for breach of contract and the amount payable as indemnity hereunder shall be such sum or sums as You shall be legally liable to pay in discharge of fines and/or damages incurred in consequence of the Damage for non-completion or late completion of orders, inability to meet contract specifications or cancellation of orders.

The cover hereby granted shall be subject to the sub-limit stated in the Schedule against "Contractual Fines and/or Penalties".

### **83. Contracted Purchases**

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Contracted Purchases".)*

The Basis of Settlement in Section 2 is extended to include the following additional Item:

#### **Contracted Purchases**

The insurance under this item is limited to loss, cancellation charges, or fines or damages for breach of contract and the amount payable as indemnity thereunder shall be such sums as You shall be legally liable

to pay and shall pay in discharge of contracts to purchase, cancellation charges or fines or damages for breach of contract, in respect of contracts for the purchase of materials, components, merchandise and/or services which cannot be utilised by You during the Indemnity Period in consequence of the Damage, less the value to You of such materials, components or merchandise or any amounts received for the sale of such property.

The cover hereby granted shall be subject to the sub-limit stated in the Schedule against "Contracted Purchases".

#### **84. Research Expenditure**

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Research Expenditure")*

The Basis of Settlement in Section 2 is extended to include the following additional Item:

##### **Research Expenditure**

The insurance under this Item is limited to the loss sustained by You in consequence of the Damage in respect of (a) Research Establishment Expenditure and (b) Increase in Cost of Working and the amount payable as indemnity hereunder shall be:

- (a)** In respect of Research Establishment Expenditure: for each working week in the Indemnity Period during which the activities of the research establishment are, in consequence of the Damage
- (i)** totally interrupted or totally given over to the reworking of projects affected by the Damage, the Insured Amount per Week;
  - (ii)** partially interrupted or partially given over to the reworking of projects affected by the Damage, an equitable proportion of the Insured Amount per Week based upon the time rendered ineffective by reason of the Damage;
- (b)** In respect of Increase in Cost of Working: the additional expenditure necessarily and reasonably incurred in consequence of the Damage to minimise the interruption to the activities of the research establishment. The amount payable under this heading shall not exceed the amount payable under (a) for loss of Research Establishment Expenditure if no such Increase in Cost of Working has been incurred,

less any sum saved during the Indemnity Period in respect of such of the Research Establishment Expenditure as may cease or be reduced in consequence of the Damage.

Provided that cover under this Item shall be proportionately reduced if the estimated value of Research Establishment Expenditure declared at the commencement of the Period of Insurance is less than the Annual Research Expenditure (appropriately increased if the Indemnity Period exceeds twelve months).

This provision shall not apply if the amount of the loss does not exceed ten percent (10%) of the estimated value of Research Establishment Expenditure declared at the commencement of the Period of Insurance.

##### **Definitions**

'Research Establishment Expenditure' means the total expenditure on research by You at the Premises less the relative cost of raw materials consumed.

'Insured Amount per Week' means one fiftieth part of the Research Establishment Expenditure incurred during the financial year immediately before the date of the Damage.

'Annual Research Expenditure' means the aggregate amount of the Research Establishment Expenditure incurred during the twelve months immediately before the date of the Damage.

Adjustments shall be made to the Insured Amount per Week and Annual Research Expenditure as may be necessary to provide for the trend of the research establishment activities and for variations in or other circumstances affecting the research establishment activities either before or after the Damage 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.

##### **Premium Adjustment Clause:**

In the event of the Research Establishment Expenditure during the accounting period of twelve months most nearly concurrent with the Period of Insurance being less than the estimated value of Research Establishment Expenditure declared at the commencement of the Period of Insurance, a pro rata return of premium not exceeding fifty percent (50%) of the premium paid on such declared value will be made in respect of the difference. If any Damage shall have occurred, giving rise to a claim under this Item, such return shall be made only in respect of so much of the said difference as is not due to such Damage.



## 85. Royalties Receivable

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Royalties receivable")*

The Basis of Settlement in Section 2 is extended to include the following additional Item:

### **Royalties Receivable**

The insurance under this item is limited to loss of royalties receivable in consequence of Damage to property at the specified premises anywhere in the world of any company, firm or person identified in the Schedule against "Royalties Receivable" and the amount payable as indemnity thereunder shall be the actual shortfall of royalties receivable, during the Indemnity Period in consequence of Damage (caused by any peril or event, Damage as result of which is insured hereunder) to property at the premises, or in the vicinity of the premises, anywhere in the World of any company or organisation which pays such royalties to You.

The cover hereby granted shall be subject to the sub-limit stated in the Schedule against "Royalties Receivable".

## 86. Loss of Goodwill

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Loss of Goodwill")*

The Basis of Settlement in Section 2 is extended to include the following additional Item:

### **Loss of Goodwill**

In the event of Damage (other than in circumstances where cover is excluded) occurring during the Period of Insurance to any building or other property or any part thereof used by You at the Premises for the purposes of the Business, which results in one of the following circumstances:

- (a) the rebuilding or reinstatement, whether total or partial, of the Premises at the site being prohibited by, or not being commercially viable because of, any Act of Parliament or regulation made thereunder or any by-law or regulation of any municipal or statutory authority;
- (b) the lessor's neglect, refusal or inability to rebuild or reinstate the Premises or to renew Your lease or monthly tenancy;
- (c) the refusal of any liquor licensing authority to grant an extension to carry on the Business at the Premises under the licence held by You;

We will compensate You under this Item for the cost expended by You to purchase Goodwill and/or a liquor licence upon acquisition of a similar business, within a reasonable time after the Damage, less that part of any amount(s) recoverable under any other Item or Items of Section 2 of this Policy which represent(s) the actual loss sustained by You resulting directly from the interruption of the Business for such additional time, beyond the period required with the exercise of due diligence and despatch to rebuild or reinstate the Damage, required to restore the Business to the condition that would have existed had no Damage occurred.

"Goodwill" means the future benefit from unidentifiable assets.

### **Special Conditions**

1. We shall not be liable under this Item unless You shall also have maintained in force an insurance on Gross Profit or Gross Revenue.
2. We shall not be liable under circumstance (c) unless You have used due diligence to ensure the observance of all licensing laws.
3. The insurance by this endorsement shall not be prejudiced if any of the circumstances stated in Clauses (a)(i), (a)(ii) or (a)(iii) of Condition 12.12 Applicable to Sections 1 and 2 of this Policy arise due to the Damage.

The cover hereby granted shall be subject to the sub-limit stated in the Schedule against "Loss of Goodwill".

## Definitions Applicable to Section 2

### **87. Current Cost Accounting**

The following statement is inserted immediately before the first of the Definitions included in Section 2 of this Policy:

#### **Current Cost Accounting**

For the purpose of the following definitions, any adjustment in current cost accounting shall be disregarded.

#### **88. Amendment to Clause 7.2 - Turnover**

The definition of "Turnover" is extended to include financial incentives or concessions granted to You by any Australian or State Government Department in recognition of specific performance in the development of market opportunities or the employment of disadvantaged persons.

#### **89. Amendment to Clause 7.4 - Pay-Roll**

Clause 7.4 - Pay-Roll is amended to read:

The remuneration (including but not limited to Pay-Roll tax, fringe benefits tax, bonuses, overtime, commission, holiday pay, sick pay, long service leave, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) paid to all of Your employees.

