

# PEST INDUSTRY



# COMBINED LIABILITY



PICL-Policy-LLOYDS-V181010



## Aster Underwriting Pty Ltd

**Postal Address** PO Box 2310, Southport Qld 4215

**Location Address** Level 1, 72 Nerang Street Southport Qld 4215

**Phone** 07 55791660

**Email** uw@asteruw.com

**Web** www.asteruw.com

**ABN** 48 095 277 937

**AFSL** 237855

LLOYD'S

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## About this booklet

This booklet contains 2 separate parts: General Information and the Policy Terms and Conditions.

### Policy Terms and Conditions

The Policy part of this 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 Financial Services Provider.

## IMPORTANT INFORMATION

This Policy and Your current Schedule are important. Please ensure that You read them carefully and keep them in a safe place.

The Policy, current Schedule, Claims Conditions, General Conditions, Exclusions, Definitions and Endorsements (if any), are to be read together as one contract.

Where any word or expression has been given a specific meaning under the heading 'DEFINITIONS - Words with special meaning', such word or expression shall bear that meaning wherever it may appear in this Policy, unless such meaning is inapplicable to the context in which such word or expression appears.

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.

The insurance by this Policy shall be invalid unless the Schedule and any alterations to the wording are signed by an authorised person. Aster Underwriting Pty Ltd AFSL: 237855 acts as Coverholder on behalf of the insurer Certain Underwriters at Lloyd's under a binding authority agreement.

If You have any questions regarding this Policy, please contact Aster Underwriting Pty Ltd.

## LLOYD'S SERVICE OF SUIT CLAUSE (Australia)

(Applicable to Lloyd's Underwriters only)

The Underwriters hereon agree that:-

- (i) In the event of a dispute arising under this Policy, Underwriters at the request of the insured (or reinsured) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon:  
Lloyd's General Representative  
Level 9, 1 O'Connell Street  
Sydney 2000 N.S.W AUSTRALIA  
who has authority to accept service and to enter an appearance on Underwriters' behalf and who is directed at the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that he will enter an appearance on Underwriters' behalf.
- (iii) If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

## General Insurance Code of Practice

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. You can obtain a copy of the code at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

## Enquiries, Complaints or Disputes (Australia)

Any enquiry or complaint relating to a policy of insurance or a breach of privacy in relation to a policy of insurance should be addressed to Aster Underwriting Pty Ltd in the first instance.

### Aster Underwriting Pty Ltd

Level 1, 72 Nerang Street  
PO Box 2310, Southport Qld 4215  
Phone: 07 5579 1660 Fax: 07 5579 1699  
Email: uw@asteruw.com

In the unlikely event that this does not resolve the matter the policy holder should contact

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

Level 9, 1 O'Connell Street Sydney NSW 2000,  
Telephone No: (02) 8298 0783, Facsimile No: (02) 8298 0788,  
Email: idraustralia@lloyds.com

Your complaint will generally be reviewed by their office if it falls within the Terms of Reference of the Australian Financial Complaints Authority. Otherwise, your matter will be referred to the Complaints Team at Lloyd's based in the UK.

If your dispute remains unresolved you may be referred to the Australian Financial Complaints Authority (AFCA) under the terms of the General Insurance Code of Practice. AFCA can be contacted on 1800 931 678 or GPO Box 3 Melbourne, Victoria 3001 or [www.afca.org.au](http://www.afca.org.au).

For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

## PRIVACY

We are committed to protecting your privacy. We use the information you provide to advise about and assist with your insurance needs. We only provide your information to the insurance companies with whom you choose to deal (and their representatives). We do not trade, rent or sell your information. You can check the information we hold about you at any time. For more information about our Privacy Policy, ask us for a copy.

Alternatively contact

### Aster Underwriting Pty Ltd

Level 1, 72 Nerang Street  
PO Box 2310, Southport Qld 4215  
Phone: 07 5579 1660 Fax: 07 5579 1699  
Email: uw@asteruw.com

## YOUR RESPONSIBILITIES

### Your Duty of Disclosure

Before You enter into a contract of general insurance with Us, (which includes this General and Products Liability Insurance Policy) You have a duty under the Insurance Contracts Act 1984 to tell Us everything that You know, or could reasonably be expected to know, is relevant to Our decision to insure You and the terms and conditions on which We insure You. You have the same duty to tell Us those things before We issue cover, renew, extend, vary or reinstate a policy of insurance.

### Information You do not need to give

You do not have to tell Us anything that:

- reduces the risk;
- is common knowledge;
- We already know or should know in the ordinary course of Our business;
- Has been indicated by Us as not necessary to know.

### Non-Disclosure

If You fail to comply with Your duty of disclosure, We may be entitled to reduce Our liability under the contract in respect of a claim or may cancel the contract.

If Your non-disclosure is fraudulent, We may also have the option of avoiding the contract from its beginning.

## DUTIES OF INSURER

We will act and conduct Ourselves with utmost good faith.

## CLAIMS

### Claims Made Policy

Section A and Section B of this policy, the Broadform Liability and Professional Indemnity sections, apply on a **Claims Made** and notified basis.

This means that Section A and Section B of the policy respond to:

- 1) any claim first made against you during the period of insurance and notified to us during the period of insurance, provided that you were not aware at any time prior to the policy inception of circumstances which would have put a reasonable person in your position on notice that a claim may be made against him/her; and
- 2) any claim made against you after the expiration of the policy provided such claims arise out of facts that you have notified us in writing during the period of insurance pursuant to Section 40(3) of the Insurance Contracts Act 1984. The facts that you may decide to notify are those which might give rise to a claim against you. Such notification must be given as soon as reasonably practicable after you become aware of the facts and prior to the time at which the policy expires. If you give written notification of facts during the period of insurance, the policy will respond even though a claim arising from those facts is made against you after the policy has expired. For your information, S40(3) of the Insurance Contracts Act 1984 is extracted below:

“Where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim when made by reason only that it was made after the expiration of the period of insurance provided by the contract.”

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to:

#### **Aster Underwriting Pty Ltd**

Level 1, 72 Nerang Street  
PO Box 2310, Southport Qld 4215  
Phone: 07 5579 1660 Fax: 07 5579 1699  
Email: uw@asteruw.com

## LIABILITY ASSUMED BY YOU UNDER AN AGREEMENT

It is not possible for You to transfer to Us the entire spectrum of legal liabilities which You may be compelled to bear under the terms of a wide variety of Indemnity and/or Hold Harmless Clauses frequently inserted into commercial business contracts by principals, lessors or other parties.

Liability assumed by You under an agreement is covered only to the extent described in this General and Products Liability Insurance Policy.

Prior to accepting legal liability for loss, destruction, damage or injury, which would not otherwise have attached to You at law, You should contact Aster Underwriting Pty Ltd to enquire whether this General and Products Liability Insurance Policy covers such liability or, if not, whether it may be so extended.

## CONTACT FOR ASSISTANCE OR CONFIRMATION OF COVER

If You need to confirm any Policy transaction or clarify any of the information contained in this Policy document or if You have any other queries, please contact Aster Underwriting Pty Ltd.

