



Marine Combined Liability Insurance

POLICY WORDING

Coast Insurance Marine Combined Liability Wording

Contents

ABOUT THIS DOCUMENT.....	1
IMPORTANT INFORMATION	1
About The Insurer(s).....	1
About Coast Insurance.....	1
General Insurance Code of Practice.....	2
Our Contract with You.....	2
Duty of Disclosure.....	2
Cooling-Off Period.....	2
How to make a Claim.....	3
Privacy Statement.....	3
Complaints and Disputes.....	3
Renewal Procedure.....	4
Preventing Our Right of Recovery.....	4
Policy Interpretation.....	4
SECTION A. Provisions Applicable to the Whole of This Policy.....	6
1. Definitions - Words with special meanings.....	6
2. General Conditions Applicable to This Policy	15
SECTION B. General and Products Liability.....	21
1. Insuring Clauses.....	22
2. Limit of Liability and Excess for Section B.....	24
3. Exclusions Applicable to Section B.....	24
4. Claims Conditions Applicable to Section B.....	28
SECTION C. Statutory Liability.....	30
1. Insuring Clauses.....	30
2. Extensions of Cover under Section C.....	30
3. Limit of Liability and Excess.....	31
4. Exclusions Applicable to Section C.....	31
5. Claims Conditions Applicable to Section C.....	32
SECTION D. Errors and Omissions Liability.....	34
1. Insuring Clause.....	34
2. Limit of Liability and Excess.....	34
3. Exclusions Applicable to Section D.....	34
SECTION E. Commercial Legal Expenses.....	35
1. Insuring Clause.....	35
2. Additional Definitions.....	35
3. Heads of Cover.....	36

ABOUT THIS DOCUMENT

This booklet contains two separate parts: Important Information and Policy Terms and Conditions.

Important Information

This part of the booklet contains information You need to know before You take out an insurance policy. Please read it carefully before taking out this insurance.

For the purposes of the Important Information section all references to:

- 'You', 'Your' or 'Yours' have the same meaning as You/Your/Yours as defined in the 'Definitions' section of the Policy;
- 'We', 'Us' or 'Our' have the same meaning as We/Our/Us/Insurer(s) as defined in the 'Definitions' section of the Policy.

Policy Terms and Conditions

This part of the booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of Your legal contract with Us.

If We issue You with an insurance policy, You will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule We send to You form Your legal contract with Us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your insurance broker.

IMPORTANT INFORMATION

About The Insurer(s)

This Policy is underwritten by certain underwriters at Lloyd's ('Underwriters'). The Underwriters are collectively referred to as 'We, Us, Our, the Insurer(s)' in this Policy.

Certain underwriters at Lloyd's are authorised and regulated by the Australian Prudential Regulation Authority ('APRA') under the provisions of the Insurance Act 1973 (Cth) to conduct insurance business in Australia.

Lloyd's is the world's specialist insurance and reinsurance market.

With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world - building resilience for businesses and local communities and strengthening economic growth around the world.

You should contact Coast Insurance in the first instance in relation to this insurance.

About Coast Insurance

Coast Insurance Pty Ltd (ABN 44 108 154 829, AFSL 268726) ('Coast') acts under a binding authority given to it by Us, to administer and issue policies, alterations and renewals. In all aspects of arranging the Policy, Coast acts as an agent for the Insurer(s) and not for You.

If You have any queries in relation to this Policy, contact Coast in any of the following ways:

Street Address: 1st Floor, 186 Scarborough Beach Road, Mt Hawthorn Western Australia 6016

Postal Address: PO Box 120, Mount Hawthorn WA 6915

Phone: +61 8 6374 7000

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.

Lloyd's 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.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au.

Our Contract with You

This Policy is a contract of insurance between You and Us and contains all the details of the cover that We provide.

The Policy consists of:

- this Policy wording which tells You what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover (this document);
- the Proposal, which is the information You provide to Us when applying for insurance cover;
- Your most current Policy Schedule issued by Us. The Schedule is a separate document unique to You, which shows the insurance details relevant to You. It includes any changes, exclusions, terms and conditions made to suit Your individual circumstances and may amend the Policy;
- any Endorsement;
- any other document We tell You forms part of the Policy which may vary or modify the above documents.

Please note, only those cover sections shown as covered in Your Schedule are insured.

These documents should be read together as they jointly form the contract of insurance between You and Us.

Duty of Disclosure

Before You enter into an insurance contract, You have a duty to tell Us anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary or reinstate an insurance contract.

You do not need to tell Us anything that:

- reduces the risk We insure You for; or
- is common knowledge; or
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

If You do not tell Us something

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a claim, or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

Cooling-Off Period

There is a twenty-one (21) day cooling-off period. If You wish to cancel the Policy, You can cancel it from its date of issue by contacting Coast in writing within twenty-one (21) days of its date of issue.

We will refund Your premium less any non-refundable government charges, taxes and levies We have paid. You cannot exercise this right if:

- You have made a claim or become entitled to make a claim under the Policy; or
- You have exercised any right or power You have in respect of the Policy or the Policy has ended.

Even after this cooling-off period ends, You still have cancellation rights. Please refer to 'Cancellation of this Policy' in the General Conditions section of the Policy.

How to make a Claim

If You need to make a claim against this Policy, please refer to the Claims Conditions Applicable to each Section of the Policy.

If You have any queries, please contact Your broker or Us as soon as possible.

Privacy Statement

In this Privacy Statement the use of "We", "Us" and "Our" means the Insurer(s) and Coast unless specified otherwise.

We are committed to the safe and careful use of Your personal information in the manner required by the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles and the terms of this Policy.

We collect Your personal information in order to assess Your application for insurance and, if Your application is accepted, to administer and manage Your insurance policy and respond to any claim that You make. To do this, Your personal information may need to be disclosed to reinsurers and service providers and related entities who carry out activities on Our behalf, such as assessors and facilitators, some of whom may be located in overseas countries such as the United Kingdom and Europe.

Our contractual arrangements generally include an obligation for these reinsurers, service providers and related entities to comply with Australian privacy laws.

By providing Us with Your personal information, You consent to the disclosure of Your personal information to reinsurers, service providers and related entities in overseas countries to enable Us to assess Your application, to administer and manage Your insurance Policy and to respond to any claim that You make. If You consent to the disclosure of Your personal information to overseas recipients, and the overseas recipient handles Your personal information in a way other than in accordance with the Australian privacy laws, We may not be responsible for the handling of Your personal information by the overseas recipient.

If You choose not to provide Your personal information and/or choose not to consent and/or withdraw Your consent to the disclosure of Your personal information to overseas entities at any stage, We may not be able to assess Your application or administer and manage Your insurance policy and respond to any claim that You make.

Our privacy policies contain information on how You may access personal information that each of us hold, or seek correction of Your personal information and information on how to make a complaint about the handling of Your personal information and how complaints are handled. If You require more information, You can access Coast's Privacy Policy at www.coastins.com.au.

Complaints and Disputes

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 Coast in the first instance:

Complaints Officer
Coast Insurance Pty Ltd
Email: info@coastins.com.au
Phone: +61 8 6374 7000
Address: PO Box 120, Mount Hawthorn WA 6915

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
Phone: (02) 8298 0783
Address: 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:

Phone: 1800 931 678
Email: info@afca.org.au
Address: GPO Box 3 Melbourne VIC 3001
Website: 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:

Coast Insurance Pty Ltd
Email: info@coastins.com.au
Phone: +61 8 6374 7000
Address: PO Box 120, Mount Hawthorn WA 6915

LMA5544
17 May 2021

Renewal Procedure

Before this Policy expires, We will advise You whether We intend to offer renewal and if so on what terms. It is important to check the terms of any renewal before renewing to ensure that the details are correct. This document will apply to any renewal unless We tell You otherwise.

Preventing Our Right of Recovery

Where another person is liable to compensate You for any loss, damage or liability which is covered by this Policy but You have agreed not to seek recovery of any monies from that person, We will not cover You under this Policy for that loss, damage or liability.

Policy Interpretation

Throughout this Policy, words are sometimes capitalised wherever they appear in the Policy to show that those words have a particular defined meaning. These words are defined under 'Definitions' as applicable to each particular section of the Policy. Where any word is defined every derivative of that word has a corresponding meaning.

References to the masculine include the feminine, the singular also includes the plural and vice versa.

The headings are included for descriptive purposes only and do not form part of the Policy for the purpose of its construction or interpretation.

SECTION A. Provisions Applicable to the Whole of This Policy

1. Definitions - Words with special meanings:

This **Policy** uses definitions which are capitalised. They have the following meaning, wherever they are used throughout this **Policy**. If a definition is stated in the singular, it will include the plural, and vice versa.

1.1 **Act** means:

- 1.1.1 any Act of the Parliament of the Commonwealth of Australia and any Act of the Parliaments of the States or Territories of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts; and
- 1.1.2 any amendment, consolidation or re-enactment of any of the above Acts or legislation.

1.2 **Act of Terrorism** means:

an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

1.3 **Advertising Injury** means:

Injury arising out of:

- 1.3.1 defamation, or
- 1.3.2 any breach of the misleading or deceptive conduct provisions of the Competition and Consumer Act 2010 (Cth) known as the Australian Consumer Law (**ACL**) or any Fair Trading or similar legislation of any country, state or territory; or
- 1.3.3 any infringement of copyright or passing off of title or slogan; or
- 1.3.4 unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or
- 1.3.5 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.

1.4 **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.

1.6 **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 **Policy**, and shall also include:

- 1.6.1 any prior operations or activities which have ceased or have been disposed of but for which **You** may retain a legal liability.
- 1.6.2 the ownership of premises and/or the tenancy thereof by **You**.
- 1.6.3 participation in any exhibition by **You** or on **Your** behalf.
- 1.6.4 the hire or loan of plant and/or equipment to other parties.
- 1.6.5 conducted tours of **Your** premises.
- 1.6.6 the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire-fighting services by **You** or on **Your** behalf.
- 1.6.7 private work undertaken by **Your Employees** for any of **Your** directors, partners, proprietors, **Officers** or executives.

1.6.8 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**.

However, for the purposes of the cover provided under Sections C and D of this **Policy, Business** shall mean only the services provided by the **Named Insured** and described in the **Schedule**.

1.7 **Claim** means:

1.7.1 for the purposes of the cover provided under Section C of this **Policy**, any verbal or written notice received by **You** which alleges a **Wrongful Breach** and claims that the **Insured** is liable to pay a **Penalty**.