#### **90. Inclusion of the definition of "Consolidated Period"**

Section 2 of this Policy is extended to include the following additional definition clause:

"Consolidated Period" means the sum of the number of weeks specified in the Schedule applicable to Clause 6.3 (a)(i) of Item No. 3 and the percentage specified in the Schedule of the remaining portion of the Indemnity Period applicable to Clause 6.3 (a)(ii) of Item No. 3.

### **Memoranda Applicable to Section 2**

#### **91. Amendment to Clause 8.8 - Accumulated Stocks**

The words "of finished goods" are deleted from Clause 8.8 of this Policy.

#### **92. Amendment to Clause 8.10 - Remote Premises of Public Utilities**

Clause 8.10 - Public Utilities Extension is amended to read:

Loss as insured by Section 2 resulting from interruption of or interference with the Business directly or indirectly in consequence of Damage anywhere in Australia to land based premises of any communication station, electric power station or sub-station, gasworks, waterworks, sewerage pumping or sewerage treatment works of a supply undertaking from which You obtain communication services, electric current, gas, water or sewerage service shall be deemed to be loss resulting from Damage to property used by You at the Premises.

It shall not be a condition precedent to liability under this endorsement that payment shall be made or liability admitted for Damage under Section 1 of this Policy.

The cover provided by this extension shall be subject to the sub-limit stated in the Schedule against "Remote Premises of Public Utilities".

#### **93. Unspecified Suppliers' and/or Customers' Premises (Australia and New Zealand)**

Section 2 of this Policy is extended to include the following memorandum:

Loss as insured by Section 2 resulting from interruption of or interference with the Business in consequence of Damage to property at the premises anywhere in Australia or New Zealand of any of Your suppliers or customers shall be deemed to be loss resulting from Damage to property used by You at the Premises.

Provided that coverage under this memorandum does not apply to loss resulting from Boiler and/or Pressure Vessel Explosion (as described in Endorsement 112), Machinery Breakdown (Physical Damage and expediting costs) (as described in Endorsement 113), Spoilage of Goods in Cold Storage (as described in Endorsement 114) and EDP Breakdown (as described in Endorsement 115) which occurs at the premises of any of your Suppliers or Customers.

For the purposes of this memorandum:

**(a)** a 'Supplier' means: any person or entity which supplies to You commodities, materials, components, goods, merchandise, machinery, plant and equipment, or services other than those services referred to under the Public Utilities Extension.

**(b)** a 'Customer' means: any person or entity to which You supply or provide commodities, materials, components, goods, merchandise, machinery, plant and equipment or services.

The cover provided by this memorandum shall be subject to the sub-limit stated in the Schedule against "Unspecified Suppliers' and/or Customers' Premises (Australia and New Zealand)".

#### **94. Unspecified Suppliers' and/or Customers' Premises (Worldwide)**

(This endorsement is only operative when a sub limit is stated in the schedule against "Unspecified Suppliers' and/or Customers' Premises (Worldwide).")

Section 2 of this Policy is extended to include the following memorandum:

Loss as insured by Section 2 resulting from interruption of or interference with the Business in consequence of Damage to property at the premises anywhere in the world (excluding Afghanistan, Albania, Angola, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Burma/Myanmar, Democratic Republic of Congo, Cuba, Eritrea, Georgia, Republic of Guinea, Iran, Iraq, Ivory Coast {Republic of Côte d'Ivoire}, Kazakhstan, Kampuchea, Kyrgyzstan, Laos, Lebanon, Liberia, Libya, Macedonia, Montenegro, North Korea, Mongolia, Romania, Rwanda, Serbia, Sierra Leone, Somalia, Sudan (North and South), Syria, Tajikistan, Tibet, Turkmenistan, Ukraine, Uzbekistan, Zaire and/or Zimbabwe) of any of Your suppliers or customers shall be deemed to be loss resulting from Damage to property used by You at the Premises.

Provided that:

(i) Coverage under this memorandum does not apply to loss resulting from Boiler and/or Pressure Vessel Explosion (as described in Endorsement 112), Machinery Breakdown (Physical Damage and expediting costs) (as described in Endorsement 113), Spoilage of Goods in Cold Storage (as described in Endorsement 114) and EDP Breakdown (as described in Endorsement 115) which occurs at the premises of any of your Suppliers or Customers.

(ii) This memorandum specifically excludes losses arising from:

- (1) Earthquake, tsunami, volcanic eruption, hydrothermal or geothermal activity or subterranean fire;
- (2) Flood; or
- (3) Storm.

For the purposes of this memorandum:

(a) a 'Supplier' means: any person or entity which supplies to You commodities, materials, components, goods, merchandise, machinery, plant and equipment, or services other than those services referred to under the Public Utilities Extension.

(b) a 'Customer' means: any person or entity to which You supply or provide commodities, materials, components, goods, merchandise, machinery, plant and equipment or services.

The cover provided by this memorandum shall be subject to the sub limit stated in the Schedule against "Unspecified Suppliers' and/or Customers' Premises (Worldwide)".

#### **95. Specified Suppliers' Premises**

*(This endorsement is only operative when a sub limit is stated in the Schedule against "Specified Suppliers' Premises.")*

Section 2 of this Policy is hereby extended to include the following additional memorandum:-

Loss as insured by Section 2 resulting from interruption of or interference with the Business in consequence of Damage to property at any of the premises of any of Your Suppliers specified in the Schedule shall be deemed to be loss resulting from Damage to property used by You at the Premises.

Provided that coverage under this memorandum does not apply to loss resulting from Boiler and/or Pressure Vessel Explosion (as described in Endorsement 112), Machinery Breakdown (Physical Damage and expediting costs) (as described in Endorsement 113), Spoilage of Goods in Cold Storage (as described in Endorsement 114) and EDP Breakdown (as described in Endorsement 115) which occurs at the premises of any of your Suppliers.

For the purposes of this memorandum a 'Supplier' means: any person or entity which supplies to You commodities, materials, components, goods, merchandise, machinery, plant and equipment, or services other than those services referred to under the Public Utilities Extension.

The cover provided by this memorandum shall be subject to the sub limit(s) stated in the Schedule against "Specified Suppliers' Premises".

#### **96. Specified Customers' Premises**

*(This endorsement is only operative when a sub limit is stated in the Schedule against "Specified Customers' Premises.")*

Section 2 of this Policy is hereby extended to include the following additional memorandum:-

Loss as insured by Section 2 resulting from interruption of or interference with the Business in consequence of Damage to property at any of the premises of any of Your Customers specified in the Schedule shall be deemed to be loss resulting from Damage to property used by You at the Premises.

Provided that coverage under this memorandum does not apply to loss resulting from Boiler and/or Pressure Vessel Explosion (as described in Endorsement 112), Machinery Breakdown (Physical Damage and

expediting costs) (as described in Endorsement 113), Spoilage of Goods in Cold Storage (as described in Endorsement 114) and EDP Breakdown (as described in Endorsement 115) which occurs at the premises of any of your Customers.

For the purposes of this Memorandum a 'Customer' means: any person or entity to which You supply or provide commodities, materials, components, goods, merchandise, machinery, plant and equipment or services.

The cover provided by this memorandum shall be subject to the sub limit(s) stated in the Schedule against "Specified Customers' Premises".

#### **97. Other Contributing Properties**

Section 2 of this Policy is hereby extended to include the following memorandum:

Loss as insured by Section 2 resulting from interruption of or interference with the Business in consequence of Damage to any other property (not more specifically mentioned in this Policy) at any situation in Australia not owned or operated by You, but which wholly or partly prevents delivery of materials, goods or services to You and/or to Your customers shall be deemed to be loss resulting from Damage to property used by You at the Premises.