## Cooling Off Information

If you want to return your insurance after your decision to buy it, you may cancel it and receive a full refund. To do this you may notify your Financial Services Provider electronically or in writing within twenty-one (21) days from the date the Policy commenced

This cooling-off right does not apply if you have made or are entitled to make a claim. Even after the cooling-off period ends, you still have cancellation rights. However, your Financial Services Provider may deduct certain amounts from any refund for administration costs or any non-refundable taxes.

## Policy Terms and Conditions for Pest Industry Combined Liability policy

### Insurer

The Policy is underwritten by Certain Underwriters at Lloyd's of London.

### Our agreement with You

This Policy is a legal contract between You and us. You pay us the premium, and we provide You with the cover You have chosen as set out in the Policy, occurring during the Period of Insurance shown on Your Policy Schedule or any renewal period.

The amount of any deductible that applies to Your Policy will be shown on Your Policy Schedule.

The exclusions in the section(s) headed 'When You are not covered' and conditions in the section headed 'General conditions' apply to all sections of this Policy.

### Your Policy

Your Pest Industry Combined Liability Policy consists of the Policy Terms and Conditions in this booklet and the Policy Schedule we give You.

Please read Your Policy carefully, and satisfy yourself that it provides the cover You require.

If You want more information about any part of Your Policy, please ask us, or Your Financial Services Provider.

The address and telephone number of Your Insurer or their representative are on Your Policy Schedule.

You should keep Your Policy booklet and Policy Schedule together in a safe and convenient place for future reference.

### Other party's interests

You must tell us of the interests of all parties (e.g. financiers, owners, lessors) who will be covered by this insurance. We will protect their interests only if You have told us about them and we have noted them on Your Policy Schedule

### Paying Your premium

You must pay Your premium by the due date. If we do not receive Your premium by this date or Your payment is dishonoured this Policy will not operate and there will be no cover.

### Preventing our right of recovery

If You have agreed not to seek compensation from another person who is liable to compensate You for any loss, damage or Liability which is covered by this Policy, we will not cover You under this Policy for that loss, damage or Liability.

### How Goods and Services Tax affects any payments we make

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

When we pay a claim, Your GST status will determine the amount we pay. When You are:

- (a) not registered for GST, the amount we pay is the Sum Insured/Limit of Liability or the other limits of insurance cover including GST;
- (b) registered for GST, we will pay the Sum Insured/Limit of Liability or the other limits of insurance and where You are liable to pay an amount for GST in respect of an acquisition relevant to Your claim (such as services to repair a Damaged item insured under the Policy) we will pay for the GST amount.

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

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

Any GST liability arising from Your incorrect advice is payable by You. Where the settlement of Your claim is less than the Sum Insured/Limit of Liability or the other limits of insurance cover, we will only pay an amount for GST (less Your

entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover Your loss, we will only pay the GST relating to our settlement of the claim.

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

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

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

## Words with special meanings

Some key words and terms used in this Policy have a special meaning.

If words and terms are only used in just one (1) Section of the Policy, we will describe their special meaning in that Section.

Wherever the following words or terms are used in the Policy, they mean what is set out below:

### Aircraft

any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

### Claim

- (a) the receipt by You of any written notice of demand for compensation made by a third party against You;
- (b) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon You which contains a demand for compensation made by a third party against You.

### Computer equipment

includes but is not limited to any, or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.

### Deductible

the amount specified in the Policy Schedule that You must pay for each and every claim arising out of the one (1) event or occurrence, including where we advance money to You under 'Defence of claims'.

### Employee

any person employed by You under a contract of service or apprenticeship during the Period of Insurance, but does not include any person employed under such contract who is excluded from the definition of 'worker' under any workers' compensation legislation. Where You have chosen cover under Section B, an 'employee' will also include any person employed by You under a contract of service or apprenticeship prior to commencement of the Period of Insurance.

### Environmental Legislation

Any Commonwealth, State or Territory statute, regulation, by-law or local law prohibiting, controlling or regulating the discharge, release, escape or disposal of pollutants into or upon land, the atmosphere or any watercourse or body of water.

### Hovercraft

Any vessel, craft or thing made or intended to float on or in or travel on or through the atmosphere or water.

### Limit of Liability

Our total Limit of Liability under this Policy, as specified in the Policy Schedule.

### Period of insurance

The period shown in the Policy Schedule.

### Policy Schedule

The Schedule of insurance or any endorsement Schedule we give You.

### Pollutants

- (a) Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals;
- (b) Any waste materials including materials recycled, reconditioned or reclaimed;
- (c) Any other air emission, odour, waste water, oil, oil products, infections or medical waste or any noise emission.

### Subsidiary

- (a) Any entity which by virtue of any applicable legislation or law is deemed to be Your subsidiary (where You are a company); or
- (b) Any entity over which You (where You are a company) are in a position to exercise effective direction or control.

### Watercraft

Any vessel, craft or thing made or intended to float on or in or travel on or through or underwater.

### We, our, us

Certain Underwriters at Lloyd's of London.

### You, Your, insured

The person(s), companies or firms named on the current Policy Schedule as the insured including, as if they were You, every past or present director, officer, employee or partner of You, but only while acting within the scope of their duties in such capacity. For the purposes of Section A of the Policy, the definition of 'You, Your, insured' also includes:

- (a) All the subsidiary companies, including their directors, officers, employees, partners or shareholders, (now or subsequently constituted) of the named insured specified in the Policy Schedule provided their places of incorporation are within Australia or any Territory of Australia, and including any entity over which the corporation is in a position to exercise effective direction or control;
- (b) Every principal, in respect of that principal's vicarious Liability for Your acts or omissions or those of the parties shown in paragraph (a) in the performance by them of work for that principal, but subject always to the extent of cover and the limit of Liability provided by this Policy;
- (c) each partner, joint venturer, co-venturer or joint lessee of the insured named in the Policy Schedule but only if we agree to insure them and the insured named in the Policy Schedule agrees to pay the premium we require;
- (d) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with Your consent (other than one (1) of the parties shown in paragraphs (b) or (c) above) in respect of claims arising from their duties connected with the activities of any such club, organisation or service. This insurance will not apply to personal injury to or property damage of any participants of any game, match, race, practice or trial;
- (e) any director or senior executive of You or one (1) of the parties shown in paragraph (a) above in respect of private work undertaken by Your employees for such director or senior executive.

However, 'You, Your, insured' does not include the interest of any other person other than as described in this definition, unless the definition is amended in subsequent Sections of the Policy

### Types of cover

This Policy offers You a choice of cover. You can choose one (1) or both of the following:

- |            |                        |  |
|------------|------------------------|--|
| Section A: | Broadform liability    | - Cover provided is on a Claims Made basis (refer page 5 CLAIMS) |
| Section B: | Professional indemnity | - Cover provided is on a Claims Made basis (refer page 5 CLAIMS) |

The types of cover You have chosen will be shown on Your Policy Schedule.