1.7.2 for the purposes of the cover provided under Section D of this **Policy**, any verbal or written demand and/or legal proceedings for breach of professional duty.

1.7.3 for the purpose of the cover provided under Section E of this **Policy**, any claims for **Legal Expenses** made under this **Policy**.

1.8 **Compensation** means:

monies paid or agreed to be paid by judgment, award or settlement in respect of **Personal Injury** and/or **Property Damage** and/or **Advertising Injury**.

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

1.9 **Consumer Protection Act** means:

any of the following:

Fair Trading Act 1985 (VIC)

Fair Trading Act 1987 (NSW)

Fair Trading Act 1987 (SA)

Fair Trading Act 1987 (WA)

Fair Trading Act 1989 (QLD)

Fair Trading Act 1990 (TAS)

Fair Trading Act 1992 (ACT)

Consumer Affairs and Fair Trading Act 1996 (NT)

Competition and Consumer Act 2010 (Cth) known as the Australian Consumer Law (**ACL**),

and any amendment, consolidation or re-enactment of any of those Acts.

1.10 **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.

1.11 **Employment Practices** means:

any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of **Your Employees**.

1.12 **Defence Costs** means:

any reasonable legal costs and associated expenses incurred with the written consent of **Us** in connection with the investigation, defence (including appeal or resisting appeal) and settlement of any **Claim** but shall not include wages, salaries or other remuneration of the **Insured**.

Provided that where proceedings are commenced to impose a **Penalty** and those proceedings are also in respect of other matters, then **We** will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.

This definition applies only to the cover provided under Section C of this **Policy**.

1.13 **Employee** means:

any person employed by the **Named Insured** under a contract of service during or prior to the commencement of the **Period of Insurance**, but does not include any independent contractor or any **Employee** of any independent contractor.

- 1.14 **Excess** means:
- the first amount of each:
- 1.4.1 claim or series of claims arising out of any one **Occurrence** under Section B;
- 1.4.2 **Loss** arising out of any **Claim** under Section C or D, first made against **You** and notified to **Us** during the **Period of Insurance**.
- The **Excess** applicable to this insurance appears in the **Schedule**.
- The **Excess** applies to all amounts for which **We** are liable under this **Policy**, including the indemnity provided by Section B Insuring Clause 2.2 (**Defence Costs** and Supplementary Payments).
- 1.15 **General Liability** means:
- Your** legal liability in respect of **Personal Injury** and/or **Property Damage** and/or **Advertising Injury** happening in connection with the **Business** and caused by or arising out of an **Occurrence** other than **Products Liability** and **Statutory Liability**.
- 1.16 **Geographical Limits** means:
- 1.16.1 anywhere in the World except **North America**.
- 1.16.2 **North America**, but only with respect to:
- 1.16.2.1 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**.
- 1.16.2.2 Products exported to **North America** without **Your** knowledge.
- 1.16.3 for the purposes of the cover provided under Section C, Australia only
- 1.17 **Hotwork** means:
- any work conducted by **You** which involves the use of oxy- acetylene torches, welding or oil tank cleaning equipment.
- 1.18 **Incidental Contracts** means:
- 1.18.1 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.
- 1.18.2 any written contract 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.
- 1.18.3 any written contract with any railway authority for the loading, unloading and/or transport of **Products**, including contracts relating to the operation of railway sidings.
- 1.18.4 those contracts designated in the **Schedule**.
- 1.19 **Insured** means:
- 1.19.1 the **Named Insured**; and
- 1.19.2 for the purposes of the cover provided under Section C only;
- 1.19.2.1 any **Officer** whilst acting in the performance of their duties to the **Named Insured**;
- 1.19.2.2 any **Employee** whilst acting in the performance of their employment by the **Named Insured**.
- 1.20 **Joint Venture** means:
- any enterprise undertaken jointly by the **Named Insured** and another party or parties.
- 1.21 **Limit of Liability** means:

the amount so specified in the **Schedule**.

1.22 **Loss** means:

1.22.1 for the purposes of the the cover provided under Section C of this **Policy**, any **Penalty** and **Defence Costs**.

1.22.2 for the purposes of the cover provided under Section D of this **Policy**, any damages (including costs awarded against **You**) or settlements.

1.23 **Medical Persons** includes but is not limited to:

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

1.24 **Named Insured** means:

1.24.1 the person(s), corporations and/or other organisations specified in the **Schedule**,

1.24.2 all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the **Named Insured** incorporated in the Commonwealth of Australia and/or any other organisations under the control of the **Named Insured**;

1.24.3 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**, but only in respect of claims made against such constituted or acquired subsidiary caused by or arising out of an **Occurrences** insured against by this **Policy**, which occurred after the date of such constitution or acquisition;

1.24.4 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 **Policy**, which occurred prior to the date of divestment.

1.25 **North America** means:

1.25.1 the United States of America and the Dominion of Canada,

1.25.2 any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and

1.25.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.

1.26 **Occurrence** means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in **Personal Injury** and/or **Property Damage** and/or **Advertising Injury** that is neither expected nor intended (except for the matters set out in clause 1.31.6) 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**.

1.27 **Officer** means:

any past, present or future director, executive officer (as defined by the Corporations Law) or company secretary of the **Named Insured**.

1.28 **Outside Director** means:

an executive position held by the **Insured** in connection with the **Business** at the specific request of the **Named Insured** in any corporation, **Joint Venture**, partnership, trust or other enterprise which is not included in the definition of the **Named Insured**.

1.29 **Penalty** means:

any monetary sum payable by the **Insured** to any **Regulatory Authority** pursuant to any **Act** for a **Wrongful Breach** by the **Insured** but excluding:

- 1.29.1 any amount payable as **Compensation**;
- 1.29.2 any compliance, remedial, reparation or restitution costs;
- 1.29.3 any damages, including any exemplary or punitive damages;
- 1.29.4 any consequential economic **Loss**;
- 1.29.5 any legal costs and associated expenses.

Notwithstanding clause 1.29.5, **We** will pay any reasonable legal costs and associated expenses payable by **You** to any **Regulatory Authority** upon the imposition of a **Penalty** covered by this **Policy**. Provided that where the proceedings that lead to the imposition of the **Penalty** also include proceedings in respect of any of the matters set out in sub-clauses 1.29.1 to 1.29.2, **We** will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in sub-clauses 1.29.1 to 1.29.2

1.30 **Period of Insurance** means:

the **Period of Insurance** specified in the **Schedule** and any extension thereof which may be agreed in writing between **You** and **Us**.

1.31 **Personal Injury** means:

- 1.31.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;
- 1.31.2 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- 1.31.3 wrongful entry or wrongful eviction;
- 1.31.4 defamation or invasion of privacy, unless arising out of **Advertising Injury**;
- 1.31.5 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;
- 1.31.6 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.

1.32 **Policy** means:

- 1.32.1 the **Policy** wording;
- 1.32.2 the **Schedule**;
- 1.32.3 the proposal; and
- 1.32.4 any endorsements agreed by the parties attaching to and forming part of this **Policy** either at inception or during the **Period of Insurance**.

1.33 **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.

1.34 **Products** means:

anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by **You** or on **Your** behalf (including **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:

- 1.34.1 food and beverages supplied by **You** or on **Your** behalf primarily to **Your Employees** as a staff benefit,
- 1.34.2 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 with 1.20.1 and 1.20.2 shall be regarded as **General Liability** claims hereunder.

1.35 **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.

1.36 **Property Damage** means:

- 1.36.1 physical **Loss**, destruction of or damage to tangible property, including the **Loss** of use thereof at any time resulting therefrom; and/or
- 1.36.2 **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**.

1.37 **Reasonable Grounds for Defence** means:

- 1.37.1 that **You** have reasonable prospects of success in avoiding or reducing any **Penalty** alleged in the **Claim**; or
- 1.37.2 that **You** have reasonable prospects of success in reducing the quantum of any **Penalty** alleged in the **Claim**,

and that having regard to the likely legal costs incurred in defending the **Claim** it is reasonable for the **Claim** to be defended. Provided that in either scenario 1.38.1 or 1.38.2 above the **Claim** is not capable of being avoided or mitigated by a settlement into which a reasonable person in **Your** position, properly advised, would enter.

This definition applies only to the cover provided under Section C.

1.38 **Regulatory Authority** means:

a person or entity appointed, constituted or acting under a delegation pursuant to any **Act** for the purposes of enforcement of such **Act** or another **Act**, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

1.39 **Removal of Wreck Expenses** means:

reasonable expenses incurred by **You** in the removal and/or disposal of a damaged or abandoned **Watercraft** which is:

- 1.39.1 the subject of an order against **You** by a recognised Maritime, Port or Harbour Authority; and,
- 1.39.2 which order has the effect of creating a legal liability on **Your** part to remove and/or dispose of such damaged or abandoned **Watercraft**.

1.40 **Retroactive Date** means:

the date shown in the **Schedule**. However, unless otherwise agreed in writing by **Us**, such date in respect of any entity acquired or created by the **Named Insured** shall be the date of acquisition

or creation of that entity by the **Named Insured** or the date shown in the **Schedule**, whichever is the later date.

1.41 **Subsidiary Company** means:

any entity in respect of which the **Named Insured**:

1.41.1 controls the composition of the board of directors; or

1.41.2 is in a position to cast, or control the casting of, more than 50% of the issued voting shares; or

1.41.3 holds more than 50% of the issued share capital,

and shall include any entity which is deemed to be a subsidiary of the **Named Insured** by virtue of any legislation or law.

1.42 **Schedule** means:

the most recent document designated as the **Schedule** to this **Policy** issued by **Us** in connection with the **Policy**.

1.43 **Senior Officer** means:

any director, chief executive officer, or company secretary of the **Named Insured**.

1.44 **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.

1.45 **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.

1.46 **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.

1.47 **We, Us, Our, Ourselves** means:

the **Insurer** named in the **Schedule**.

1.48 **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 **Your Workers**

1.49 **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.

1.50 **Wrongful Breach** means:

any act, error or omission which occurs:

1.50.1 in connection with the **Business**;

1.50.2 within the **Territorial Limits**; and

1.50.3 after the **Retroactive Date**,

whereby:

1.50.4 **You** contravene an **Act** or are involved in the contravention of an **Act**;

1.50.5 **You commit** an offence pursuant to an **Act**; or

1.50.6 such conduct is prohibited under an **Act** or is the subject of the imposition of a **Penalty** under an **Act**.