Provided that coverage under this memorandum does not apply to loss resulting from Boiler and/or Pressure Vessel Explosion (as described in Endorsement 112), Machinery Breakdown (Physical Damage and expediting costs) (as described in Endorsement 113), Spoilage of Goods in Cold Storage (as described in Endorsement 114) and EDP Breakdown (as described in Endorsement 115) which occurs at the premises of any of such Other Contributing Properties.

The cover provided by this memorandum shall be subject to the sub-limit stated in the Schedule against "Other Contributing Properties".

#### **98. Interdependency - Australia**

Section 2 of this Policy is hereby extended to include the following additional memorandum:-

Loss as insured by Section 2 resulting from interruption of or interference with the Business in consequence of Damage to property at or in the vicinity of any situation in Australia (belonging to or used by any parent, subsidiary or related company or organisation), which is not insured by Section 1 of this Policy or by any other insurance policy effected by You, shall be deemed to be loss resulting from Damage to property used by You at the Premises.

The cover provided by this memorandum shall be subject to the sub limit stated in the Schedule against "Interdependency - Australia".

#### **99. Loss of Special Attraction**

Section 2 of this Policy is hereby extended to include the following additional memorandum:-

Loss as insured by Section 2 resulting from interruption of or interference with the Business in consequence of Damage (caused by any peril or event, Damage as a result of which is insured hereunder) to a special attraction, being another business or facility in the immediate vicinity of the Premises that the Business depends upon to attract people to the area, which results in cessation or diminution of trade, including any cessation or diminution of trade due to temporary falling away of potential custom, shall be deemed to be loss resulting from Damage to property used by You at the Premises.

Provided that coverage under this memorandum does not apply to loss resulting from Boiler and/or Pressure Vessel Explosion (as described in Endorsement 112), Machinery Breakdown (Physical Damage and expediting costs) (as described in Endorsement 113), Spoilage of Goods in Cold Storage (as described in Endorsement 114) and EDP Breakdown (as described in Endorsement 115) which occurs at the premises of any such special attraction.

The cover provided by this memorandum shall be subject to the sub limit stated in the Schedule against "Loss of Special Attraction".

#### **100. Closure of Transport Routes, Ports or Airports**

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Closure of Transport Routes, Ports or Airports")*

Section 2 of this Policy is hereby extended to include the following memorandum:-

Notwithstanding Property Exclusion 9.10, loss as insured by Section 2 resulting from interruption of or interference with the Business directly or indirectly in consequence of Damage to any:

**(a)** roads, bridges, tunnels or railway lines;

**(b)** airports, local ports or harbours, docks, wharves, jetties and/or piers; and/or

(c) machinery, plant and equipment associated and/or used in connection therewith for the purpose of loading and unloading of vehicles, railway wagons, aircraft or watercraft;

resulting in closure by order of any authority of any transport route, port or airport anywhere in Australia.

The cover provided by this memorandum shall be subject to the sub limit stated in the Schedule against "Closure of Transport Routes, Ports or Airports".

**101. Closure of Premises arising from Infectious Disease, Vermin, Pests or Defective Sanitary Arrangements, Murder or Suicide, and Food Poisoning**

*(This endorsement is only operative when an aggregate limit is shown in the Schedule against "Closure of Premises arising from Infectious Disease, Vermin, Pests or Defective Sanitary Arrangements, Murder or Suicide, and Food Poisoning.")*

Section 2 of this Policy is hereby extended to include the following additional memorandum:-

Notwithstanding Perils Exclusions 10.2 (a) and 10.5 (d), loss as insured by this section resulting from interruption of or interference with the Business directly or indirectly arising from closure or evacuation of the whole or part of the Premises by order of a competent public authority consequent upon:

- (a) An outbreak of an infectious or contagious human disease occurring within a 20 kilometre radius of the Premises, however there is no cover for highly pathogenic Avian Influenza or any other Listed Human Disease under the Biosecurity Act 2015 and subsequent amendments or replacements, irrespective of whether discovered at the premises or out-breaking elsewhere;
- (b) the discovery of vermin or pests or defects in the drains and/or sanitary arrangements at the Premises;
- (c) murder or suicide occurring at the Premises; or
- (d) injury, illness or disease arising from or attributable to or traceable to foreign or injurious matter in food or drink provided from or on the Premises.

The term 'notifiable human infectious disease' specifically excludes loss arising from Acquired Immune Deficiency Syndrome ("AIDS") and any AIDS related condition, Severe Acute Respiratory Syndrome ("SARS"), or Avian Influenza including any Influenza A virus sub-type that arises in birds and subsequently attains the capacity for human transmission.

The cover provided by this memorandum shall be subject to the sub limit stated in the Schedule against "Infectious Disease, Vermin, Pests or Defective Sanitary Arrangements, Murder or Suicide and Food Poisoning".

#### **102. Trade Exhibitions**

*(This endorsement is only operative when a sub limit is shown in the Schedule against "Trade Exhibitions")*

Section 2 of this Policy is hereby extended to include the following additional memorandum:-

Loss as insured by Section 2 resulting from interruption of or interference with the Business due to curtailment of any trade exhibition anywhere in the world in consequence of Damage thereat and/or to property exhibited therein by You shall be deemed to be loss resulting from Damage to property used by You at the Premises.

The cover provided by this memorandum shall be subject to the sub-limit stated in the Schedule against "Trade Exhibitions".

## **Exclusions Applicable to Sections 1 and 2**

### **Property Exclusions**

#### **103. Temporary Removal**

The final sentence of Property Exclusion 9.1 is amended to read:

This Exclusion shall not apply during temporary removal of property (other than stock and/or merchandise), including unregistered motor vehicles, other than where used as stock and/or merchandise of the Business, to any situation in Australia or New Zealand and whilst at such situation.

Whilst such property is in transit (excluding loading, unloading and storage 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.

For the purpose of this endorsement, "temporarily removal" means removal for a particular purpose, with the intention that the property be returned to the place from which it has been removed once that purpose has been served.

The cover provided by this endorsement shall be subject to the sub-limit stated in the Schedule against "Temporary Removal".

#### **104. Transit of Property Insured (except portable electronic equipment)**

This Policy is extended to cover Property Insured (except portable electronic equipment) whilst in transit within Australia. In respect of transit, cover is provided for theft from a securely locked motor vehicle.

Provided always that Our liability shall be limited to the sub-limit stated in the Schedule against "Transit of Property Insured (except portable electronic equipment)" for any one loss or series of losses arising out of any one event or occurrence.

#### **105. Property In Transit (Personal Computers, Ancillary Equipment And Software)**

*(This endorsement is only operative when a sub limit is stated in the Schedule against "Property in Transit (Personal Computers, Ancillary Equipment and Software)".*

This Policy is extended to cover personal computers, ancillary equipment and software whilst in transit anywhere within Australia or New Zealand.

For the purpose of this endorsement only, the under noted Exclusions to All Sections shall be deemed to be inoperative:

**(a)** Property Exclusions 9.1 and 9.13(b)

**(b)** Perils Exclusions 10.1(a), 10.1(b), 10.4(a) and 10.6

Provided always that We shall not be liable:

- (i)** to You or to any other person or party for the value of the information contained in any such software; and
- (ii)** for theft of any such property from any unattended and unlocked vehicle(s).