### Retroactive date

Retroactive cover – applies to Section A and Section B

This Policy will only provide indemnity in respect of conduct and wrongful acts committed (or alleged to have been committed) after the retroactive date.

## Section A: Broadform liability

Words with special meanings – definitions which apply to Section A

Some key words and terms used in this Section A have a special meaning.

Wherever the following words or terms are used in this Section of the Policy, they mean what is set out below:

### Business

the Business described in the Policy Schedule.

### Claim

the receipt by You of any written or verbal notice of demand for compensation made by a third party against You.

### Defence Costs

means the costs and expenses we pay under 'Defence of Claims' set out in this Section A.

### Employment Practices

any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by You

### Internet Operations

- (a) transfer of computer data or programs by use of electronic mail systems by You or Your employees, including part-time and temporary staff, contractors and others within Your organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or Trojan horse,
- (b) access through Your network to the world wide web or a public Internet site by Your employees, including part-time and temporary staff, contractors and others within Your organisation,
- (c) access to Your Intranet (meaning internal company information and computing resources) which is made available through the world wide web for Your customers or others outside Your organisation, and;
- (d) the operation and maintenance of Your web site

### Investigation Costs and Expenses

Reasonable legal costs and other expenses incurred by You or on Your behalf with our consent, or by us, resulting from any legally compellable attendance by You at any official investigation or inquiry.

But 'investigation costs and expenses' does not include any fine, penalty or order for the payment of monetary compensation.

Payment by us of investigation costs and expenses reduces the sub-limit shown for 'investigation costs and expenses' in the Policy. That sub-limit is part of and not in addition to the limit of liability.

For the purpose of application of any relevant extensions and optional extensions in this Policy, an official investigation or inquiry is deemed to be a Claim, notwithstanding that there has been no allegation of a wrongful act against You. However, the sub-limit for such investigation costs and expenses is not increased.

### Medical Persons

Qualified Medical Practitioners, nurses, dentist and first aid attendants.

### Occurrence

An event which results in personal injury or property damage, neither expected nor intended from Your standpoint. All personal injury or property damage arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one (1) Occurrence.

## Personal Injury

- (a) bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury,
- (b) the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution,
- (c) the effects of wrongful entry or eviction,
- (d) the effects of a publication or utterance of defamatory or disparaging material,
- (e) the effects of assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

## Property Damage

- (a) physical damage to or loss or destruction of tangible property including any resulting loss of use of that property, or
- (b) loss of use of tangible property which has not been physically damaged, lost or destroyed, provided the loss of use is caused by an Occurrence.

## Territorial Limits

Anywhere in the world subject to Exclusion 9 – ‘Territorial Limits’ in ‘General exclusions’ and Exclusion 10- ‘Exports to USA and Canada’ in Section A.

## Vehicle

Any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

## Your Products

Any goods, products and property (after they have ceased to be in your possession or under Your control), which are deemed to have been manufactured, grown, extracted, produced, processed, constructed, assembled, erected, installed, repaired, serviced, treated, sold, supplied or distributed by You (including any container for them other than a vehicle).

## What You are Insured against

### Liability

We will cover You for Your legal liability to pay:

- all sums by way of compensation, and
- all costs awarded against You

in respect of any Claim for personal injury or property damage first made against You during the Period of Insurance and which is notified to us during the Period of Insurance within the Territorial Limits in connection with the Business activities described on the policy schedule.

## Defence of Claims

If we agree to cover You we will

- (a) defend in Your name and on Your behalf any Claim or legal action against You seeking damages for personal injury or property damage even if the action is groundless, false or fraudulent, and we will investigate, negotiate and settle any Claim or legal action as we see fit,
- (b) pay all legal costs and expenses incurred by us and all interest accruing after entry of judgement until we have paid, tendered or deposited in court such part of the judgement as does not exceed the limit of liability,
- (c) reimburse You for all reasonable expenses, other than loss of earnings, incurred by You with our consent in connection with the defence of a Claim or legal action,
- (d) pay reasonable expenses incurred by You for first aid to others at the time of personal injury caused by an Occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973).

## What we will pay

### Limit of Liability

- (a) Our maximum liability in respect of any claim or any series of claims first made against You during the Period of Insurance and which is notified to us during the Period of Insurance within the Territorial Limits in connection with the Business activities described on the policy schedule will not exceed the Limit of Liability shown on Your Policy Schedule.
- (b) Our total aggregate liability during any one (1) Period of Insurance for all claims first made against You during the Period of Insurance and which is notified to us during the Period of Insurance within the Territorial Limits in connection with the Business activities described on the policy schedule arising out of Your Products will not exceed the Limit of Liability shown on Your Policy Schedule.

The applicable Limit of Liability will not be reduced by the amount of any Deductible paid by You

### Exclusions which apply to Section A

The following exclusions apply to this Section of the Policy. There are also General exclusions which apply to all Sections of this Policy.

This Policy does not cover:

#### 1. Employment liability

Liability for personal injury imposed:

- (a) by any Workers' Compensation law,
- (b) by the provision of any industrial award, 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, agreement or determination or contract of employment or workplace agreement, or

provided that if You are:

- (c) required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such personal injury, or
- (d) not required to so insure or otherwise fund such liability by reason only that the personal injury is to a person who is not a worker or employee for the purposes of the relevant worker's compensation law or the personal injury is not an injury which is subject to such law

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

There is no cover under this Policy for and in respect of Employment Practices

#### 2. Property in custody or control

Property damage to:

- (a) property owned by or leased or rented to You, or
- (b) property in Your physical or legal control

But this exclusion does not apply to liability for property damage to:

- (c) premises (including landlord's fixtures and fittings) which are leased or rented to You,
- (d) premises (or their contents) not owned, leased or rented by You but temporarily occupied by You for work therein,
- (e) vehicles (not belonging to or used by You) in Your physical or legal control where the property damage occurs while the vehicles are in a car park owned or operated by You, unless You own or operate the car park for reward,
- (f) the property of an employee of You or of the parties shown in paragraph (a) of 'Words with special meanings' of 'You', 'Your' or 'Insured',
- (g) other property temporarily in Your physical or legal control provided no indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which You are or have been working on and our limit under this clause 2(g) does not exceed \$250,000 for any one (1) Occurrence and in the aggregate for any one (1) Period of Insurance

Provided that we will not cover You under this Policy in respect of liability assumed by You under any contract or agreement which requires You to effect material damage insurance on premises, property or goods which You do not own

### 3. Product defect

Property damage to Your products if the damage is attributed to any defect in them or to their harmful nature or unsuitability

### 4. Loss of use

Loss of use of tangible property which has not been physically injured, or lost or destroyed resulting from:

- (a) a delay in or lack of performance by or on Your behalf of any agreement,
- (b) the failure of Your products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You, but this exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss or destruction of Your products after they have been put to use by any person or organisation other than You as defined under the definition of 'You', 'Your' or 'Insured'

### 5. Product recall

Claims arising out of or resulting from any loss, cost or expense incurred by You for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of Your products or of any property of which they form a part, if such products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them