1.51 **You, Your, Insured means:**

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

1.51.1 the **Named Insured**.

1.51.2 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.

1.51.3 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.

1.51.4 every principal in respect of the principal's liability arising out of:

1.51.4.1 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 **Policy**.

1.51.4.2 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 **Policy**.

1.51.5 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 **Policy**.

1.51.6 every **Officer**, member, **Employee** or voluntary helper of the **Named Insured's** canteen, social and/ or sporting clubs, first aid, medical, ambulance or fire-fighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities as such.

1.51.7 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.

1.51.8 the estates, legal representatives, heirs or assigns of:

1.51.8.1 any deceased or insolvent persons, or

1.51.8.2 persons who are unable to manage their own affairs by reason of mental disorder or incapacity, who would otherwise be indemnified by this **Policy**, but only in respect of liability incurred by such persons as described in clauses 1.51.8.1 and 1.51.8.2 above.

1.51.9 every party including **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 **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 **Policy**.

2. General Conditions Applicable to This Policy

The following General Conditions apply to all cover Sections of the Policy unless otherwise stated.

2.1 Adjustment of Premium

If the first premium or any renewal premium for 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 **Policy**.

2.2 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.

2.3 Assignment or Alteration of Interest

No change in, or modification of, or assignment of interests under this cover Section shall be effective except if agreed to in writing by **Us**.

2.4 Authorisation

The **Named Insured** described in the **Schedule** agrees to act on behalf of all the **Insureds** under this cover Section and each **Insured** agrees that such **Insured** is authorised to act on their behalf with respect to the giving and receiving of notice of any **Claim**, the receiving and giving of notice of cancellation or expiry of this **Policy**, or any part of it, the payment of premium and the return of any part of the premium that may become due under this cover Section, the negotiation, agreement to and acceptance or endorsements, and the giving and receiving of any other notice provided for in this cover Section..

2.5 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.

2.6 Breach of Condition or Warranty

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

- 2.6.1 breach of a condition or warranty without **Your** knowledge or consent, or
- 2.6.2 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
- 2.6.3 error in name, description or situation of property; or
- 2.6.4 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.

2.7 Cancellation of this Policy

By **You**

- 2.7.1 **You** may cancel this **Policy** or any Section of it at any time by tendering notice in writing to **Us** to that effect, in which event the cancellation will become effective from the earlier of the date the notice is received by **Us** or the date on which **You** arranged alternative insurance protection.

By Us

2.7.2 Subject to General Conditions 2.6 and 2.10, **We** may cancel this **Policy** in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984 (Cth)(as amended).

Such cancellation shall take effect at the earlier of the following times:

2.7.2.1 the time when another **Policy** of insurance between **You** and **Us** or some other insurer, being a **Policy** that is intended by **You** to replace this **Policy**, is entered into; or

2.7.2.2 at 4.00 p.m. on the thirtieth (30th) business day after the day on which notification was given to **You**.

In the event of cancellation of this **Policy** by either party, **You** shall be entitled to a pro rata refund of premium subject to any minimum and deposit premium that may apply.

If the premium is subject to adjustment, cancellation will not affect **Your** obligation to supply **Us** with such information as is necessary to permit the premium adjustment to be calculated.

2.8 Confidentiality

It shall be a condition of the cover provided under Section C that (except to the extent that **You** are compelled by law to do so) **You** not release to any third party, or otherwise publish, details of the nature of the liabilities insured under Section C, the extent of cover provided under Section C, or the amount of the premium specified in the **Schedule**, without **Our** written consent.

This Condition applies only to the cover provided under Section C of this **Policy**.

2.9 Cross Liability

This insurance indemnifies:

2.9.1 each of the parties comprising the **Named Insured**, and

2.9.2 each of the **Insureds** hereunder,

separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in clauses 2.9.1 and 2.9.2 in respect of claims made by any other of such parties.

Provided always that:

2.9.3 each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, Exclusions and Definitions of this **Policy** in the same manner and to a like extent as though separate policies had been issued, and

2.9.4 in no case shall the amount payable by **Us** in respect of any one claim or series of claims arising out of any one **Occurrence** or in the aggregate, as the case may be, exceed the applicable **Limit of Liability** as specified in the **Schedule**.

2.10 Non-Imputation

Where this insurance is arranged in the names of more than one **Insured**, any conduct on the part of any party or parties whereby such party or parties:

2.10.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth);

2.10.2 made a misrepresentation to **Us** before this **Policy** was entered into;

2.10.3 failed to comply with any term or condition of this **Policy**; and / or acted in a manner which gives rise to the application of an exclusion of this **Policy**, shall not prejudice the right of the remaining party or parties to indemnity as may be provided by this **Policy**.
Provided that such other party shall:

2.10.4 not have participated in and have had no prior knowledge of any such conduct; and

2.10.5 as soon as is reasonably practicable upon becoming aware of any such conduct, advise **Us** in writing of all known facts in relation to such conduct.

2.11 Goods and Services Tax

You must inform **Us** of the extent to which **You** are entitled to an input tax credit for the premium each time that **You** make a claim under this **Policy**. No payment will be made to **You** for any GST liability that arises on the settlement of a claim under this **Policy** when **You** have not informed **Us** of **Your** entitlement or correct entitlement to an input tax credit.

Notwithstanding anything contained in this **Policy** (including the **Schedule** and any endorsements attached hereto) to the contrary, **Our** liability will be calculated after taking into account:

2.11.1 any input tax credit to which **You**, or any claimant against **You**, is entitled for any acquisition relevant to a claim paid under this **Policy**; and

2.11.2 any input tax credit to which **You**, or any claimant against **You**, would have been entitled were **You** or the claimant to have made a relevant acquisition; and

2.11.3 the GST exclusive amount of any supply made by **You** which is relevant to **Your** claim.

If the applicable **Limit of Liability** is not sufficient to cover **Your** claim, **We** will only pay GST (less any relevant input tax credit) that relates to **Our** proportion of **Your** claim.

The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the A New Tax System (Goods and Services Tax) Act 1999.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, Claims Conditions, General Conditions, Exclusions or Definitions of this **Policy** other than as stated above.

2.12 Governing Law/Jurisdiction

The construction, interpretation and meaning of the provisions of this **Policy** shall be determined in accordance with the law of the Commonwealth of Australia and the State or Territory where this **Policy** is issued, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of Australia.

2.13 Inspection & Audit

We shall be permitted, but not obliged, to inspect **Your** premises and operations at any reasonable time by prior arrangement. 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 **Policy** and within three (3) years after the final termination of this **Policy** but only with regard to matters which in **Our** opinion are relevant to this **Policy**.

2.14 Notices Under Acts

You shall comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate **Regulatory Authority** under any **Act** within the time specified or if no time is specified, within a reasonable time.

2.15 Other Insurance

2.15.1 In the event that a **Policy** of insurance or policies of insurance are listed in the **Schedule**, those policies of insurance will act as primary insurance and this **Policy** will only apply in excess of such **Policy** of insurance;

2.15.2 **You** shall notify **Us** immediately upon entering into any other **Policy** of insurance that provides insurance cover in respect of the risks insured by this **Policy**.

2.16 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, then subject to Section 60 of the Insurance Contracts Act 1984, **We** may cancel this **Policy** at the request of the premium funding company, after substantiation of the debt and default in payment by **You** has been made and proven to **Us**, by giving **You** not less than three (3) business days written notice

to that effect, following which a refund will be made to the premium funding company the proportionate part of the premium applicable to the unexpired **Period of Insurance**.

2.17 Preservation

Any provision of this **Policy** which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.

2.18 Reasonable Precautions

You must:

2.18.1 exercise reasonable care that only competent **Employees** are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.

2.18.2 take reasonable precautions:

2.18.2.1 to prevent **Personal Injury** and/or **Property Damage** and/or **Advertising Injury**.

2.18.2.2 to prevent the manufacture, sale or supply of defective **Products**.

2.18.2.3 to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.

2.18.3 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.

2.18.4 comply and ensure that **Your Officers, Employees**, agents and contractors comply with the provisions of any **Act**.

This sub-clause 2.18.4 applies only to the cover provided under Section C.

2.19 Release

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

Notwithstanding General Condition 2.23 of this **Policy**, **We** agree to waive all **Our** rights of subrogation against any such Authority or landlord in the event of any **Occurrence** for which a claim for indemnity may be made under this **Policy**.

2.20 Non-Imputation

Where this insurance is arranged in the joint names of more than one **Insured**, as described in clause 1.13, it is hereby declared and agreed that:

2.20.1 each **Insured** shall be covered as if it made its own proposal for this insurance.

2.20.2 any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each **Insured**.

2.20.3 any knowledge possessed by any **Insured** shall not be imputed to the other **Insured**.

2.21 Foreign Currency

All amounts referred to in this **Policy** are in Australian Dollars.

If **You** incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of 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 free rate of exchange published in the Australian Financial Review on the date on which **We** pay to **You** (or some other person or party as directed by **You**) the indemnity in respect of such award or settlement; subject always to the applicable **Limit of Liability**.

2.22 Subrogation and Allocation of the Proceeds of Recoveries

Subject to General Condition 2.23 'Subrogation Waiver', any corporation, 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:

2.22.1 due to the application of an **Excess**; and/or

2.22.2 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**.

2.23 Subrogation Waiver

Notwithstanding General Condition 2.22, **We** hereby agree to waive all **Our** rights of subrogation under this **Policy** against:

2.23.1 each of the parties described under clause 1.20.

2.23.2 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 **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**.

2.24 Interpretation

This **Policy** incorporates the **Schedule**, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and any other terms herein contained or endorsed hereon, which are to be read together.

Words importing the singular gender shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender.

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this **Policy** are not to be construed or interpreted by reference to such headings.

2.25 Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

JH2010/009 29th July 2010

2.26 Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause - 10/11/03

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

2.26.1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

2.26.1.1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

2.26.1.2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof

2.26.1.3. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

2.26.1.4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.

2.26.1.5. any chemical, biological, bio-chemical, or electromagnetic weapon.

CL 370 10th November 2003

2.27 Marine Cyber Endorsement

1. Subject only to paragraph 3 below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.
2. Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.
3. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

LMA5403

11 November 2019

2.28 War and Civil War Exclusion Clause

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

NMA464

2.29 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:

1. War, invasion, acts of foreign enemies, hostilities or warlike 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, or

2. Any act(s) of Terrorism

For the purpose of this exclusion, 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.