The cover provided by this endorsement shall be limited to the sub-limit stated in the Schedule against "Property in Transit (Personal Computers, Ancillary Equipment and Software)".

#### **106. Amendment to Property Exclusion 9.2 - Money**

Property Exclusion 9.2 is hereby deleted from this Policy and replaced by the following:-

##### **9.2. Money:**

**(a)** whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured, and which insurance responds in the event of a claim to the amount of the claim, 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 peril or 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, except where the keys or combinations have been obtained by deception or threat. For the purpose of this Property Exclusion 2(c) 'business hours' shall mean when You or any of Your directors, officers, partners or employees are at Your Premises for the purpose of conducting Your Business.

**(d)** where the loss is not discovered within fifteen (15) working days of the event.

**(e)** where the loss arises out of a demand made for the payment of Money in connection with any kidnapping, bomb threat, hoax, extortion or an attempt at any of these.

#### **107. Decorative birds or fish**

Property Exclusion 9.6 is hereby deleted from this Policy and replaced by the following:-

**9.6.** livestock, animals, birds or fish (other than birds or fish used solely for decorative purposes and in respect of loss arising from fire only).

The cover provided by this endorsement shall be limited to the sub-limit stated in the Schedule against "Decorative birds or fish (fire cover only)".

**108. Amendment to Property Exclusion 9.9**

Property Exclusion 9.9 is amended to read:

**9.9 (a)** bridges, canals, roadways (other than driveways, vehicle parking or manoeuvring areas and other paved areas at the Premises used or occupied by You for the purpose of the business), and tunnels, dams and reservoirs (other than tanks) and their contents.

**(b)** railway tracks other than on the Premises occupied or used by You for the purpose of the Business.

**109. Weather Damage to Certain Property**

Property Exclusions 9.13 (a) and 9.13 (b) are hereby deleted.

The cover provided by this endorsement shall be limited to the sub-limit stated in the Schedule against "Weather Damage to Certain Property".

**110. Amendment to Property Exclusion 9.14(a)**

Property Exclusion 9.14(a) is hereby deleted from this Policy and replaced by the following:-

**9.14. (a)** property undergoing construction, erection, alteration or addition (including the dismantlement or partial dismantlement of any existing structures) when the total contract value of such work to be carried out at any one Situation exceeds ten per cent (10%) of the Limit of Liability or five hundred thousand dollars (\$500,000) whichever is the lesser.

Provided that this exclusion shall:

**(i)** only apply in respect of the portion(s) of Your premises and/or the part(s) of any property which are the subject of such works and this exclusion shall not apply with respect to any other property insured hereunder.

**(ii)** not apply to any Damage to existing Property Insured caused by any peril or event not otherwise excluded under this Policy.

**111. Contract Works Exemption**

(This Endorsement is only operative if a sub limit is stated in the Schedule against "Contract Works Exemption".)

Property Exclusion 9.14(a) shall not apply in respect of the following contract:

(Insert contract details).....

This endorsement extends to include dismantling, movement within the location occupied by You, reerection, testing and/or commissioning of machinery, plant and equipment.

The undernoted "Exclusions - Applicable to Sections 1 and 2" shall not apply to the cover granted by this endorsement.

**Exclusion      Number**

Property      9.13 and 9.14 (a)

Perils 10.1(a) and 10.1(b)

Perils 10.2(c) and 10.2(e)

Perils 10.4(a), 10.4(c), 10.4(d) and 10.5(c)

Perils Exclusion 10.4(b) is amended to read:

**(b)** unexplained routine inventory shortage unless such loss can reasonably be attributed to burglary and/ or theft or any attempt thereat.

The following exclusion shall apply to this endorsement:

This insurance does not cover the cost of rectifying defective workmanship, material or design, or wear and tear. This exclusion shall be limited to the part which is defective and shall not apply to any other part(s) of the Property Insured which may be Damaged in consequence of the circumstances described herein.

The cover provided by this endorsement shall be limited to the sub-limit stated in the Schedule against "Contract Works Exemption".

**112. Boiler and/or Pressure Vessel Explosion**

(This Endorsement is only operative if a sub limit is stated in the Schedule against "Boiler and/or Pressure Vessel Explosion")

Notwithstanding Property Exclusion 9.17, this Policy extends to indemnify You against:



- (a) Damage to any boiler, economiser and/or other pressure vessel, including mountings and fittings, feed, circulating, supply or delivery pipes, valves and other apparatus thereof or thereon (hereinafter referred to as the 'Plant'), caused by or arising out of the Explosion, implosion, rupture, Collapse, bursting, cracking, fracturing or overheating of such Plant.
- (b) loss as insured by Section 2 resulting from interruption of or interference with the Business directly or indirectly in consequence such Damage.

For the purpose of this endorsement:-

- (i) The Basis of Settlement in respect of Damaged Plant shall be the cost of repair or replacement of the Plant in accordance with the provisions of the Reinstatement or Replacement, Extra Cost of Reinstatement and Output Replacement Memoranda to Section 1 of this Policy.
- (ii) The Basis of Settlement in respect of loss due to interruption of or interference with the Business consequent upon Damage insured against hereunder shall be in accordance with the cover afforded by Section 2 of this Policy.
- (iii) The insurance provided under this endorsement shall also extend to include:
- (1) any payments incurred by You in respect of the costs and expenses as described in Section 1 Clause 1 - 'The Indemnity', and
- (2) the benefits described in the Memoranda to Section 1;
- to the extent that costs and expenses are incurred by You and/or the circumstances described in the Section 1 Memoranda may apply.
- (iv) 'Explosion' means the sudden and violent rending of the permanent structure of the Plant by force of internal steam or fluid pressure causing bodily displacement of any part of the structure together with forcible ejection of the contents.
- (v) 'Collapse' means the sudden and dangerous distortion of any part of the permanent structure of the Plant by bending or crushing caused by force of steam or fluid pressure whether attended by rupture or not.
- (vi) The following Exclusions shall be deemed to be inoperative:-
- Property Exclusion 9.17;
  - Perils Exclusions 10.2(a), 10.2(b), 10.2(c) and 10.2(e)
  - Perils Exclusions 10.4(c), 10.4(d) and 10.5(b)
- (vii) We shall not be liable for:-

- (1) the cost of repair or replacement necessitated by:
- (A) wearing away or wasting of the material of the Plant, whether by leakage, corrosion, or by the action of the fuel, or otherwise;
- (B) slowly developing deformation or distortion of any part of the Plant;
- (C) cracks, fractures, blisters, laminations, flaws or grooving even when accompanied by leakage or damage to tubes, headers or other parts of the Plant caused by over-heating or leakage at seams, tubes or other parts of the Plant;
- (D) failure of joints;
- but damage to or destruction of the Plant caused by its own Explosion, implosion, rupture, Collapse or bursting (which may result from any of the circumstances described in sub clauses (vii)(1)(A) to (vii) (1) (D) above) whilst the Plant is in use, causing stoppage of the functions thereof and necessitating repair or replacement before it can resume working, is insured hereunder.
- (2) destruction of or damage to any Plant if at the time of the damage or destruction:
- (A) the load on the safety valve(s) upon the particular item of Plant was in excess of that permitted by the latest certificate issued in accordance with any Statute or Regulation thereunder applicable thereto; or
- (B) any safety valve limiting the pressure is removed or rendered



inoperative; or

**(C)** such Plant has not been duly certified where certificates of inspection are required by any Statute or Regulation thereunder;

unless You can prove that You did not consent to the Plant being operated in any of the circumstances described in sub clauses (vii)(2)(A) to (vii)(2)(C) above; or

**(D)** such Plant was undergoing the application of any hydraulic test and the Damage was occasioned thereby.

The checking of the correct working of Plant or of its safety installations is not considered to be the application of a hydraulic test in the context of this sub clause (vii)(2)(D).