### 6. Vehicles

Personal injury or property damage arising out of the ownership, possession, operation, or use by You or on Your behalf of any vehicle:

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

Exclusions 6(a) and (b) above do not apply to:

- (c) personal injury where:
  - (i) that compulsory liability insurance or statutory indemnity does not provide indemnity, and
  - (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to vehicles
- (d) property damage arising out of and during the loading or unloading of goods to or from any vehicle
- (e) property damage caused by or arising from the operation or use of any vehicle which is designed primarily for lifting, lowering, loading unloading, while being operated or used by You or on Your behalf within the confines of Your premises
  
- (f) property damage caused by or arising out of the use of
  - (i) any vehicle whilst being used as a tool, or
  - (ii) plant forming part of Your vehicle being used as a tool operating at any worksite

but excluding property damage caused by or arising whilst the vehicle is transporting or carting goods

### 7. Contractual liability

Any obligation assumed by You under any agreement or contract except to the extent that:

- (a) the liability would have been implied by law
- (b) the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges You to effect insurance in respect of the subject matter of that contract
- (c) the liability is assumed by You under a warranty of fitness or quality as regards to Your products.

### 8. Professional liability

- (a) The rendering of or failure to render professional advice or service by You or any related error or omission,

- (b) personal injury or property damage arising directly or indirectly out of or caused by Your advice, design, formula or specification

#### 9. Defamation

The publication or utterance of a defamatory statement or the publication of other defamatory or disparaging material:

- (a) made prior to the commencement of the Period of Insurance, or
- (b) made by You or at Your direction with knowledge of its falsity, or
- (c) related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

#### 10. Exports to the USA or Canada

Claims in respect of personal injury or property damage caused by or arising out of Your products knowingly exported by You, or Your agents or servants, to the USA or Canada.

#### 11. Faulty workmanship

The cost of performing, correcting or improving any work undertaken by You.

#### 12. Assault and battery

Personal injury or property damage caused by or arising from assault and battery committed by You or at Your direction unless reasonably necessary for the protection of persons or property.

#### 13. Tobacco

Personal injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

#### 14. Information technology hazards, computer data, program and storage media exclusion

- (a) Personal injury or property damage arising, directly or indirectly, out of, or in any way involving Your Internet Operations, or
- (b) Property damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
  - (i) the use of any computer hardware or software
  - (ii) the provision of computer or telecommunication services by You or in Your behalf
  - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

But this exclusion does not apply to:

- (c) personal injury or property damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site, or
- (d) Liability which arises irrespective of the involvement of Your Internet Operations, and

nothing in this exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

#### Conditions which apply to Section A

The following conditions apply to this Section of the Policy. There are also General conditions which apply to all Sections of this Policy.

#### Joint Insured's

Where more than one (1) party comprises the Insured each of the parties will be considered as a separate and distinct unit and the words 'You', 'Your' or 'Insured' will be considered as applying to each party in the same manner as if a separate Policy had been issued to each of them, provided that nothing in this clause will result in an increase of our limit of liability in respect of any Occurrence or Period of Insurance.

### Reasonable care

You must:

- (a) Exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition
- (b) take all reasonable precautions to prevent personal injury and property damage, and prevent the manufacture, sale or supply of defective products, and comply with and ensure that Your employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by all relevant public authorities for the:
  - (i) safety of persons or property
  - (ii) disposal of waste products
  - (iii) handling, storage or use of flammable liquids or substances, gases or toxic chemicals
- (c) at Your own expense take reasonable action to trace, recall or modify any of Your products containing any defect or deficiency of which You have knowledge or have reason to suspect, including (but not limited to) any of Your Products subject to governmental or statutory ban.

### Inspection of property

- (a) We will be permitted but not obligated to inspect Your property and operations at any time.
- (b) Neither our right to inspect nor our failure to inspect nor the making of any inspection nor any report of an inspection may be used by You or others in any action or proceeding involving us.
- (c) We may examine and audit Your books and records at any time during the Period of Insurance and within three years thereafter but that examination and audit will be restricted to matters which in our opinion are relevant to the Policy.

### Adjustment of premium

Where the Policy Schedule shows premium for the Policy has wholly or partly been calculated on estimates You must, within thirty (30) days after the expiry of each Period of Insurance, provide to us such matters, particulars and information relevant to the Policy as we may reasonably require. The premium for the Period of Insurance will then be adjusted and any difference paid by or allowed to You, as the case may be, provided that the adjusted premium will not be less than any minimum premium specified in the Policy Schedule.

You must keep a record of all matters, particulars and information requested by us and must on reasonable notice allow us or our nominee to inspect and make copies of those records

## Section B: Professional Indemnity

Words with special meanings – definitions which apply to Section B

Some key words and terms used in this Section B have a special meaning.

Wherever the following words or terms are used in this Section of the Policy, they mean what is set out below

### Bodily Injury

Physical injury, sickness, disease, death, mental injury, mental anguish, nervous shock, or emotional distress of any person

### Claim

the receipt by You of any written or verbal notice of demand for compensation made by a third party against You.

### Computer equipment

Computer equipment and includes but is not limited to any, or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated

### Conflict

- (a) A conflict of duty and duty, where You act for a client while being subject to a contrary interest, being an interest of another client, or
- (b) A conflict of interest and duty, where You act for a client while being subject to a contrary interest, being a personal advantage interest.

### Costs and expenses

The legal costs and other expenses incurred by You or on Your behalf or by us in the investigation or defence of a Claim.

### Documents

Deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but will not include bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

### Family Member

Your:

- (a) Spouse, domestic partner, or companion
- (b) Parent, or parent of Your spouse, domestic partner or companion
- (c) Sibling or child.

### Insured's Profession

The profession, as specified in the Policy Schedule, which is conducted by You. If You change Your name and there is no other change which materially alters the risk, the Insured's Profession will continue to be covered by this Policy.

### Minor interest

A direct or indirect control or ownership of less than 10% of the issued share capital and/or options of a public company or less than 10% of the value of any other company, entity or enterprise.

### Senior Counsel

A barrister in active practice who is entitled to use the letters 'QC' or 'SC' in any one (1) or more superior courts in Australia or New Zealand.

## What You are Insured against – Insuring clauses

We will cover You in accordance with the terms of this Section B ‘Professional indemnity’ of the Policy and in accordance with the Exclusions which apply to Section B, General exclusions and General conditions

In respect of each Insuring clause, all causally connected or interrelated wrongful acts will jointly constitute a single wrongful act under this Policy

The inclusion of any Insuring clause will not increase the Limit of Liability or aggregate Limit of Liability under the Policy

We will cover:

### A - civil liability

- you for all loss arising from a Claim against you for civil liability for compensation arising as a result of a breach of professional duty in the conduct of the Insured’s Profession, where the Claim is first made and notified to us during the Period of Insurance

### B – costs and expenses

- you for costs & expenses incurred with our written consent in the defence or settlement of any Claim indemnified by this Policy

### C – intellectual property

- you for civil liability for compensation arising from any Claim made against you for any unintentional infringement of copyright, trademark, registered design or patent, or any plagiarism or breach of confidentiality

### D - defamation

- you for civil liability for compensation arising from any Claim made against you for defamation

### E – outgoing principals

- your former principals, partners, directors and employees in respect of civil liability insured by Insuring clauses A and B, provided always that the definition of ‘you, your, Insured’ includes those persons and only in respect of work performed while they are your principal, partner, director or employee

### F – Trade practices and related legislation

- You for civil liability for compensation arising from any Claim made against you under the terms of the Trade Practices Act 1974 (Commonwealth), the Fair Trading Act 1987 (NSW), the Fair Trading Act 1985 (Victoria) or similar legislation enacted by the other states or territories of Australia or New Zealand.