2.30 Endorsement Excluding A Communicable Disease Following A Public Health Emergency of International Concern (PHEIC)

2.30.01. In the event that the World Health Organization ('WHO') has determined an outbreak of a Communicable Disease to be a Public Health Emergency of International Concern (a 'Declared Communicable Disease'), no coverage will be provided under this (re)insurance for any loss, damage, liability, cost or expense directly arising from any transmission or alleged transmission of the Declared Communicable Disease.

2.30.02. The exclusion in paragraph 1 of this endorsement will not apply to any liability of the (re)insured otherwise covered by this (re)insurance where the liability directly arises from an identified instance of a transmission of a Declared Communicable Disease and where the (re)insured proves that identified instance of a transmission took place before the date of determination by the WHO of the Declared Communicable Disease.

2.30.03. However even if the requirements of paragraph 2 of this endorsement are met, no coverage will be provided under this (re)insurance for any:

- A. liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for the Declared Communicable Disease whether the measures are preventative or remedial;
- B. liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of the Declared Communicable Disease;
- C. loss, damage, liability, cost or expense caused by or arising out of fear of or the threat of the Declared Communicable Disease.

2.30.0 As used in this endorsement, Communicable Disease means any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:

- A. the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and
- B. the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and
- C. the disease, substance or agent may, acting alone or in conjunction with other comorbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

5. This endorsement shall not extend this (re)insurance to cover any liability which would not have been covered under this (re)insurance had this endorsement not been attached.

All other terms, conditions and limitations of this (re)insurance remain the same.

JL2021-014
8th March 2021

2.31 LSW 1001 (Insurance) – Several Liability Notice

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 the individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

SECTION B. General and Products Liability

1. Insuring Clauses

1.1 Your Cover Under Section B

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

1.1.1 **Personal Injury**, and/or

1.1.2 **Property Damage**; and/or

1.1.3 **Advertising Injury**;

happening during the **Period of Insurance** within the **Geographical Limits**, in connection with the **Business** or **Your Products** and/or work performed by **You** or on **Your** behalf and caused by or arising out of an **Occurrence**.

1.2 Defence Costs and Supplementary Payments

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

1.2.1 defend, in **Your** name and on **Your** behalf, any claim or suit against **You** alleging such **Personal Injury** and/or **Property Damage** and/or **Advertising Injury** and seeking damages on account thereof even if any of the allegations of such claim or suit are groundless, false or fraudulent.

1.2.2 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 withheld):

1.2.2.1 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

1.2.2.2 in bringing or defending appeals in connection with such claim or suit.

1.2.3 Pay

1.2.3.1 all charges, expenses and legal costs recoverable from or awarded against **You** in any such claim or suit, and

1.2.3.2 pre-judgment interest awarded against **You** on that part of the judgment payable by **Us**; and

1.2.3.3 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.

1.2.4 Pay premiums on:

1.2.4.1 bonds to release attachments for amounts not exceeding the **applicable Limit of Liability** of this **Policy** but **We** shall have no obligation to apply for or furnish any such bond.

1.2.4.2 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.

1.2.5 Pay expenses incurred by **You** for:

1.2.5.1 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).

1.2.5.2 temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof.

1.2.5.3 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.

- 1.2.6 Pay all legal costs incurred by **You** with **Our** consent for representation of **You** at:
- 1.2.6.1 any Coronial Inquest or Inquiry
 - 1.2.6.2 any proceedings in any court or tribunal in connection with liability insured against by this **Policy**.
 - 1.2.6.3 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.
 - 1.2.6.4 any enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.

Provided that **Our** liability under clauses 1.2.6.3 and 1.2.6.4 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** 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 **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. **We** will not withhold **Our** consent unreasonably.

1.3 **Additional Benefit - Claims Preparation Costs**

In addition to the amount of cover provided by this **Policy**, **We** will pay up to \$25,000 in respect of each claim or series of claims arising out of any one **Occurrence** for reasonable professional fees and such other expenses incurred by **You** for the preparation of a claim under this **Policy**.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under clause 1.2 of this Section B.

1.4 **Additional Benefits**

The cover provided by this Section is extended to include **Your** liability:

1.4.1 **Hotwork**

in respect of or arising in connection with **Hotwork** on any **Watercraft** including those previously engaged in the carriage of the following cargoes:

ammunition, explosives, bulk oil, flammable liquids in bulk or gas in bulk.

It is a condition that the rules, regulations and requirements of the port or government authorities at the place where the **Hotwork** is being carried out have been complied with including obtaining a gas free certificate and/or any other certificates or authorisation that may be required. All **Hotwork** must be carried out within the standard set out within Australian Standard Safety in Welding and Allied Processes Part 1: Fire Precautions." - AS 1674.1 - 1997.

1.4.2 **Removal of Wreck**

for **Removal of Wreck Expenses** which are incurred in the ordinary course of the operation of **Your Business**, and the removal order by the relevant Port or Harbour authority is first served on **You** during the **Period of Insurance**.

1.4.3 **Optional Additional Benefit - Products** Exported to **North America** with **Your Knowledge**.

This benefit is optional and will only apply where this Additional Benefit is stated in the Schedule is "Insured".

The cover provided by 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:

- 1.4.3.1 cover only applies to **Your** legal liability in respect of **Personal Injury** and/or **Property Damage** that arises out of any **Products** exported to **North America** with **Your** knowledge.
- 1.4.3.2 cover is not provided for:
- 1.4.3.3 **Personal Injury** and/or **Property Damage** directly or indirectly caused by or arising out of the discharge, dispersal, emission, release or escape of **Pollutants**.
- 1.4.3.4 the cost of removing, nullifying or clean up of **Pollutants**.
- 1.4.3.5 the cost of preventing the escape of **Pollutants**.
- 1.4.3.6 any claim for **Compensation** if in **North America You** have:
 - (a) any assets other than **Products**,
 - (b) a related or **Subsidiary Company**;
 - (c) any person or entity with power of attorney; and/or
 - (d) any franchisor or franchisee.

2. Limit of Liability and Excess for Section B

Subject to clause 1.2 and clauses 1.3 and 3.17.5 below:

- 2.1 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 for **General Liability** arising out of any one **Occurrence**.
- 2.2 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**, for **Products Liability**.

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

3. Exclusions Applicable to Section B.

The following Exclusions apply to the cover provided under Section B of this policy unless otherwise stated.

We do not cover any liability:

3.1 Advertising Injury

for **Advertising Injury**:

- 3.1.1 resulting from statements made at **Your** direction with knowledge that such statements are false.
- 3.1.2 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.
- 3.1.3 resulting from any incorrect description of **Products** or services.
- 3.1.4 resulting from any mistake in advertised price of **Products** or services.
- 3.1.5 failure of **Your Products** or services to conform with advertised performance, quality, fitness or durability.
- 3.1.6 incurred by any **Insured** whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

3.2 **Aircraft**

for **Personal Injury** and/or **Property Damage** arising from the ownership, maintenance, operation or use by **You** of any **Aircraft**.

3.3 **Aircraft Products**

arising out of **Your Products** that are **Aircraft** or **Aircraft** component parts used for maintaining an **Aircraft** in flight or moving upon the ground, or used in the construction of an **Aircraft** hull or machinery, which to **Your** knowledge are incorporated in an **Aircraft**.

3.4 **Asbestos**

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

3.5 **Breach of Professional Duty**

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

3.5.1 in respect of **Personal Injury** and/or **Property Damage** arising from such breach of duty.

3.5.2 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.

3.5.3 arising out of advice or service which is not given for a fee.

3.5.4 arising out of advice given in respect of the use or storage of **Your Products**.

3.6 **Contractual Liability**

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

3.6.1 effect insurance over property, either real or personal.

3.6.2 assume liability for, **Personal Injury** and/or **Property Damage** regardless of fault; provided that this exclusion shall not apply with regard to:

3.6.2.1 liabilities which would have been implied by law in the absence of such contract or agreement; or

3.6.2.2 liabilities assumed under **Incidental Contracts**; or

3.6.2.3 terms regarding merchantability, quality, fitness or care of **Your Products** which are implied by law or statute; or

3.6.2.4 liabilities assumed under the contracts specifically designated in the **Schedule** or in any endorsement(s) to this **Policy**.

3.7 **Damage to Products**

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

3.8 **Defamation**

for defamation:

3.8.1 resulting from statements made prior to the commencement of the **Period of Insurance**.

3.8.2 resulting from statements made at **Your** direction with knowledge that such statements are false.

3.8.3 incurred by any **Insured** whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

3.9 **Defence Costs** not Consented to

Any **Defence Costs** incurred or paid before **Our** consent has been given in accordance with the provisions of this **Policy**;

3.10 **Electronic Data**

arising out of:

- 3.10.1 the communication, display, distribution or publication of **Electronic Data**; provided that this Exclusion 3.10.1 does not apply to **Personal Injury** and/or **Advertising Injury** arising therefrom;
- 3.10.2 the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of **Electronic Data**;
- 3.10.3 error in creating, amending, entering, deleting or using **Electronic Data**;
- 3.10.4 the total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all;

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

3.11 **Employers Liability**

- 3.11.1 for **Personal 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 **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 **Your** obligations pursuant to such law.

- 3.11.2 imposed by:

- 3.11.2.1 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.

- 3.11.2.2 any law relating to **Employment Practices**.

Notwithstanding Exclusion clause 3.6 - Contractual Liability, Exclusions 3.11.1 and 3.11.2 shall not apply with respect to liability of others assumed by the **Named Insured** under a written contract or agreement.

3.12 **Faulty Workmanship**

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

3.13 **Fines, Penalties, Punitive, Exemplary or Aggravated Damages**

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

3.14 **Liquidated Damages**

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

3.15 **Loss of Use**

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

- 3.15.1 a delay in or lack of performance by **You** or on **Your** behalf of any contract or agreement; or
- 3.15.2 failure of any **Products** or work performed by **You** or on **Your** behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by **You**; but this Exclusion 3.15.2 shall not apply to **Your** liability for **Loss** of use of other tangible property resulting from sudden and accidental physical **Loss**, destruction of or damage to any **Products** or work performed by **You** or on **Your** behalf after such **Products** or work have been put to use by any person or organisation other than **You**.

3.16 **Pollution**

- 3.16.1 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 **Pollutants** into or upon land, the atmosphere or any water course or body of water.
- 3.16.2 for any costs and expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or testing and monitoring for, containing, removing, nullifying, or cleaning up of, **Pollutants**.