The cover provided by this endorsement in respect of Section 1 shall be limited to the sub limit stated in the Schedule against "Boiler and/or Pressure Vessel Explosion".

### **113. Machinery Breakdown (physical damage and expediting costs)**

Property Exclusion 9.16 is deleted and the policy extends to indemnify the Insured for damage to Machinery occasioned by or happening through any mechanical, electrical, electromechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of any kind except as otherwise specifically excluded. For the purpose of this endorsement:

1. "Machinery" means any apparatus, including electronic control equipment, whether functioning independently or as part of a collection of apparatus, which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.
2. The following specific exclusions shall apply to this endorsement and shall take precedence over the exclusions applicable to all sections of the policy:

#### **Property Exclusions**

Physical loss or destruction of or damage to:

- (a) any sewer piping, underground gas piping, piping forming part of any sprinkler system or water piping other than boiler feed water piping, boiler condensate return piping or water piping connecting to or used with an airconditioning system;
- (b) any structure, foundation or setting (other than a bedplate) supporting or housing any Machinery, or the lining or fire wall of any unfired vessel;
- (c) any vehicle or mobile equipment whilst being driven on a public thoroughfare (but damage to such vehicle or mobile equipment whilst being used at any situation as a tool of trade is not excluded);
- (d) any aircraft or floating vessel;
- (e) any elevator, crane, hoist, power shovel, dragline or conveyor (but not any pressure vessel or electrical equipment used with such items of Machinery);
- (f) any computer or electronic data processing equipment;
- (g) any X-ray machine, spectrograph, gauges or other apparatus using radioactive materials, any radio or television apparatus;
- (h) any penstock, draft tube or well casing;
- (i) any steam or gas turbine-generator with a capacity exceeding 250 horsepower or equivalent;
- (j) electrical wiring and fittings associated with lighting and power circuits

#### **Perils Exclusions**

The Insurer(s) shall not be liable in respect of

- (a) (i) wear and tear and gradual deterioration (whether by wasting, grooving, rust, corrosion, erosion or otherwise) nor for the cost of maintenance work generally;
- (ii) gradually developing flaws, deformation, distortion, cracks or partial fractures;

Provided that Perils Exclusions (a)(i) and (ii) shall be limited to the part(s) of the Machinery immediately so affected and shall not apply to any other part(s) of the Machinery undergoing sudden and unforeseen damage in consequence thereof.

- (b) repair or renewal of non-metallic parts and expendable tools, blades, edges, moulds, dies, templates, screens, sieves, ropes, belts and like items subject to rapid wear and tear unless repair or renewal

thereof is necessitated by the occurrence of damage (as insured by this endorsement) to any other part(s) of the Machinery;

**(c) damage:**

**(i)** arising from the intentional application of any tool or process to the Machinery during the course of repair, alteration, modification, maintenance or overhaul thereof.

**(ii)** to the Machinery resulting from the imposition of abnormal conditions relating to testing or intentional overloading of or experiments with the Machinery, unless the Insurer(s) shall have agreed in writing to grant indemnity under this endorsement whilst the Machinery is being operated under such conditions.

**(iii)** to the Machinery resulting from fault(s) or defect(s) therein known to the Insured or to responsible employees of the Insured but not disclosed to the Insurer(s) at the commencement of the Period of Insurance.

**(d)** consequential loss of any kind (including consequential loss due to lack of performance, loss of contract or payment in respect of any contractual fine or penalty due to late or non-performance of services by the Insured).

The insurance under this endorsement includes expediting expenses, which shall mean:

**(a)** penalty rates for wages during overtime, shift, night, Sunday or holiday working;

**(b)** payment for carriage by express passenger, fast goods or other rail or road transport;

**(c)** payment for carriage by air freight via licensed airline(s) operating a regular scheduled service but not by aircraft chartered for such carriage, unless agreed in writing with the Insurer(s).

The Insurer(s) liability for expediting expenses shall not exceed 50% of the normal cost of repair or replacement of the damaged Machinery.

#### **114. Spoilage of Goods in Cold Storage**

Notwithstanding the provisions of the policy exclusions, this Policy is extended to include Damage to goods contained in cold storage if caused by:

**1.** Damage to refrigeration plant occasioned by or happening through any cause or event not otherwise excluded, even if such cause or event results from an excluded peril,

**2.** Pollution or contamination by leaking refrigerant,

**3.** A rise or fall in temperature resulting from:

**(a)** A sudden, unintended and unexpected leakage of refrigerant or

**(b)** Faulty operation of the temperature controlling device(s) or

**(c)** Failure of publicly supplied electricity, water or gas services arising from Damage to any property of the public supply authority occurring in circumstances in which indemnity would apply if that property was insured under Section 1 of this Policy (other than indemnity not applying because of the application of a Deductible) or

**(d)** Failure of publicly supplied electricity, water or gas services arising from the cessation of work whether total or partial by employees of the public supply authority or from the interruption or retarding of any process or operation as a result of any industrial dispute involving employees of the public supply authority.

The liability of the Insurer(s) for anyone loss or series of losses arising out of anyone event or occurrence at anyone location shall be limited to the Sub-Limit of Liability stated in the Schedule of the policy against "Spoilage of Goods in Cold Storage" and shall be reduced by the amount of the Deductible stated in the Schedule.

#### **115. EDP Breakdown**

Section One - Material Loss or Damage is extended to cover electronic data processing systems including peripheral and ancillary equipment and media against any sudden and unforeseen loss, destruction or damage whilst such property is within the precincts of the Situation and/or Premises and working or at rest or being dismantled, moved, reassembled or reinstated for the purpose of cleaning, adjustment, inspection, repair, overhaul or relocation but only after successful commissioning at the Situation and/or Premises.

The following "Property Exclusions - Exclusion Applicable to Sections 1 and 2" shall not apply to the cover granted by this endorsement:

**Exclusion Number**

Property 9.16

Perils 10.2(a)  
Perils 10.2(c)  
Perils 10.2(e)  
Perils 10.4(c)  
Perils 10.4(d)

Provided that the liability of the Insurer(s) shall not exceed the amount of the sub-limit stated in the schedule of the policy against "Data Processing/Media/Computer Breakdown" for any one loss or series of losses arising out of any one event or occurrence at any one location.

## **116. Electronic Data Endorsement D**

### **1. Electronic Data Exclusion**

- 1.1** Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:
- 1.1.1.** This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or even contributing concurrently or in any other sequence to the loss.
- 1.1.2.** ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.
- 1.1.3.** COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

### **2. Electronic Data Processing Media Valuation**

- 2.1** Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:
- 2.1.1.** Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However, this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

## **Perils Exclusions**

### **117. Amendment to General Exclusion 19.1 (c) Applicable to All Sections of this Policy**

For the purpose of Sections 1 and 2 of this Policy, the proviso to General Exclusion 19.1 (c) is hereby amended to read as follows:

Provided that this Exclusion 19.1 (c) shall not apply to any radiations emitted by spectrometers, X-ray units, diathermy machines, equipment for radio and television broadcasting, telecommunications equipment, radar installations or industrial and commercial appliances used for sealing plastics or for welding, heating, sterilisation, drying or cooking.