### G – Joint Venture Liability

- We agree to indemnify you in respect of any claim made against you for that proportion of any legal liability arising out of any activities in which you are engaged as a joint venturer or as a partner.

### H – Retroactive date

- Unlimited retroactive cover’ – if no retroactive date is specified in the Schedule or if the retroactive date is specified in the Schedule as ‘unlimited’, this policy shall provide indemnity in respect of claim(s) arising from acts, errors or omissions committed or alleged to have been committed irrespective of when such acts, errors or omissions were committed (or were alleged to have been committed).
- ‘Limited retroactive cover’ – where a retroactive date is specified in the Schedule, then this policy shall only provide indemnity in respect of claim(s) arising from acts, errors or omissions committed or alleged to have been committed after the retroactive date.

## I – Vicarious Liability

- We agree to indemnify you in respect of any claim made against you arising from any act, error or omission committed or alleged to have been committed by any third party for whose acts, errors or omissions you are legally liable, provided that such coverage shall not extend to any such third party.

## What we will pay

### Limit of Liability

Our total liability under this Policy Section B for any one (1) Claim, or loss, including defence costs, and in the aggregate in respect of all Claims, or losses, including defence costs, will not exceed the Limit of Liability shown on Your Policy Schedule.

Where the schedule specifies a number of 'reinstatements', the total aggregate amount for all amounts (including defence costs) payable by us under this policy shall not exceed the sum of:

- (a) the limit of indemnity plus
- (b) the limit of indemnity multiplied by the number of 'reinstatements' specified in the schedule.

### Section B: Policy extensions

#### Preamble

We shall provide indemnity to you under this section for no additional premium, provided that:

1. the indemnity provided by each policy extension is subject to the schedule, insuring clauses, conditions, definitions, exclusions, deductible and other terms of this policy (unless otherwise expressly stated herein);
2. the inclusion of any policy extension shall not increase the limit of indemnity.

#### Extensions

We will cover You under each of the Policy extensions below in accordance with the terms of this Section B of the Policy and in accordance with the exclusions which apply to Section B, the General Exclusions and General Conditions

The inclusion of any Policy extension will not increase the Limit of Liability, aggregate Limit of Liability or any applicable sub-limit under the Policy

#### Continuous cover

We shall, notwithstanding the 'Prior or pending' exclusion and claims made notice, provide indemnity in respect of any claim made against you where such claim arises from a fact or circumstance ('circumstance'):

1. of which you first became aware prior to the period of insurance and which you knew, or ought to have reasonably known, had potential to give rise to a claim; and
2. which should have, but was not, notified to us under an earlier policy under which we were indemnifying you.

Provided that:

3. such indemnity shall not apply to any claim where your failure to notify such claim is fraudulent;
4. we have continuously insured you between the date when the circumstance should have been notified and the date the claim was actually notified.

#### Extended reporting period

In the event that this insurance is not renewed or is cancelled for any reason other than non-payment of premium then you have until such time that you effect another professional indemnity insurance policy or a period of sixty (60) days commencing on the day immediately following expiry of this policy, whichever is the lesser period, during which to notify us of any claim first made against you during the period of insurance, provided that this extension:

1. does not reinstate or increase the limit of indemnity or extend the period of insurance; and
2. will only apply to acts, errors or omissions committed or alleged to have been committed by you before the end of the period of insurance or the cancellation date of this policy where this policy has been cancelled.

#### Estates and legal representatives

We will indemnify Your Estate, heirs, legal representatives or assigns in the Event of Your death or incapacity, in respect of your civil liability that would have been covered by Insuring Clause A or B if You were alive or had capacity

Such persons must observe and are subject to all the terms of this Policy insofar as they can apply

## Fraud and Dishonesty

We will cover You against civil liability for compensation arising from any Claim made against You which would otherwise be excluded by reason of Exclusion 7 (Fraud and Dishonesty) under the heading 'Exclusions which apply to Section B'.

However:

- (a) cover will not be provided to You if You committed or condoned any act, error or omission excluded by reason of Exclusion 7 (Fraud and Dishonesty) under the heading 'Exclusions which apply to Section B',
- (b) there will be no cover for any Claim against You directly or indirectly based upon, attributable to, or in consequence of:
  - (i) the loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes;
  - (ii) the loss of an electronic record which represents a current and transferable obligation of a person to pay the holder of the electronic record an amount or amounts of money described in the electronic record in exchange for delivery, adjustment or cancellation of the electronic record;
  - (iii) a transaction, direction or dealing involving or in any way relating to a right to be paid money or to have any of the items referred to in subparagraph (i) or (ii) of this paragraph (b) delivered, negotiated or assigned or an electronic record of such a right

## Loss of documents

We will cover You in respect of certain loss described in this clause arising from the loss of any documents (including but not limited to documents which are Your property) which have been destroyed, damaged, lost or mislaid and, after diligent search and attempt to recover, cannot be found. We will give You this cover provided always that:

- (a) the discovery of the loss of the documents occurred during the Period of Insurance and was notified in writing to us within twenty-eight (28) days after the date of the discovery (but never beyond the expiry date of the Period of Insurance); and
- (b) cover will be limited to the costs, charges and expenses of whatsoever nature incurred by You in replacing and/or restoring the documents and any Claim for such costs, charges and expenses must be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by us with Your approval; and
- (c) we will not be liable under this Policy extension to provide indemnity in respect of that proportion of any costs, charges and expenses of whatsoever nature arising directly or indirectly out of:
  - (i) corruption, erasure, theft, alteration of, or
  - (ii) access or lack of access to, or
  - (iii) interference with Your electronically stored data or electronically stored data held by You wholly or partly caused by:
    - (iv) any computer virus; or
    - (v) any person who is not Your current partner, director or employee where such costs, charges and expenses relate to You replacing and/or restoring such data after a period of forty-eight (48) hours following the time when the virus or act took effect; and
- (d) cover will be limited to the loss of any documents:
  - (i) which were in Your physical custody or control or that any person to whom You entrusted, lodged or deposited the documents in the ordinary course of business; and
  - (ii) which occurred within the territorial limits of Australia or New Zealand.

Our total liability in respect of all losses under this Policy extension will not exceed:

- (a) the sub-limit shown in the Policy Schedule for Loss of documents; or
- (b) if no amount is shown, the sum of \$100,000

## Newly created subsidiary companies

You must tell us as soon as practicable when You create a subsidiary company after the commencement of the Period of Insurance.