Provided that, with respect to any such liability which may be incurred anywhere other than **North America**, Exclusions 3.16.1 and 3.16.2 shall not apply where such discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from **Your** standpoint which takes place in its entirety at a specific time and place.

3.17 **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:

3.17.1 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.

3.17.2 premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, **You** for the purpose of the **Business**, but no cover is provided by this **Policy** if **You** have assumed the responsibility to insure such premises.

3.17.3

3.17.3.1 premises (and/or their contents) temporarily occupied by **You** for the purpose of carrying out work in connection with the **Business**, or

3.17.3.2 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.

3.17.4 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**.

3.17.5 notwithstanding Exclusion clause 3.6 "Contractual Liability", any property (except property that **You** own) not mentioned in clauses 3.17.1 to 3.17.4 above whilst in **Your** physical or legal care, custody or control whether or not **You** have accepted or assumed legal liability for such property.

3.18 **Property owned by You**

for **Property Damage** to property owned by **You**.

3.19 **Product Guarantee**

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

3.20 **Product Recall**

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

3.21 **Radioactivity**

directly or indirectly caused by, contributing to, by or arising from 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 Exclusion 3.21 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.

3.22 **Terrorism**

for **Loss**, damage, liability, cost or expense of any 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**.

Provided that, Exclusion 3.22 also excludes **Loss**, damage, liability, cost or expense of any 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**.

3.23 **Vehicles**

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

3.23.1 which is registered or which is required under any legislation to be registered, or

3.23.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected);

but Exclusions 3.23.1 and 3.23.2 shall not apply to:

3.23.3 **Personal Injury** where:

3.23.3.1 that compulsory liability insurance or statutory indemnity does not provide indemnity, and

3.23.3.2 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**.

3.23.4 any **Vehicle** (including any tool, implement, machinery 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**.

3.23.5 the delivery or collection of goods to or from any **Vehicle**.

3.23.6 the loading or unloading of any **Vehicle**.

3.23.7 any **Vehicle** temporarily in **Your** custody or control for the purpose of parking.

3.23.8 **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.

3.24 **War**

in respect of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority.

4. **Claims Conditions Applicable to Section B**

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

You shall give:

4.1.1 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 **Policy**.

4.1.2 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**.

- 4.1.3 Written notice (including facsimile transmission) must be given to **Us** via **Your** representative.
- 4.2 **Your Duties in the Event of an Occurrence, Claim or Suit**
- 4.2.1 **You** shall not, without **Our** written consent (which consent shall not be unreasonably withheld), make any admission, offer, promise or payment in connection with any **Occurrence** or **Claim**.
- 4.2.2 **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.
- 4.2.3 **You** shall, when so requested, provide **Us** with details of any other insurances current at the time of any **Occurrence**, and/or **Personal Injury** and/or **Property Damage** and/or **Advertising Injury** and covering any of the liability insured by this **Policy**.
- 4.3 **Our Rights Regarding Claims**
- 4.3.1 Following the happening of any **Occurrence** in respect of which a **Claim** is, or may be, made under 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**.
- 4.3.2 **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:
- 4.3.2.1 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
- 4.3.2.2 any lesser sum for which the **Claim(s)** can be settled.
- 4.3.3 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:
- 4.3.3.1 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
- 4.3.3.2 incurred by **Us**, or by **You** with **Our** written consent, prior to the date of such payment.

SECTION C. Statutory Liability

The cover provided by this Section of the Policy is on a "claims made" basis. Please refer to Insuring Clause 1.1 below.

1. Insuring Clauses

- 1.1 **We** agree to pay to and on **Your** behalf any **Loss** arising from any **Claim** first received by **You** and notified to **Us** during the **Period of Insurance**.
- 1.2 **We** shall not be liable to indemnify **You** for **Defence Costs** under clause 1.1 unless **You** obtain **Our** written consent, and **We** shall not be obliged to provide such consent unless **We** are satisfied that **You** have **Reasonable Grounds for Defence**. **We** will not withhold **Our** consent unreasonably.
- 1.3 If **We** refuse to provide the consent set out in clause 1.2, **We** shall give **You** reasons for **Our** refusal.
- If after receipt of those reasons **You** contest **Our** refusal to provide such consent **You** may obtain the written opinion of a Senior Counsel. The Senior Counsel shall be mutually agreed upon by both parties or failing agreement shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.
- If the Senior Counsel is of the opinion that the **Insured** has **Reasonable Grounds for Defence** then **We** will give **Our** consent in accordance with clause 1.2 and be responsible for the Senior Counsel's reasonable fees for providing such opinion.
- 1.4 If **You** continue to defend a **Claim** where **We** have refused to provide consent, and **You** are successful in respect of that **Claim**, then **Our** consent shall be deemed to have been given at the time it was first requested by **You**. For the purpose of this clause "successful" means that the outcome of the **Claim** establishes that at the time at which **We** refused consent, **You** had **Reasonable Grounds for Defence**.
- 1.5 **We** agree to indemnify **You** in respect of any **Claim** notified to **Us** during the **Period of Insurance** where that **Claim** arose from circumstances which **You** knew (or ought reasonably to have known) to have been circumstances which may have given rise to a **Claim** prior to commencement of the **Period of Insurance**.

Provided always that:

- 1.5.1 **You** had not committed or attempted to commit any fraudulent non- disclosure or fraudulent misrepresentation;
- 1.5.2 **We** were **Your** Statutory Liability insurer for a continuous (and uninterrupted) period from the date **You** first became aware of the circumstances which **You** knew (or ought reasonably to have known) to be circumstances which may have given rise to such a **Claim**, up to and including when the **Claim** was first made against **You** and notified to **Us**.

2. Extensions of Cover under Section C

The following extensions apply only to the cover provided under Section C. They shall not increase the **Limit of Liability** beyond that shown in the **Schedule**, and are subject to all other terms and conditions of the **Policy**, except to the extent they are varied by these extensions.

2.1 Continuous Cover

We will indemnify **You** in respect of any **Claim** notified to **Us** during the **Period of Insurance** where that **Claim** arose from circumstances which **You** knew (or ought reasonably to have known) to have been circumstances which may have given rise to a **Claim** prior to commencement of the **Period of Insurance**.

Provided always that:

- 2.1.1 **You** have not committed or attempted to commit any fraudulent non- disclosure or fraudulent misrepresentation;

- 2.1.2 **We** were **Your** Statutory Liability insurer for a continuous (and uninterrupted) period from the date **You** first became aware of the circumstances which **You** knew (or ought reasonably to have known) to be circumstances which may have given rise to such a **Claim**, up to and including when the **Claim** was first made against **You** and notified to **Us**;
- 2.1.3 **We** agree to indemnify **You** under this extension in accordance with the **Policy** held by **You** with **Us** at the time **You** first became aware that circumstances existed which **You** knew (or ought reasonably to have known) to be circumstances which may have given rise to such **Claim**, but **You** shall have no greater cover than otherwise available under this **Policy**; and,
- 2.1.4 **We** reserve the right to reduce **Our** liability in respect of such **Claim** by the amount which fairly represents the extent to which **Our** interests are prejudiced as a result of the late notification of such circumstances.

2.2 **Outside Directorship**

We will indemnify **You** for a **Loss** in respect of any **Outside Directorship** held by an **Officer**;
Provided that:

- 2.2.1 such indemnity shall not be extended to the outside organisation in which such **Outside Directorship** is held, or to any other director, executive officer, company secretary or **Employee** of such organisation; and
- 2.2.2 the coverage afforded by this extension shall not apply to any part of any **Loss** covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or **Employees**.

3. **Limit of Liability and Excess**

- 3.1 **Our** liability under this Section C in respect of all **Losses** arising out of all **Claims** covered by this Section during the **Period of Insurance** will not exceed the **Limit of Liability** stated in the **Schedule**, which is part of, and not in addition to, the **Limit of Liability** applicable to the whole of this **Policy**.
- 3.2 **Our** liability under this Section applies only to that part of each **Loss** above the **Excess**.
- 3.3 For the purposes of this Section all **Losses** arising out of any one **Wrongful Breach** or interrelated **Wrongful Breaches** are deemed to be one **Loss**.

4. **Exclusions Applicable to Section C**

- 4.1 This **Policy** does not provide indemnity in respect of any **Claim**:
 - 4.1.1 based upon, attributable to or in consequence of: a
 - 4.1.1.1 any wilful, intentional or deliberate **Wrongful Breach**;
 - 4.1.1.2 a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any **Act**;
 - 4.1.1.3 any **Wrongful Breach** caused by gross negligence or recklessness by **You**;
 - 4.1.1.4 a dishonest, fraudulent, malicious act or omission by **You**;
 - 4.1.1.5 the gaining by **You** of any personal profit or advantage or receiving any remuneration to which **You** were not legally entitled;
 - 4.1.1.6 any **Wrongful Breach** in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to **Officers** and **Employees** for **Claims** arising in the performance of their duties as **Officers** and **Employees**;
 - 4.1.1.7 a **Wrongful Breach** of any **Consumer Protection Act**. This exclusion does not apply to **Officers** and **Employees** for **Claims** arising in the performance of their duties as **Officers** and **Employees**;

- 4.1.1.8 any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Act 2001 (Cth) and any amendment, consolidation or re-enactment of any of those Sections;
- 4.1.1.9 a **Wrongful Breach** in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
- 4.1.1.10 a **Wrongful Breach** relating to the regulation of vehicular, air or marine traffic;
- 4.1.1.11 ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
- 4.1.1.12 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 4.1.1.13 war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority; or any **Act of Terrorism**;
- 4.1.2 made, threatened or in any way intimated against **You** prior to the **Period of Insurance**;
- 4.1.3 arising from any matter disclosed to any insurer (including **Us**) prior to the **Period of Insurance** as either a **Claim** or circumstance which may give rise to a **Claim** against the **Insured**;
- 4.1.4 arising from any circumstances of which the **Insured** had become aware prior to the **Period of Insurance** and which **You** knew (or ought reasonably to have known) to be circumstances which may give rise to a **Claim**;
- 4.1.5 arising from any **Wrongful Breach** where **You** knew (or ought reasonably to have known) prior to the **Period of Insurance** that there had been such a **Wrongful Breach**;
- 4.1.6 for any **Loss** or part of any **Loss** which is attributable to the period after **You** knew (or ought reasonably to have known) that its conduct was a **Wrongful Breach**;
- 4.1.7 deliberately or intentionally solicited by **You**. This exclusion does not apply to **Officers** and **Employees** where such **Claims** arise in the discharge of their duties as **Officers** and **Employees**;
- 4.1.8 any **Defence Costs** incurred or paid before **Our** consent has been given in accordance with the provisions of this **Policy**;
- 4.1.9 for any **Loss** or part of any **Loss** arising from or which is attributable to **Your** participation in any **Joint Venture**. Provided that this exclusion shall not apply to **Outside Directorship** as stated in Clause 2.2;
- 4.1.10 4.1.10 for any **Penalty**
 - 4.1.10.1 imposed pursuant to any law of any country, state or territory outside the **Geographical Limits**;
 - 4.1.10.2 imposed within the **Geographical Limits** but arising out of any act or omission occurring outside the **Geographical Limits**, and any **Defence Costs** associated with such **Penalty**.
 - 4.1.10.3 Imposed under the Work Health & Safety Act 2011 (NSW), subsequent amendments, replacement, re-enactment, successor or equivalent legislation in any other State or Territory of the Commonwealth of Australia;
 - 4.1.10.4 the insurance of which is prohibited at law.