### **118. Deletion of Perils Exclusion 10.1(a)**

**(Inclusion of damage caused by Flood)**

Perils Exclusion 10.1(a) is hereby deleted from this Policy.

### **119. Flood - Amended Definition**

The definition of "flood" forming part of Perils Exclusion 10.1 (a) is amended to read:

the covering of normally dry land by water that has escaped or been released from the confines of any of the following:

- (a)** a lake (whether or not it has been altered or modified);

- (b) a river (whether or not it has been altered or modified);
- (c) a creek (whether or not it has been altered or modified);
- (d) another natural watercourse (whether or not it has been altered or modified);
- (e) a reservoir;
- (f) a canal;
- (g) a dam.

#### **120. Transmission & Distribution Lines Above Ground (1,000 Metres Exclusion)**

Notwithstanding any provision to the contrary in this Policy or any endorsement thereto, it is understood and agreed that this insurance excludes loss, Damage, cost or expense of whatsoever nature to all above ground transmission and distribution lines, including wire, cables, poles, pylons, standards, towers, other supporting structures and any equipment of any type which may be attendant to such installations of any description, for the purpose of transmission or distribution of electrical power, telephone or telegraph signals, and all communication signals whether video or visual.

This exclusion applies to all equipment other than that which is on or within 1,000 metres of any insured structure.

This exclusion applies to both Damage to the equipment and all business interruption, consequential loss, and/or other contingent losses related to transmission and distribution lines.

#### **121. Amendment to Perils Exclusion 10.2(a)**

Clause (a) of Perils Exclusion 10.2 is hereby deleted and replaced by the following:

(a) (i) the action of moths, termites or other insects, vermin, rust or oxidation, mildew, mould, 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.

(ii) Pollution or Contamination of any Property Insured, except where such pollution or contamination results from any cause or event which is not otherwise excluded by this Policy.

‘Pollution or Contamination’ means the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, atmosphere or any water course or body of water (including ground water).

#### **122. Deletion of Perils Exclusion 10.4(a)**

Perils Exclusion 10.4(a) is hereby deleted from this Policy.

#### **123. Amendment To Perils Exclusion 10.5(c)**

Perils Exclusion 10.5(c) is hereby amended to read:-

(c) erosion, subsidence, earth movement or collapse resulting therefrom except if caused by or arises out of an earthquake or seismological disturbance.

#### **124. Employee Fraud or Dishonesty**

*(This Endorsement is only operative if a Sub Limit is stated in the Schedule against “Employee Fraud or Dishonesty”)*

We will (subject to the following terms, Definitions, Provisions, Specific Exclusions, and the Conditions of this Policy) indemnify You for Loss discovered during the Period of Insurance or within twelve (12) months thereafter or within twelve (12) months after the termination of employment of any Employee(s), where evidence submitted reasonably establishes that the Loss was due to the Fraudulent or Dishonest Conduct of such Employee(s), whichever shall first occur.

For the purpose of this endorsement:

1. Perils Exclusion 10.5(a) is hereby deleted.

2. The following Definitions shall apply:

“You” shall be deemed to include: the trustees, managers, officers or members of any superannuation, pension, savings or like scheme, welfare, social or sporting club, formed with Your knowledge and consent.

“Employee” means:

(a) any person whilst in Your service in the ordinary course of the Business during the currency of this Policy and whom You compensate by salary, wages or commission and has the right to govern and direct in the performance of such service.

- (b) any ex-employee during a period not exceeding thirty (30) days following the termination of such service.
- (c) any of Your directors or trustees whilst performing acts coming within the scope of the usual duties of an Employee or member of any committee duly elected or appointed to examine or audit or have custody of or access to Your Money or property.
- (d) any person assigned to perform employee duties for You by an agency furnishing personnel.
- (e) any person acting as a fiduciary, trustee, administrator, office bearer or member of any superannuation, pension, savings or like scheme, welfare, social or sporting club formed with Your knowledge and consent.
- (f) any person employed by You as a Consultant, where that person's services are provided primarily or exclusively to You.
- (g) any person undertaking studies, gaining work experience or similar duties with You and whom You have the right to govern and direct in the performance of their work.

**“Consultant” means:**

any person employed under a contract for services and shall include financial, technical or other specialists of whatsoever kind and description.

**“Loss” means:**

Loss of Money, Securities or property of whatsoever kind, being Your own or for which You are legally liable or have assumed responsibility, incurred by You during the Period of Insurance arising out of the Fraudulent or Dishonest Conduct of any Employee(s) acting alone or in collusion with any other person(s).

“Fraudulent or Dishonest Conduct” includes:

- (a) fraudulent misappropriation, embezzlement, forgery, counterfeiting, data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means.
- (b) the establishment or operation of or collusion with any company or other organisation, which carries on business in direct competition with You, including the sale of goods or merchandise stolen from You, by any Employee(s) acting alone or in collusion with any other person(s).
- (c) any other dishonest act or omission committed or made, by any Employee(s) with the knowledge that such act or omission is likely to result in financial loss being sustained by You.

3. The following Provisions shall apply to this endorsement:

**(1) Claims Procedure**

Notice in writing must be given to Us as soon as reasonably practicable after:

- (a) any Loss; or
- (b) reasonable cause for suspicion of Loss;

comes to the knowledge of Your officer responsible for insurance.

Within a reasonable time after such notice, You will deliver to Us full details in writing of the Loss and the amount claimed in respect thereof together with all such proof of the correctness of the claim as We may reasonably require.

**(2) Application of Sub Limit of Liability**

The indemnity afforded by this endorsement shall be limited to the amount of the sub limit stated in the Schedule against “Employee Fraud or Dishonesty” in respect of any one Employee and in respect of all Employees during any one Period of Insurance.

All Losses arising directly or indirectly from any one Employee or any number of Employees in collusion in respect of the one event or series of events arising from the one source or original cause, irrespective of whether the act or acts of Fraudulent or Dishonest Conduct were committed during more than one Period of Insurance, shall be deemed one act of Fraudulent or Dishonest Conduct.

**(3) Reimbursement of Investigation Costs**

In addition to the sub limit stated in the Schedule against “Employee Fraud or Dishonesty”, We agree to reimburse You up to an amount not exceeding ten thousand dollars (\$10,000) or five per cent (5%) of the claim actually paid (whichever is the lesser) for fees payable by You to external auditors, consultants, investigators, private enquiry agents and the like, which are necessarily and reasonably incurred to substantiate a valid claim by You under this endorsement.

#### **(4) Allocation of Recoveries**

Recoveries made after Loss, less the actual cost of recovery to the extent that this is incurred by Us, shall be distributed as follows:

- (a)** Firstly, You shall be reimbursed for Loss exceeding the sub limit stated in the Schedule against “Employee Fraud or Dishonesty” or exceeding the settlement (whichever is lesser);
- (b)** Secondly, We shall be reimbursed for the settlement made;
- (c)** Thirdly, You shall be reimbursed for Loss equal to the amount of the Deductible stated in the Schedule.

#### **(5) Continuity of Cover**

If the insurance provided by this endorsement is in substitution for that provided under any prior policy of insurance carried by You or by a predecessor in interest of Your Business (which prior policy is terminated, cancelled or allowed to expire as at the time of such substitution) We agree that this endorsement applies to Loss, which is discovered during the Period of Insurance and which would otherwise have been recoverable by You or such predecessor under such prior policy except for the fact that the time within which to discover and claim for Loss thereunder had expired.