If You do, we agree that the definition of 'You, Your, Insured' is extended to include the subsidiary company created after the commencement of the Period of Insurance, for a period of up to fourteen (14) days (but never beyond the expiry date of the Period of Insurance) from the date of such creation.

The indemnity granted under this extension will only apply in respect of an act, error or omission occurring in respect of that subsidiary company subsequent to its creation.

We will be entitled to such additional information as we may require in respect of the created subsidiary company and You agree that we have the right to charge any additional premium we may require.

### Official investigations and inquiries – costs and expenses

We agree to pay investigation costs and expenses in relation to any official investigation or inquiry commenced during the Period of Insurance and which is notified to us during the Period of Insurance.

Our aggregate liability for all Claims under this extension will not exceed \$250,000

In relation to any cover afforded under this extension:

- (a) we will be entitled, at our discretion, to appoint legal representation to represent You in the official investigation or inquiry; and
- (b) in the Event that a Claim for payment of investigation costs and expenses is subsequently withdrawn or denied, we will cease to advance investigation costs and expenses and You or any person named as an Insured (for Your respective rights and interests) will refund any investigation costs and expenses advanced by us, unless we agree in writing to waive recovery of the investigation costs and expenses; and
- (c) the deductible will apply to each and every official investigation or inquiry.

For the purpose of this Policy extension, an official investigation, examination or enquiry includes an investigation, examination or enquiry by way of Royal Commission or Coronial Enquiry or conducted by a regulatory authority such as the Australian Securities and Investments Commission but does not include any investigation, examination or enquiry conducted by a parliament or any disciplinary committee of any association or professional body of which You are a member.

### Run-off cover Insured entity

We agree that if an Insured entity ceases to exist or operate or is consolidated with, merged into or acquired by any other entity during the Period of Insurance, cover with respect to that entity will continue until the expiry date of the Period of Insurance.

However, cover will only apply in respect of Claims arising from an act, error or omission occurring prior to the effective date that the entity ceased to exist or operate or was consolidated with, merged into or acquired by another entity.

### Severability and non-imputation

We agree that where this Policy insures more than one (1) party, any conduct on the part of any party or parties where the party or parties:

- (a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984, or
- (b) made a misrepresentation to us before this contract of insurance was entered into,

will not prejudice the right of the remaining party or parties to any indemnity which may be provided by this Policy.

Provided always that

- (c) the remaining party or parties are entirely innocent of and had no prior knowledge of the conduct and as soon as reasonably practicable upon becoming aware of the conduct, advise us in writing of all known facts in relation to the conduct, and
- (d) before the contract of insurance was entered into with us, proper inquiry has been made of You (where You are a company) and Your directors for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984. For the sake of clarity, this provision is not intended to limit Your duty of disclosure.

### Penalties

We will indemnify You against any penalty and defence costs resulting from a Claim by a regulatory authority for a wrongful breach which would otherwise be excluded by reason of Exclusion 8 (Fines, penalties, punitive damages) General exclusions which apply to all Sections of this Policy, where the Claim is first made on You and notified in writing to us in the Period of Insurance. Provided always that we will not be liable to indemnify You in respect of any penalty or defence costs in respect of any such Claim arising directly or indirectly from or which is based upon, attributable to, or in consequence of any:

- (a) dishonest, wilful, intentional or deliberate wrongful breach; or
- (b) wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act; or
- (c) Your gross negligence or recklessness; or
- (d) requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost; or
- (e) breach of sections 182 or 183 of the Corporations Act and any amendment, consolidation or re-enactment of any of these sections.

Our aggregate liability for all Claims under this extension will not exceed \$250,000.

## Exclusions which apply to Section B

The following exclusions apply to this Section of the Policy. There are also General exclusions which apply to all Sections of this Policy. This Policy does not cover any Claim against You:

### 1. Assumed duty or obligation

directly or indirectly based upon, attributable to, or in consequence of any duty or obligation assumed by You by way of contract, warranty, guarantee or indemnity, to the extent that such liability exceeds the liability You would have incurred in the absence of such contract, warranty, guarantee or indemnity.

### 2. Bodily injury

directly or indirectly based upon, attributable to, or in consequence of bodily injury when such injury occurs at any time during the actual provision of the services of the insured Profession by You or on Your behalf.

### 3. Conflict

directly or indirectly based upon, attributable to, or in consequence of a conflict. Provided always that:

- (a) this exclusion does not derogate from or limit exclusion 2 in this 'Exclusions which apply to Section B', and
- (b) this exclusion will not apply where the conflict arises from Your provision, or alleged provision, of services to more than one (1) client (which term in this subparagraph includes former clients) and You obtain a signed and dated document from each client prior to providing professional services acknowledging that You may also be involved with another client whose interests may be different from those of the client in question.

### 4. Financial interest

directly or indirectly based upon, attributable to or in consequence of any actual or alleged:

- (a) advice
- (b) inducement
- (c) recommendation
- (d) endorsement
- (e) other service

provided by You regarding investment in, work for, or lending to:

- (f) You
- (g) any entity operated or controlled by You
- (h) any subsidiary, nominee, trustee or family member of You
- (i) any entity in which You or any subsidiary, nominee, trustee, or family member of You has a direct or indirect financial interest other than a minor interest.

### 5. Fraud and Dishonesty

directly or indirectly based upon, attributable to, or in consequence of:

- (a) Your actual or alleged dishonest, fraudulent, criminal, or malicious act or omission or that of Your consultants, sub-contractors, or agents
- (b) any act or omission of You or Your consultants, sub-contractors, or agents committed or alleged to have been committed with a reckless disregard for the consequences of the act or omission,
- (c) any wilful breach of any statute, contract or duty by You or Your consultants, sub-contractors or agents.

### 6. Obligations to employees

directly or indirectly based upon, attributable to, or in consequence of bodily injury of any employee or damage to or destruction of any property of any employee, including loss of use of property, arising out of, or in the course of, their employment.

### 7. Occupier's liability

directly or indirectly based upon, attributable to, or in consequence of any liability incurred or alleged to have been incurred as a result of occupation, control, management or ownership of any real property by You.

### 8. Related or associated entities

brought or maintained by or on behalf of:

- (a) You or Your subsidiary or parent,
- (b) any person who, at the time of the act, error or omission giving rise to the Claim is a family member unless such person is acting without Your prior direct or indirect solicitation or co-operation.

### 9. Trading debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by an Insured or any guarantee given by You for a debt.

## 10. Goods sold and supplied

directly or indirectly based upon, attributable to, or in consequence of:

- (i) the sale, storage, supply or distribution of any goods,
- (ii) any actual, or alleged, provision of advice associated with the sale, storage, supply or distribution of any goods.

## 11. Manufacturing, construction, installation and supervision

directly or indirectly based upon, attributable to, or in consequence of any manufacturing, erection, construction, installation, maintenance, or demolition activities, or the supervision of such activities, undertaken by You or on Your behalf unless the Claim is directly based upon, attributable to an act, error or omission:

- (i) in design or specification completed by You;
- (ii) in advisory or consultancy services provided by You during site inspections by You directly relating to Your engagement to provide design or specification services.