5. Claims Conditions Applicable to Section C

5.1 Notification of **Claims** / Circumstances

5.1.1 **You** shall as a condition precedent to **Your** right to be indemnified under this **Policy** give **Us** notice in writing as soon as reasonably practicable:

5.1.1.1 of any **Claim** made against **You**; and

5.1.1.2 of any circumstances which **You** shall become aware which may give rise to a **Claim** under this Section of the **Policy**,

irrespective of whether the **Penalty** is likely to be within or above the amount of the **Excess**.

- 5.1.2 If a **Claim** is made against **You** during the **Period of Insurance** and **You** notify **Us** of such **Claim** within 21 days after the expiry of the **Period of Insurance**, such **Claim** shall be deemed to have been notified to **Us** during the **Period of Insurance**.
- 5.1.3 If during the **Period of Insurance**, **You** become aware of any circumstances which may subsequently give rise to a **Claim** against **You** and **You** give written notice of such circumstances to **Us** during the **Period of Insurance** (or within 21 days after the expiry of the **Period of Insurance**), then any **Claim** which may subsequently be made against **You** shall be deemed to be a **Claim** made against **You** and notified to **Us** during the **Period of Insurance**.
- 5.2 Settlement / Defence / Co-Operation
- 5.2.1 **You** shall use all reasonable care and do and concur to do all things reasonably practicable to avoid a **Wrongful Breach** or diminish a **Loss**.
- 5.2.2 **We** shall have the right, but not the obligation, to conduct in **Your** name, the investigation, defence (including appeal and resisting appeal) and settlement of any **Claim**.
- Any amount incurred by **Us** in conducting such investigation or defence shall be deemed to be part of the **Defence Costs**.
- 5.2.3 Where **We** recommend to **You** to agree to pay any **Penalty**, consent to any order directing **You** to pay any **Penalty** or otherwise settle or resolve any **Claim**, and **You** do not agree to do so, then **We** are entitled to reduce **Our** liability to **You** to the extent of any prejudice suffered by **Us** by reason of **Your** failure to so agree.
- 5.2.4 **You** shall upon request by **Us** and at **Your** own expense:
- 5.2.4.1 provide all information and assistance as may be required;
- 5.2.4.2 give a complete and truthful account of the facts relevant to any **Claim**;
- 5.2.4.3 supply all documents and other evidence relevant to the **Claim**; and
- 5.2.4.4 obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested,
- and in respect of a **Claim** against:
- 5.2.4.5 the **Named Insured** shall, upon request from **Us** and at its own expense ensure that a **Senior Officer** attends, and if necessary, gives evidence on behalf of the **Named Insured**, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any **Claim** made against the **Named Insured**;
- 5.2.4.6 any **Officer** or **Employee**, the **Officer** or **Employee** shall, upon request from **Us** and at their own expense attend, and if necessary, give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any **Claim** made against such **Officer** or **Employee**.
- 5.2.5 For the purpose of clauses 5.2.1 to 5.2.4 any reference to a **Claim** includes circumstances notified under clause 10.1.1 of this **Policy**.

SECTION D. Errors and Omissions Liability

This Section is an optional cover and may be requested by the Named Insured. It will only apply if it is shown in the Schedule as "Insured". The cover is only available to clients with a specific risk profile, and We may not be able to offer it to all Insureds.

The cover provided by this Section of the Policy if insured, will be on a "claims made" basis. Please refer to Insuring Clause 1.1 below.

1. Insuring Clause

- 1.1 Subject to the General Conditions Applicable to this Policy, and the exceptions set out below **We** will indemnify **You** for financial loss (including claimants' costs, fees and expenses awarded against or recoverable from **You**) arising from any **Claim** first made against **You** during the **Period of Insurance** and notified to **Us** during the **Period of Insurance** in respect of civil liability incurred or alleged to have been incurred for breach of professional duty in the conduct of **Your Business**.

2. Limit of Liability and Excess

- 2.1. **Our** liability under this Section D in respect of all **Losses** arising out of all **Claims** covered by this Section during the **Period of Insurance** will not exceed the **Limit of Liability** stated in the **Schedule**, for any one event and in the aggregate during any one Period of Insurance and is part of, and not in addition to, the **Limit of Liability** applicable to the whole of this **Policy**.
- 2.2. **Our** liability under this Section applies only to that part of each **Loss** above the **Excess**. The **Excess** is \$5000 each and every claim made against **You** which amount shall be retained by **You** as **Your** own liability and uninsured;
- 2.3. For the purposes of this Section all **Losses** arising out of any one act, error or omission or interrelated acts, errors or omissions are deemed to be one **Loss**.

3. Exclusions Applicable to Section D

It is understood and agreed that **We** shall not be liable under this Section D for any:

- 3.1 liability arising out of or in any way connected with any contract or agreement unless and only to the extent that such liability would have arisen in any event in the absence of such contract or agreement;
- 3.2 trading losses or trading liabilities incurred by the Insured including but not limited to any loss of client account and/or custom;
- 3.3 amount in respect of liquidated damages fines penalties or payments due under any statute statutory regulation by-law or other provisions having the force of law;
- 3.4 liability arising from any deliberate act or omission by or on behalf of the Insured and which result could have reasonably been expected by the Insured having regard to the nature and circumstances of such act or omission;
- 3.5 liability arising from or in any way connected with act(s) of fraud or dishonesty;
- 3.6 liability arising where the event giving rise to the liability occurred or is alleged to have occurred prior to the inception of this policy.
- 3.7 liability for **Claims** where the Insured had, prior to the commencement of the **Period of Insurance**, knowledge of the fact, situation or circumstance which gave rise to the **Claim**.

SECTION E. Commercial Legal Expenses

The cover provided by this Section of the Policy is on a "claims made" basis. Please refer to Insuring Clause 1.1 below.

1. Insuring Clause

1.1 Your Cover Under Section E

We agree (subject to the terms, Claims Conditions, General Conditions, Exclusions, Definitions and Limits of Liability incorporated herein) to pay to You for Legal Expenses (as defined and described in the Heads of Cover below) arising during the Period of Insurance within the Territorial Limits, in connection with Your Business.

2. Additional Definitions

For the purposes of this Section, the following terms shall have the respective meanings set out below when they appear in bold in this Section regardless of whether they appear before or after the place in this Section where they are defined. Grammatical variations of such terms shall have corresponding meanings.

- 2.1. **Aggregate Claims Limit** means the amount specified in the **Schedule** being the maximum amount **We** will pay to **You** for all **Claims** in the **Policy Period**.
- 2.2. **Any One Claim** means all **Claims** arising from the same originating cause, event or circumstances which will be treated as a single **Claim** for the purposes of this **Policy**.
- 2.3. **Applicable Law** means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law (collectively the "**Law**") relating or applicable to such Person, property, transaction, event or matter and includes any interpretation, bulletins, circular letters, guidelines, instruments, provisions, notices and policy statements published or issued in respect of any such Law by any Person having jurisdiction over the Law, or charged with its administration or interpretation and also shall include any economic and trade sanctions, anti-bribery laws and personal data laws and regulations.
- 2.4. **Appointed Professional** means any legal advisor, financial advisor or other professional advisor or third-party Person appointed by the **Claims Manager** to act on **Your** behalf.
- 2.5. **ATO** means the Australian Taxation Office or appropriate government authority charged with the administration of **Tax Legislation**.
- 2.6. **Business Premises** means the premises from which **You** conduct and/or undertake **Your Core Business Activities**.
- 2.7. **Claim** means a claim under this **Policy** related to a **Dispute** which is made and communicated in accordance with clause 4 Claims Conditions below during the **Policy Period**.
- 2.8. **Claim Amount** means the amount of indemnity being claimed by **You** from **Us** for a **Claim**.
- 2.9. **Claims Manager** means the **Person** named as '**Claims Manager**' in the **Schedule**.
- 2.10. **Construction Services** means
 - 2.10.1. the design, construction or erection of buildings, spas and swimming pools,
 - 2.10.2. alterations, additions, extensions, refurbishment, repairs, replacement, reinstatement conversion or demolition of pre-existing buildings or structures;
 - 2.10.3. landscaping.
- 2.11. **Core Business Activities** means the principal areas or activities specified in the **Schedule**.
- 2.12. **Court or Tribunal** means a court, tribunal or other **Statutory Body** within the Commonwealth of Australia and its external territories that have jurisdiction in respect of the **Applicable Laws**.
- 2.13. **Debt Recovery Professional** means the **Person** named as 'Debt Recovery Professional' in the **Schedule**.
- 2.14. **Dispute** means any civil legal proceeding or action in a **Court or Tribunal** either commenced by **You** or commenced against **You** by an **Opponent** which relates to **Your Core Business Activities** and which falls within one of the **Heads of Cover**.
- 2.15. **Excess** means the agreed amount specified in the **Schedule** that **You** are required to pay towards a **Claim** in respect of each **Claim**.
- 2.16. **GST** means goods and services tax.