Provided that:

- (a)** the insurance hereunder shall form part of, and shall not be in addition to, the sub limit stated in the Schedule against “Employee Fraud or Dishonesty”;
- (b)** such Loss would have been covered under this endorsement had this Policy been in force when the Fraudulent or Dishonest Conduct took place; and
- (c)** recovery under this endorsement shall in no event exceed the smaller of the following amounts:
  - (i)** the sub limit stated in the Schedule against “Employee Fraud or Dishonesty”; or
  - (ii)** the amount(s) which would have been recoverable under the prior policy if such policy had been maintained in force until the discovery of such Loss.

#### **(6) Retrospective Excess Cover**

We shall indemnify You for Loss discovered during the Period of Insurance arising out of Employee Fraud or Dishonesty which took place during the period of twelve (12) months preceding the commencement date of this Policy but only for the excess of the amount recoverable under any other policy of insurance.

#### **(7) Loss caused by unidentifiable Employee(s)**

If a Loss is alleged to have been caused by the Fraudulent or Dishonest Conduct of any Employee(s) but You are unable to designate the specific Employee(s) involved, You shall have the benefit of this Policy.

Provided that:

- (a)** the evidence submitted reasonably suggests that the Loss was due to the Fraudulent or Dishonest Conduct of any Employee(s); and
- (b)** Our aggregate liability for any such Loss shall not exceed the sub limit stated in the Schedule against “Employee Fraud or Dishonesty”.

#### **(8) Subrogation**

Clause 11.3 - “Subrogation Waiver” - shall not apply to the cover granted under this endorsement.

#### **(9) Prior Fraudulent or Dishonest Conduct**

Knowledge which any officer signing an application for this insurance for You may have at the time of signature, in respect of that officer’s own personal Fraudulent or Dishonest Conduct which is unknown to You, shall not be imputed to You.

#### **(10) Other Parties**

This insurance applies with respect to Loss of Money or goods belonging to or in the care of one insured party arising from the Fraudulent or Dishonest Conduct of any Employee(s) of any other party insured by this Policy.

#### **(11) Other Interested Parties**

We will indemnify, as though they were You, all parties having any financial interests in the property hereby insured by virtue of any mortgage, loan, lease, hiring, or other agreement.

#### **(12) Automatic Reinstatement**

Notwithstanding Provision (15) hereunder, indemnification by Us for any loss under the terms of this

endorsement shall not reduce Our liability for any other losses sustained hereunder during any one Period of Insurance.

Provided that You shall pay such reasonable pro rata additional premium that We may require for such Reinstatement of cover.

**(13) Change of Risk**

Every material change in the risks covered by this endorsement, existing at the commencement of this insurance or at any subsequent renewal date, shall be notified in writing to Us as soon as practicable after Your officer responsible for insurance matters shall become aware of such change.

If so requested by Us, You shall pay a reasonable pro rata additional premium for such material change of risk.

**(14) Non Invalidation**

Breach or non-compliance by any Employee(s) of checks, precautions or the method of conducting Your Business, without the knowledge or consent of Your management, shall not prejudice this insurance.

**(15) Non-Accumulation of Liability**

Regardless of:

**(a)** the number of years this Policy shall remain in force; or

**(b)** the number of annual premiums which may be paid or payable to Us for the cover provided hereunder; or

**(c)** the duration of the total period during which any Fraudulent or Dishonest Conduct of any Employee(s) may take place;

Our liability under this endorsement with respect to any Loss or series of Losses shall not be cumulative from one Period of Insurance to another or others.

**(16) Set-off of Money owing to defalcating Employee(s)**

In the event of any claim being made under this endorsement You shall (to the extent allowed by law) retain any salary, wages or commission payment(s) due to such Employee(s) in respect of whose Fraudulent or Dishonest Conduct the claim is made and shall apply such payment(s) towards making good the amount of any default due to the Fraudulent or Dishonest Conduct insured against hereunder.

**4. The following Specific Exclusions shall apply to this endorsement:**

We shall not be liable for:

**(a)** Loss arising from any subsequent Fraudulent or Dishonest Conduct of any Employee which takes place after You shall have knowledge of any Fraudulent or Dishonest Conduct on the part of such Employee.

Provided that this Specific Exclusion 4(a) shall not apply to Loss of Money or property then being conveyed by such Employee outside Your Premises.

**(b)** any Loss arising from the complete or partial default upon or non-payment of any loan, extension of credit or transaction in the nature of a loan, obtained from or made by You or by any Employee, whether authorised or unauthorised by You, unless such Loss arises from the Fraudulent or Dishonest Conduct of any Employee.

**(c)** any Loss or that part of any Loss, the proof of which (either as to its existence or its amount) is deduced solely from an inventory or profit computation.

Provided that this Specific Exclusion 4(c) shall not apply to Loss of Money or other property which You can establish, through evidence wholly apart from such inventory or profit computation, was sustained due to the Fraudulent or Dishonest Conduct of any Employee.

**(d)** any consequential loss of whatsoever kind arising out of the Fraudulent or Dishonest Conduct of any Employee(s).

# Memoranda Applicable to Sections 1 and 2

## 125. Event

Clause 11.2 - "Event" is hereby extended to include the following perils in addition to Earthquake:

- (a) Storm and Tempest, Rainwater, Flood
- (b) Subterranean Fire, Volcanic Eruption

## 126. Public Authorities, Storage, Lease and Hire Agreements

Clause 11.3 - "Subrogation Waiver" is hereby extended to include the following clause:

You may, without prejudicing Your position under this Policy:

- (a) release any statutory governmental, semi-governmental or municipal authority from any liability if required by any contract to do so.
- (b) agree to enter into a contract for storage of goods or merchandise even if the terms of the contract include a disclaimer clause.
- (c) agree to enter into a lease for occupancy of any building or part of a building or a lease or hiring of property where the terms of the lease or hiring include a disclaimer clause in favour of the lessor or the owner.

## 127. Subrogation Waiver

The wording of Clause 11.3 - "Subrogation Waiver", is hereby amended to read:

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

- (a) You or any Your directors, partners, officers or employees);
- (b) any corporation or entity (including its directors, officers, partners or employees) owned or controlled by any Insured named herein or subsidiary to any Insured named herein or any coowner of the property insured hereunder.
- (c) any party described in Clause 4.1 - "Interests of Other Parties", unless You expressly agree to the pursuit of recovery action against that party.

You may without prejudicing Your position under this Policy:

- (i) release any statutory governmental, semi-governmental or municipal authority from any liability if required at law to do so;
- (ii) agree to enter into a contract for storage of goods or merchandise if the terms of the contract include a disclaimer clause;
- (iii) agree to enter into a lease for occupancy of any building or part of a building or a lease or hiring of property where the terms of the lease or hiring include a disclaimer clause in favour of the lessor or the owner.

## 128. Adjustment of Premium

Clause 11.4 - "Adjustment of Premium" is extended to include the following clause:

- (f) If any claim paid or payable under Section 1 and/or 2 of this Policy in respect of Damage occurring during the Period of Insurance is reduced due to under-insurance in accordance with the provisions of a Co-insurance or Average clause or clauses, We shall waive any additional premium for that Period of Insurance, which would otherwise be payable in accordance with this memorandum.