## 12. Information, communication and technology

directly or indirectly based upon, attributable to, or in consequence of:

- (i) any computer equipment (including any or any combination or part of data, computer hardware, operating system, application, software and computer chip, including microprocessor chip or embedded control logic), software, hardware or firmware sold, manufactured produced, installed, repaired, serviced, treated, supplied, distributed, licensed or shared by You;
- (ii) any service, advice or work provided by You in relation to or in connection with (i) above and including the provision of data processing, data warehousing, facilities management and outsourcing, telecommunications and data communication services provided by the insured in the conduct of the insured's Profession.

## Conditions which apply to Section B

The following conditions apply to this Section of the Policy. There are also General Conditions which apply to all Sections of this Policy.

### Your right to contest

If we recommend a settlement in respect of any Claim and You do not agree that the Claim should be settled, then You may elect to contest the Claim. Our liability in connection with that Claim will not exceed the amount for which we believe the Claim could have been settled, plus the costs and expenses incurred with our written consent up to the date of Your election, less the deductible.

### Senior Counsel

We will not require You to contest any Claim unless a senior counsel (to be mutually agreed upon by You and us) advises that the Claim should be contested.

In formulating their advice, senior counsel will take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely costs and expenses and Your prospects of successfully defending the Claim.

### Lawyers we retain

If we retain lawyers to conduct the investigation, defence or settlement of any Claim, those lawyers will act on our behalf, not yours, in relation to any issue regarding Your entitlement to indemnity from us. Any information that is received by lawyers retained by us in the course of investigating, defending or settling any Claim against You can be provided to us and relied upon by us in relation to any issue that may arise regarding our liability to indemnify You. In relation to any such information, You waive any Claim that You may have for legal professional privilege as between You, the lawyers retained by us and us.

The lawyers retained by us to conduct the investigation, defence or settlement of any Claim, may provide advice to us on any issue regarding our liability to indemnify You and, while doing so, may continue to act in the investigation, defence or settlement of the Claim on behalf of both us and You.

All communications between us and lawyers retained by us to act in the conduct of the investigation, defence or settlement of any Claim which relate to Your entitlement to indemnity from us are privileged as between us and the lawyers and You agree that You are not entitled, under any circumstances, to access or obtain any such communications.

If any actual or apparent conflict arises between our interests and Yours, the lawyers retained by us to conduct the investigation, defence or settlement of any Claim may cease acting on Your behalf and may continue to act on our behalf in relation to any dispute between You and us with respect to Your entitlement to indemnity from us

### What You must pay if You make a Claim – Deductible

This condition applies to all Sections of this Policy.

For Claims You make on any Section of this Policy, You will have to pay the deductible which is shown on Your Policy Schedule.

If more than one (1) deductible is payable under this Policy for any Claim, or series of Claims arising from the one (1) Event:

- You must pay the highest deductible, but
- You must pay only one (1) deductible.

### When you are not covered

#### General Exclusions which apply to all Sections of this Policy

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 war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation or nationalisation or requisition or destruction or damage to property by or under the order of any government or public or local authority, 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 of the day or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, ethnic 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) of the day or de facto, and which:

- involves violence against one (1) or more persons, or
- involves damage to property, or
- involves damage to property, 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

3. Radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion. This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to 1, 2 or 3 above

There is no cover under this Policy for:

#### 4. Prior or Pending

- (a) any Claim made, threatened or intimated against an Insured prior to the Period of Insurance, or
- (b) any Claim directly or indirectly based upon, attributable to, or in consequence of any fact or circumstance:
  - (i) of which written notice has been given, or ought reasonably to have been given, under any previous Policy
  - (ii) of which you first became aware prior to the Period of Insurance, and which you knew or ought reasonably to have known had potential to give rise to a Claim under this Policy.

#### 5. Proposal Form

Any Claim against you arising directly or indirectly, based upon, attributable to or in consequence of matters as disclosed to us in the proposal form or submission you completed and submitted to us for this insurance.

## 6. Asbestos

any Claim directly or indirectly caused by or arising from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.

## 7. Aircraft, Aircraft Products, Watercraft and Hovercraft

Claims arising out of

- (a) the ownership, maintenance, operation or use by you or on your behalf of:
  - (i) any aircraft, or the ownership, operation or use by you or on your behalf of:
  - (ii) any watercraft, or
  - (iv) any hovercraft.
- (b) your products that are 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.

## 8. Fines, Penalties, Punitive Damages

finer, penalties or liquidated or other damages for, directly or indirectly based upon, attributable to or in consequence of any punitive, aggravated, multiple, or exemplary damages, or fines or penalties imposed by law including but not limited to civil penalties. This Exclusion does not apply to any cover afforded by extensions 'Penalties' under Section B or Statutory Liability Extension.

## 9. Territorial Limits

- (a) Claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance.
- (b) Claims made and actions instituted within the USA or Canada or any other territory coming within the jurisdiction of the courts of the USA or Canada.
- (c) Claims and actions to which the laws of the USA or Canada apply.
- (d) Claims arising out of the enforcement of any judgement, order or award obtained within, or determined pursuant to, the laws of the USA or Canada or their territories or protectorates.

Provided that:

- (e) Exclusions 9 (b), (c) and (d) above do not apply to Claims and actions arising from the presence outside Australia of any of your employees and/or directors, partners or proprietors who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the USA or Canada.

The limit of liability in respect of cover provided under paragraph 9 (e) is inclusive of all costs, expenses and interest as set out in 'Defence of Claims'.

## 10. Pollution

- (a) Personal Injury or property damage 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, but this Exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place,
- (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this Exclusion does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or property damage,
- (c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others,
- (d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the USA or Canada or in any country to which the laws of the USA or Canada apply,

except to the extent that cover for pollution is provided by Section 2.

Our liability under clauses 10 (a) and 10 (b) above in respect of any one (1) discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases, and escape of pollutants during any one (1) Period of Insurance will not exceed \$1,000,000.

### **11. Pathogenic Organism**

any Claim directly or indirectly caused by or contributed to or arising from any pathogenic organism:

- (a) for loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising from the loss, destruction or damage or any consequential loss; or
- (b) for any legal liability of any nature

For the purposes of this Exclusion pathogenic organism includes but is not limited to the following: mould or fungi or its spores, bacteria yeasts, mildew, algae, mycotoxins, or any other metabolic products enzymes or protein secreted by the above whether toxic or otherwise.

We will not be under any duty to defend you in any proceedings in connection with any pathogenic organism Claims or incidents.

This Exclusion applies irrespective of when the Claim arose or was made and irrespective of when the exposure to the pathogenic organism occurred

### **12. Non-Approved Chemicals**

any Claim directly or indirectly arising out of, caused by or contributed to by your use of chemicals which have not been approved by the relevant Federal, State, Territory and Local Government Authority/ies for use in the eradication of pests.