- 2.17. **Heads of Cover** means the heads of cover listed in this **Policy** at clause 3 for which We will indemnify **You** for in accordance with the terms of this Policy.
- 2.18. **Tax Legislation** means any Commonwealth legislation which imposes obligations in relation to income tax, **GST** or fringe benefits tax.
- 2.19. **Opponent** means any third-party **Person** who **You** are engaged in a **Dispute** with.
- 2.20. **Opponent's Costs** means the legal fees and disbursements of an **Opponent** arising from a **Dispute** which are either:
- 2.20.1. ordered by a **Court or Tribunal** to be paid by **You** to an Opponent; or
- 2.20.2. agreed by the **Claims Manager** in a negotiated settlement with an **Opponent** as payable by **You** to an **Opponent**.
- 2.21. **Person** means any individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organisation or other legal entity.
- 2.22. **Policy** means the insurance contract entered into between **You** and **Us** which consists of this policy wording and the **Schedule**.
- 2.23. **Policy Limits** means the maximum amounts **We** will pay under this **Policy**, as stated in the **Schedule**, in respect of **Any One Claim** and for all **Claims** in the **Policy Period**, the **Aggregate Claims Limit**.
- 2.24. **Policy Period** means the period for which this **Policy** is in force as specified in the **Schedule**.
- 2.25. **Positive Outcome** means a financial outcome that is more favourable to **You** as a consequence of the continuance of any proceedings after **We** determined there were no **Reasonable Prospects** having regard to the offers that were made before that determination and the costs incurred before and after that determination.
- 2.26. **Reasonable Prospects** means it is more probable than not that the determination of the **Dispute** at a final hearing will:
- 2.26.1. in respect of a **Dispute** brought against **You**, result in **You** obtaining a better outcome than the compensation or remedy sought by the **Opponent**, and
- 2.26.2. in respect of a **Dispute** brought by **You**, result in **You** obtaining a better outcome than has been offered to **You** by the **Opponent**; and
- 2.26.3. in respect of an appeal, it is more probable than not that **You** will on appeal obtain a more favourable outcome than the judgement or decision appealed; and
- 2.26.4. in respect of a **Claim** under Heads of Cover 3: Statutory Licence Protection it is more probable than not that **You** will overturn the suspension, revocation or amendment of the Statutory Licence,
- 2.27. **Relating To** means relating to; in connection with; arising under; arising out of; arising from; as a result of; resulting from; as a consequence of; attributable to; contributed to by; caused by; involving.
- 2.28. **Schedule** means the schedule to this **Policy**.
- 2.29. **Significant Financial Loss** means \$5,000.
- 2.30. **Statutory Body** means a government department, agency or body, and judicial officers appointed by any government charged with the administration of, and investigation into, compliance with Applicable Law in the **Territorial Limits**.
- 2.31. **Statutory Licence** means a licence granted to **You** by the government or a local authority which is utilised by **You** to conduct **Your Core Business Activities**.
- 2.32. **Territorial Limits** means the Commonwealth of Australia and its external territories and all Australian States and Territories.
- 2.33. **Us/We/Our** means Certain Underwriters at Lloyd's of London specified as 'Insurer' in the **Schedule**.
- 2.34. **You/Your** means the **Persons** or commercial entity named as 'Insured' in the **Schedule**.
- 2.35. **Your Costs** means the reasonable legal and professional fees and disbursements an **Appointed Professional** incurs on **Your** behalf in the course of pursuing or defending a **Claim** which are payable by **You** to the **Appointed Professional**.

3. Heads of Cover

We will indemnify **You** under the following **Heads of Cover**, subject always to the terms of this Policy including, but limited to, the applicable **Policy Limits** and **Excess**:

3.1 Head of Cover 1: Contractual Disputes

We will indemnify **You** for **Your Costs** and **Your Opponent's Costs** arising from a **Dispute** between **You** and **Your Opponent** in respect of an alleged breach, whether by **You** or by **Your Opponent**, of the terms of a written contract entered into by **You** and **Your Opponent** for the supply of goods and/or services.

3.1.1. **We** have no liability for a **Claim** where:

3.1.1.1. The **Claim Amount** is less than either:

- (a) \$5,000 (five thousand Australian dollars); or
- (b) the applicable small claims threshold stipulated by the **Court or Tribunal** in which proceedings **Relating To** the **Dispute** are or will be commenced.

3.1.1.2. The **Claim Amount** is likely to exceed 75% (seventy-five percent) of the total amount in **Dispute**.

3.1.1.3. Written notice of the **Dispute** was served by/on **You** within 90 (ninety) calendar days of the commencement of this **Policy**.

3.1.2. **We** will not indemnify **You** under this **Head of Cover** for:

3.1.2.1. A **Dispute** which relates to any contract other than for the supply of goods and/or services.

3.1.2.2. A **Dispute** which relates to any contract entered into by **You** in respect of which coverage under any other **Head of Cover** in this **Policy** is applicable and therefore indemnity shall be provided in accordance with the terms of that **Head of Cover**, subject to the terms of that **Head of Cover**.

3.1.2.3. A **Dispute** which relates solely to non-payment where **You** or an **Opponent** has failed to pay in a timely manner in accordance with the terms of the relevant contract save for where **You** have completed the debt recovery process outlined in clause 3.7 (Head of Cover 7: Debt Recovery).

3.1.2.4. A **Dispute** arising from a contract **Relating To Construction Services** unless:

- (a) **Your Core Business Activities** include **Construction Services**; and
- (b) the **Dispute** is with a supplier directly related to the **Construction Services** undertaken by **You** as part of **Your Core Business Activities**.

3.1.2.5. A **Dispute** arising from a contract:

- (a) for employment;
- (b) for the provision of insurance, securities, financial accommodation, credit or guarantees;
- (c) **Relating To** a motor vehicle;
- (d) related to the occupation of property including leases, tenancy agreements or a licence to occupy;
- (e) **Relating To** the sale or purchase of real property;

3.1.2.6. **Disputes** over franchise agreements.

3.2 Head of Cover 2: Tax Audit

3.2.1 **We** will indemnify **You** for **Your Costs** in responding to an audit by the **ATO** in respect of:

3.2.1.1 An investigation or inquiry into **Your** tax affairs by the **ATO** in accordance with **Tax Legislation**;

3.2.1.2 A claim from the **ATO** that:

- (a) additional **GST** is due from **You**;
- (b) additional income tax or fringe benefits tax is due from **You** in accordance with **Tax Legislation**.

3.2.2 **We** have no liability for a **Claim** where:

3.2.2.1 Written notice of an audit by the **ATO** has been served on **You** within 90 (ninety) calendar days of the commencement of this **Policy**.

3.2.2.2 the tax returns which are the subject of the **Dispute**:

- (a) were not lodged by a suitably qualified and licenced accountant or tax professional appointed by **You** to prepare and lodge **Your** tax returns;
 - (b) were not lodged within the relevant statutory time limits;
- 3.2.2.3 **You** have not made all payments for due taxes and provided all necessary documentation to the **ATO** within the relevant time limits specified by the **ATO**.
- 3.2.3 **You** must notify the **Claims Manager** as soon as possible if **You** are in receipt of a notice of audit. **You** must advise the **Claims Manager** of any notice from the **ATO** notifying **You** of the end of an audit and from the date the notice is received by **You** **We** will not be liable for **Your Costs** which are incurred after the end of the audit.
- 3.2.4 **We** will not indemnify **You** under this **Head of Cover** for:
 - 3.2.4.1 routine responses to requests for information and other contacts with the **ATO** which do not amount to an audit of your tax affairs, including but not limited to lodgement of Business Activity Statements, and superannuation payments and returns.
 - 3.2.4.2 costs which are not directly incurred in relation to the audit which is the subject of the **Claim**. If **Your Appointed Professional** conducts additional work outside of the scope of the **Claim**, costs will be apportioned as appropriate to ensure that only those costs directly incurred in relation to the audit are indemnified.
 - 3.2.4.3 costs incurred as a result of an audit arising from a change in **Applicable Law** (including but not limited to **Tax Legislation**) which has retrospective effect.
 - 3.2.4.4 costs incurred in relation to action taken by the **ATO** once an audit or investigation is transferred to the department in the **ATO** responsible for prosecution of offences under the **Tax Legislation**.
 - 3.2.4.5 costs in relation to professional services advising on tax avoidance schemes or other attempts to avoid due payment of tax or superannuation of any kind, and audits **Relating To** such schemes.

3.3 Head of Cover 3: Statutory Licence Protection

- 3.3.1 **We** will indemnify **You** for **Your Costs** and **Your Opponent's Costs** incurred in seeking to protect **Your** rights under a **Statutory Licence** which is under threat of suspension, revocation or amendment, which, if not disputed, will have a financial impact on **Your** ability to conduct **Your Core Business Activities**.
- 3.3.2 **We** will not, and are not liable to indemnify **You** for any **Claim** where the **Statutory Licence** which is the subject of the **Claim** is utilised by **You** to generate less than 20% (twenty percent) of **Your** gross operating income.
- 3.3.3 **We** will not, and are not liable to indemnify **You** under this **Head of Cover** for any **Dispute Relating To a Statutory Licence** which is:
 - 3.3.3.1 suspended, revoked or amended as a result of a general industry wide policy rather than for a reason particular to **You**;
 - 3.3.3.2 a first application for, or a renewal of a **Statutory Licence** due to lapse of time;
 - 3.3.3.3 due to a suspension, revocation or amendment arising from a change in **Applicable Law**.

3.4 Head of Cover 4: Landlord Disputes

- 3.4.1 **We** will indemnify **You** for:
 - 3.4.1.1 **Your Costs** and **Your Opponent's Costs** arising from a **Dispute** with **Your** commercial landlord arising out of an alleged breach of the lease, tenancy agreement or licence in place in respect of **Your Business Premises**;
 - 3.4.1.2 Where **Your Core Business Activities** are those of a commercial landlord, **Your Costs** and **Your Opponent's Costs** arising from a

Dispute with a tenant over an alleged breach of the lease, tenancy agreement or licence in place in respect of commercial premises leased to them by **You**,

provided that the consequences of not pursuing or defending the **Dispute** include that **You** will suffer **Significant Financial Loss** and **Your Costs** are reasonable and proportionate having regard to the costs to be expended and the benefit **You** will obtain.

3.4.2 It is a precondition to indemnity for a **Claim** that **You** have served any and all required statutory and/or contractual notices prior to any **Dispute**.

3.4.3 We will not indemnify **You** under this **Head of Cover** for any **Dispute** arising:

- (a) from the first negotiation of a lease, tenancy agreement or licence;
- (b) from the renewal, renegotiation or review of a lease, tenancy agreement or licence at normal expiry;
- (c) solely from a failure to pay rent or other amounts due under the terms of a lease, tenancy agreement or licence;
- (d) from the refusal of a party to meet obligations under the terms of a lease, tenancy agreement or licence when there is no **Dispute** that such obligations are owed;
- (e) from a contract or agreement which is not a lease, tenancy agreement or licence.