## 129. Declarations of Acquired Property

Clause 11.4 (b) - "Adjustment of Premium" is hereby extended to include the following additional sub clauses:

- (iii) You shall also make such declarations to Us under paragraph 11.4 (b)(i) in respect of acquisitions of Property Insured, provided that no such declaration shall be required upon acquisition when the value of the acquisition does not exceed the amount stated in the Schedule against "Acquired Companies (Endorsement)", of Your total declaration of value under Section 1 as at the commencement of the Period of Insurance.
- (iv) Notwithstanding Our acceptance of a total variation in the Declared Values, up to the amount stated in the Schedule under the Combined Section 1 and Section 2 sub limit against "Declaration of Acquired Property", this endorsement shall not be construed as automatically providing an increase in the Combined Limit of Liability applicable to Sections 1 and 2 of this Policy.



# Conditions Applicable to Sections 1 and 2

## **130. Misdescription, Non-Disclosure and Alteration**

Notwithstanding Conditions 12.1 and 12.2 of this Policy, You shall not be prejudiced by any unintended or inadvertent error, omission, misdescription of the risk, interest or property insured hereunder, incorrect declaration of value of such property, failure to advise Us of any change or risk, interest or property insured hereunder, failure to advise Us of any acquisition of risk, interest or property to be insured hereunder, or failure to comply with any statutory requirement.

Provided that Your officer(s) responsible for insurance shall, upon becoming aware of any such matters, inform Us thereof as soon as reasonably practicable thereafter and You shall pay a reasonable pro rata additional premium, upon request by Us, from the date of any such material variation in risk.

## **131. Breach of Condition or Warranty or Misdescription**

The breach of any condition or warranty without Your knowledge or consent, or error in name, description, location or valuation of property, or omission to state a material fact, shall not invalidate this insurance; provided that Your officer responsible for insurance shall, upon becoming aware of any such breach or error or omission, inform Us as soon as reasonably practicable thereafter and You shall pay a reasonable pro rata additional premium, upon request by Us, from the date of any such material variation in risk.

## **132. Amendment to Condition 12.2 - "Alteration"**

The preamble to paragraphs (a) to (d) of Condition 12.2 is hereby amended to read:-

Subject to Section 54 of the Insurance Contracts Act 1984 (Cth), We shall not be liable for Damage to any property insured hereunder caused or contributed to by any alteration after the commencement of this Policy.

## **133. Amendment to Condition 12.3 - "Sprinkler Installations"**

Condition 12.3 is hereby amended as follows:

The words "or are required by law to be protected" are deleted from the first paragraph of this Condition.

This Condition is hereby extended to include the following additional paragraphs:

Where the sprinklered Premises are leased to a tenant and the lease provides that the tenant shall provide for maintenance of the installation, any failure so to do will not prejudice Your rights provided that, upon becoming aware of the failure, You shall either immediately provide for maintenance of the installation or immediately give notice in writing to Us and, upon request by Us, pay such reasonable additional premium as We may require.

Where You (or a tenant responsible to provide for maintenance of the installation) enters into an agreement for maintenance with a contractor and such agreement provides in substance that You or the tenant shall indemnify and/or hold harmless and/or release from liability the contractor in respect of Damage which may occur as a result of any peril insured against by this Policy, the insurance hereunder shall not be prejudiced by You or the said tenant agreeing to such provision.

The indemnity and/or hold harmless provision and/or release from liability shall be equally binding upon Us and We shall waive all rights of subrogation which may have otherwise existed against You or the tenant.

Your officer responsible for insurance shall, upon becoming aware of such agreement, inform Us as soon as reasonably practicable and a reasonable additional premium will be paid if required by Us.

## **134. Deletion of Condition 12.4 - "Other Insurance"**

Condition 12.4 is hereby deleted.

## **135. Amendment to Condition 12.5 - "Notification of Claims"**

Paragraph (a) of Condition 12.5 is hereby amended to read as follows:

**(a)** On the discovery of any Damage, You shall forthwith give notice thereof in writing to Us and shall as soon as reasonably practicable deliver to Us a claim in writing containing as particular an account as may be reasonably practicable of the Damaged items of property and the amount of Damage having regard to their value at the time this occurred and of the amount of any claim under Section 2 of this Policy, together with details of any other insurances which may apply to the claim.

## **136. Amendment to Condition 12.8 - "Our Rights"**

The first paragraph of Condition 12.8 is hereby amended to read as follows:

On the happening of any Damage in respect of which a claim is or may be made under this Policy We and every person authorised by Us may, following agreement with You and without thereby admitting 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 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.

#### **137. Amendment to Condition 12.9 - "Subrogation"**

Condition 12.9 is hereby amended to read as follows:-

- (a) Any person or party 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 as may be necessary or reasonably required by Us for the purpose of enforcing any rights and remedies against, or of obtaining relief or indemnity from, any other persons or parties to which We shall be or would become entitled or subrogated upon Our paying for or making good any Damage or consequential loss under this insurance.
- (b) Recoveries, whether effected by Us or by You, shall be applied, net of the expense of such recovery, first to the satisfaction of Your loss in excess of the claim paid under this Policy (disregarding the amount of any Deductible applicable), secondly to Us as reimbursement of the amount(s) paid in settlement of Your claim and thirdly to You in satisfaction of any Deductible amount applicable. Recovery from reinsurance shall not be deemed a recovery for the purpose of this paragraph (b).

#### **138. Amendment to Condition 12.12 - "Termination of Cover under Section 2"**

Condition 12.12 of this Policy is hereby amended to read as follows:

If during the currency of this Policy You:

- (a) permanently discontinue or cease to carry on the Business or if Your proprietary interest in the Business ceases otherwise than by death; or
- (b) (being a corporation) are placed in liquidation, provisional liquidation, under official management, under the control of a receiver and manager or if control over Your assets is assumed by a receiver; or
- (c) (being a natural person) become bankrupt;

then the insurance cover provided under Section 2 of this Policy in respect of such Business or part of the Business shall automatically cease, unless its continuance is admitted in writing by memorandum issued by Us or on Our behalf.

Such termination of cover shall not apply if any of the events stated in clauses (a), (b) or (c) are caused by loss, insured by Section 2 of this Policy, resulting from interruption of or interference with the Business in consequence of Damage to property used by You at the Premises.

#### **139. Victorian Fire Services Levy Endorsement - Cancellation**

Notwithstanding any provision to the contrary in this Policy or any endorsement thereto, in the event that this Policy or any cover under it is cancelled on or after 01 January 2013 in circumstances where You are entitled to a refund of a portion of the premium, We will not refund any portion of the premium that is attributable to the fire services levy for risks located in Victoria.

#### **140. Severability and Non-Imputation**

This Policy is hereby extended to include the following additional Condition Applicable to Sections 1 and 2:-

For the purpose of granting cover under Sections 1 and 2 of this Policy:-

- (a) any proposal or application shall be considered as a separate proposal or application by each person or entity comprising the Insured.
- (b) any declaration, statement or representation made in any proposal or application shall be construed as a separate declaration, statement or representation by each person or entity comprising the Insured.
- (c) any knowledge possessed by any person or entity who/which is an Insured shall not be imputed to any other person or entity who/which is an Insured hereunder.
- (d) this Policy will apply as a separate contract of insurance between Us and each person or entity comprising the Insured; provided that where a claim is brought against more than one such Insured, the amount of available cover will not be increased as a result of this paragraph but will be determined on the basis that there is a single contract of insurance between Us and all of the persons or entities comprising the Insured.