3.5 Head of Cover 5: Restrictive Covenants

3.5.1 **We** will indemnify **You** for **Your Costs** and **Your Opponent's Costs** arising from a **Dispute** with a former employee in relation to an alleged breach of a restrictive covenant, either by **You** or the former employee, contained within a written employment contract between **You** and the former employee.

3.5.2 **We** have no liability for a **Claim** where:

- 3.5.2.1 the restrictive covenant is unreasonable as to scope or duration; or
- 3.5.2.2 the alleged breach by the former employee will not have a material detrimental effect on Your business' revenue generation; or
- 3.5.2.3 there will be no financial benefit for **You** if the restraint is enforced.

3.5.3 **We** will not, and are not, liable to indemnify **You** under this **Head of Cover** for any restrictive covenant exceeding 12 (twelve) months in duration.

3.6 Head of Cover 6: Third Party Damage to Good or Premises

3.6.1 **We** will indemnify **You** for **Your Costs** and **Your Opponent's Costs** of pursuing a third party who has by their own act or omission caused **You** uninsured losses by causing physical damage to **Your Business Premises**, or goods, machinery or other property located at **Your Business Premises**.

3.6.2 **We** will not, and are not, liable to indemnify **You** under this **Head of Cover** for any damage:

- (a) caused by **You** or **Your** employees;
- (b) to goods not at **Your Business Premises**, unless the goods are under Your direct care and control;
- (c) to a motor vehicle, except where stationary and located at **Your Business Premises**.

3.7 Head of Cover 7: Debt Recovery

3.7.1 **We** will indemnify **You** for **Your Costs** arising from a **Dispute** with an **Opponent** where **You** are owed payment under an invoice which has not been settled despite the payment terms having expired.

3.7.2 Any **Claim** shall be subject to **You** following the process below:

Stage 1:

3.7.2.1 **You** must issue a final notice letter to the debtor. A template letter will be provided by Coast Insurance – please send an email request to the following address: info@coastins.com.au.

3.7.2.2 If on expiry of the additional fourteen (14) calendar days allowed to pay as specified in the template letter **You** have not received payment, **You** must move to stage 2.

Stage 2:

3.7.2.3 **You** must provide full details of the amount due to the **Debt Recovery Professional** via the following email address: legalexpenditures@proclaim.com.au.

3.7.2.4 The **Debt Recovery Professional** will then communicate a letter on **Your** behalf advising the debtor that if they do not pay in seven (7) calendar days court proceedings will be issued.

3.7.2.5 If payment is still not forthcoming, the recovery will become a **Claim** under Head of Cover 1: Contractual Disputes, and the **Debt Recovery Professional** will issue court proceedings on **Your** behalf to seek recovery of the amount due.

3.7.3 **We** will not, and are not, liable to indemnify **You** under this **Head of Cover** for any **Dispute** in relation to a debt sum of less than \$2,500 (thousand five hundred Australian dollars) for the services under the heading "Stage 2" above or for the services specified in clause 3.7.2.5 where the debt sum is less than \$5,000 (five thousand Australian dollars).

4. General Exclusions Applicable to All Heads of Cover

4.1 Cover is excluded under this **Policy** in respect of any **Claim**:

4.1.1 arising from outside of the territory of the Commonwealth of Australia; and/or New Zealand;

4.1.2 arising from an appeal, unless otherwise agreed by the **Claims Manager**; 4.1.3 arising from a dispute between **You, Us**, the Coverholder and/or **Claims Manager**;

4.1.4 arising from a **Dispute** between **You** and any parent, subsidiary or otherwise related entity (including franchisor/franchisees) or any trust operated by **You**;

4.1.5 where **You** have in place other insurance which indemnifies **You** for the same **Claim**, or where **You** are required by **Applicable Law** to have such a policy, whether one is in place or not;

4.1.6 where **We** have suffered prejudice due to **Your** deliberate, intentional or reckless failure to take all reasonable steps to avoid a **Claim** arising;

4.1.7 where **You** have acted with any criminal intent or have otherwise recklessly or through omission committed criminal act(s);

4.1.8 where **You** have breached a term of this Policy in relation to that **Claim**;

4.1.9 arising from one of the following:

(a) building work or construction;

(b) franchise agreements;

(c) planning laws or regulations;

- (d) intellectual property of any kind, including but not limited to patents, copyrights, trademarks, passing off, registered designs and similar (unless directly related to a Claim under Head of Cover 5 Restrictive Covenants);
- (e) a warranty or guarantee;
- (f) subsidence, land heave, land slip, mining or quarrying;
- (g) allegations of defamation of any kind or malicious falsehood;
- (h) judicial review;
- (i) Worker's Compensation.

4.1.2 Notwithstanding any other provision, clause or term of this Policy and/or any endorsement thereof to the contrary, this **Policy** excludes and does not insure any **Claim**, loss, liability, damage, cost, fine, penalty, expense or other sum of any kind whatsoever **Relating To**, whether directly or indirectly and/or regardless of any other cause or event contributing concurrently or in any other sequence thereto, a Communicable Disease and/or any fear or threat (whether actual or perceived) thereof.

4.1.3 This **Policy** excludes any fines, damages, compensation, taxes, penalties or interest which **You** are ordered to or agree to pay.

4.2 Claims Conditions

4.2.1 In the event of:

4.2.1.1 a **Claim** arising under this Section; or

4.2.1.2 the receipt by **You** of notice from any party of a specified and definite intention to make a **Claim** against **You**; or

4.2.1.3 any cause, event, **Dispute** or circumstance which may give rise to a **Claim**,

You must, as soon as practicable, give written notice to the **Claims Manager** to the following address: legalexpenses@proclaim.com.au with a courtesy email to claims@coastins.com.au. Any delay in reporting the above by **You** may prejudice **Your** position under this **Policy**.

It is a condition to indemnity being provided under this **Policy** that **You** receive formal written confirmation from the **Claims Manager** that **Your Claim** is covered before **You** start incurring **Your Costs** or **Opponent's Costs**. Any costs incurred by **You** before the **Claim** has formally been accepted by the **Claims Manager** are not covered under this **Policy**.

4.2.2 Claims Made and Notified

4.2.2.1 This is a "claims made" **Policy**, which means that **You** shall only be indemnified for **Claims** where:

- (a) **You** first become aware of cause, event, **Dispute** or circumstance giving rise to the **Claim** during the **Policy Period**; and
- (b) **You** first notify the **Claim** to the **Claims Manager** during the **Policy Period**.

- 4.2.3 Upon accepting the **Claim**, the **Claims Manager** will engage an **Appointed Professional** on **Your** behalf and will appoint any further professionals (for example legal counsel) as necessary and appropriate in its opinion throughout the course of the **Claim**.
- 4.2.4 **You** must authorise and instruct the **Appointed Professional** to comply fully with the **Claims Manager** at all times throughout the duration of the **Claim**.
- 4.2.5 **You** must comply promptly with all requests for information or other forms of assistance made by either the **Claims Manager** or **Appointed Professional** which is in **Your** power to provide in connection with the investigation, defence or settlement of any **Claim** or investigation of any circumstances which may give rise to a **Claim** in respect of which indemnity is sought under this **Policy** including attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration or other proceedings.
- 4.2.6 **You** must where possible take all reasonable and necessary steps to recover any costs paid by **Us** and recoverable by **You** and have these costs paid directly to **Us**.
- 4.2.7 **You** must advise the **Claims Manager** in writing as soon as reasonably practicable if **You** receive an offer to settle or compromise a **Claim** and must not admit liability for, settle or make or promise any payment in respect of any **Claim**, circumstance or event which is likely to be the subject of indemnity under this **Policy** without the prior written approval of the **Claims Manager**. The **Claims Manager** will not withhold consent unreasonably.
- 4.2.8 **We** can, at any time during the course of a **Claim**, pay to **You** an amount equal to the **Claims Manager's** reasonable view of the value of the **Claim** in full and final settlement of the **Claim**. In forming this view of the value of the **Claim** the **Claims Manager** will have regard to **Your** interests and act reasonably.
- 4.2.9 If **You** fail to accept the advice of the **Appointed Professional** to settle a **Claim**, **We** shall be permitted to refuse to indemnify **You** under this **Policy** from the date on which **You** refuse such advice.
- 4.2.10 **We** will not make any payment under this **Policy** until such time as **You** have paid and exhausted the **Excess**
- 4.2.11 **We** shall be entitled, if **We** so desire, to take over and conduct in **Your** defence or settlement of any **Claim**, or to prosecute in **Your** name for **Our** benefit and at **Our** expense, any **Claim** whilst at all times having regard to **Your** interests and acting reasonably.

4.3 Requirement for Reasonable Prospects of Success

- 4.3.1 All **Claims** under this **Policy**, however arising, are subject to the following:
- 4.3.1.1 the action taken by **You** in pursuing or defending the **Claim** must be reasonable and proportionate with regard to the costs to be expended, and there must not be a more appropriate manner in which to protect **Your** interests; and
- 4.3.1.2 the **Dispute** must have a reasonable prospect of success by **You**. This means that in the opinion of the **Claims Manager** (considering the advice of the **Appointed Professional** if appointed) **You** have a better than 50% (fifty percent) chance of achieving a positive outcome in the **Dispute**.
- 4.3.2 For the purposes of clause 4.3.1.2 above, a "positive outcome" means it is found that **Your** version of events are determined to be more likely to be true than those of **Your** Opponent and therefore the decision will go in **Your** favour.
- 4.3.3 Having reasonable prospects of success is an ongoing requirement and if prospects fail to meet the above threshold at any point during the course of a **Claim**, indemnity under this **Policy** will be withdrawn. If **You** choose to continue the defence or pursuit if a case in those circumstances it will be

at **You** own cost, but should **You** ultimately achieve a positive outcome (as defined at 4.3.2 above) **We** will reimburse **You** for any costs or disbursements **You** fail to recover from **Your** Opponent.

4.3.4 The **Claims Manager** will provide **You** with written reasons if it decides that the **Claim** does not meet the reasonable prospects of success requirement. If **You** disagree with the **Claims Manager** over whether a **Claim** has prospects or not, **You** can either:

4.3.4.1 at Your own expense seek an opinion from independent legal counsel. If this opinion changes the Claims Manager's view (in its sole discretion), We will reimburse You for the cost of the opinion (subject to Policy Limits) and Your Claim shall be covered from that point subject to the terms and conditions of this Policy; or

4.3.4.2 access Our Complaints process outlined above.

END OF DOCUMENT.