### **13. Qualified Person**

any Claim directly or indirectly arising out of, caused by or contributed to by any person who has not undertaken relevant training and not obtained the appropriate qualification or license, where required by law and any recognised industry association or body, to carry out work the nature of which is described in your Policy Schedule.

### **14. Spraying Cotton**

any Claim directly or indirectly arising out of, caused by or contributed to by spraying cotton.

### **15. Chemical Handling**

any Claim directly or indirectly arising out of, or caused by, or in connection with the transportation, storage, loading or unloading of chemicals, unless the transportation, storage, loading or unloading of chemicals is in strict compliance with the relevant legislative and industry requirements and the chemical manufacturer's instructions.

### **16. Wildlife capture, release and/or destruction**

any Claim directly or indirectly arising out of, or caused by, or in connection with the capture, release and/or destruction of wildlife, unless the activity is conducted in strict compliance with the relevant legislative requirements and relevant guidelines recognised by wildlife welfare organisation/s.

### **17. Manufacturer's Instructions**

any Claim directly or indirectly arising out of, or caused by, or in connection with the use of any product, unless the use of the product is in strict accordance with the manufacturer's instructions.

### **18. Australian Standards**

any Claim directly or indirectly arising out of, caused by, or in connection with your Business, unless your Business activities are conducted in strict compliance with all relevant Australian Standard/s issued by Standards Australia Limited.

### **19. Concrete Barrier**

any Claim directly or indirectly arising out of, caused by, or in connection with the failure of concrete or masonry work to cure, alleviate, prevent, eliminate or retard the entrance of termites.

### **20. Pre-Existing Damage**

any Claim directly or indirectly arising out of, caused by, or in connection with continuing or additional damage to property for which there is or has been evidence of Pre-Existing Damage

## General conditions

General conditions which apply to all Sections of this Policy

### Changing Your Policy

If You want to make a change to this Policy, the change becomes effective when:

- we agree to it, and
- we give You a new Policy Schedule detailing the change

### Other interests

You must not transfer any interests in this Policy without our written consent.

Any person whose interests You have told us about and we have noted on Your Policy Schedule is bound by the terms of this Policy.

### Cancelling Your Policy

#### How You may cancel this Policy

- You may cancel this Policy at any time by telling us in writing that You want to cancel it
- Where 'You' involves more than one (1) person, we will only cancel the Policy when a written agreement to cancel the Policy is received from all persons named as the Insured

#### How we may cancel this Policy

- We may cancel this Policy in any of the circumstances permitted by law by informing You in writing
- We will give You this notice in person or send it to Your address last known to us

### The Premium

We will refund to You the proportion of the Premium for the remaining Period of Insurance, provided we shall be entitled to retain the agreed minimum Premium. When the Premium is subject to adjustment, cancellation will not affect Your obligation to supply to us such information as is necessary to permit the Premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation

### Notices

Any notice we give You will be in writing, and it will be effective:

- if it is delivered to You personally, or
- if it is delivered or posted to Your address last known to us

It is important for You to tell us of any change of address as soon as possible.

### Changes to information previously advised

You must tell us as soon as possible if circumstances occur, or if changes or alterations are intended or made which increases the risk of liability or loss under this Policy.

You must tell us immediately if:

- (a) You or any person named as an Insured go into voluntary bankruptcy, receivership, liquidation or any other form of external administration or fail to pay debts or breach any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings,
- (b) there is any material change in the nature of Insured's profession carried on by You or any person named as an Insured.

Where there is any material alteration to the risk we will be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984.

### Notice to us of other Insurance

In the event of any Claim for indemnity under this Policy You must notify us of all other Insurance effected by You providing the same or similar cover

### Authorisation

The entity specified in the Policy Schedule as the Insured agrees to act on behalf of every person who falls within the definition of 'You, Your, Insured' under this Policy and each person Insured agrees that the entity will act on their behalf with respect to the giving and receiving of notice of any Claim, the giving and receiving of notice of cancellation or expiry of this Policy, the payment of Premium and the return of any Premium that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving and receiving of a notice provided for in this Policy.

### Mitigation and Co-Operation

If You, either prior to or during the Period of Insurance, become aware of a situation which could, if not rectified, lead to a loss or Claim or increase the quantum of a loss or Claim, You will use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability under this Policy. You must not pursue a course of action which You know or ought reasonably to know will bring about any Claim, unless this is undertaken to discharge Your duties under any relevant law.

You must frankly and honestly disclose to us all relevant information and, in addition, must provide assistance to us as we may require to enable us to investigate and to defend any Claim under this Policy and/or to enable us to determine our liability under this Policy.

Compliance with this condition will be at Your own cost, unless otherwise agreed in writing by us.

### Jurisdiction

All disputes arising out of or under this Policy will be subject to determination by any Court of competent jurisdiction within Australia.

### Discharge of Liabilities

At any time we can pay to You or on Your behalf, for all Claims made against You for any one (1) Occurrence:

- the limit of liability, after deducting any amounts already paid, or
- any lower sum for which the Claim may be settled

If we do so:

- the conduct of any outstanding Claim(s) will become Your responsibility, and
- we will not be liable to pay any further amounts under that other than costs, charges, or expenses that we agreed to pay before we made the payment referred to above

### Claims for less than the deductible

We may, if we believe that any Claim will not exceed the deductible, instruct You to conduct the defence of the Claim. If we do this, we will (subject to the terms of this Policy) reimburse You for all reasonable costs and expenses in the defence of the Claim if any payment You make to dispose of the Claim exceeds the deductible

# Claims

## What you must do

If an event happens which may give rise to a Claim under this Policy you must:

- tell us or your Financial Services Provider as soon as possible, but in any case you must tell us during the period of insurance in which the Claim is made or the loss discovered. You will be provided with advice on the procedure to follow;
- supply us with all information we require to settle the Claim;
- take all reasonable precautions to prevent further loss or damage;
- not negotiate, admit, repudiate or pay any Claim by any person;
- co-operate with us fully in any action we take if we have a right to recover any money payable under this Policy from any other person.

If in doubt at any time, ring us or your Financial Services Provider for advice

## What you must NOT do

You must NOT:

- admit liability if an incident occurs which is likely to result in someone Claiming against you;
- make any admission of guilt or promise or offer of payment in connection with any such Claim, unless we first agree in writing. This applies to you or any other person making a Claim under this Policy. We will not be liable for any settlement, loss, defence costs, costs and expenses, admission, offer or payment, or assumed obligation to which we have not consented in writing.

## What we do

We may take over and conduct the defence or settlement of any Claim or issue legal proceedings for damages. If we do this we will do it in your name. We have full discretion in the conduct of any legal proceedings and in the settlement of any Claim. You must co-operate by giving us any statements, documents or assistance we require. This may include giving evidence in any legal proceedings.

## What can affect a Claim

We will reduce the amount of a Claim by the deductible shown in the Policy Terms and Conditions or on the Policy Schedule. We may refuse to pay a Claim if you are in breach of your Duty of Disclosure or any of the conditions of this Policy, including any endorsements noted on or attached to the Policy Schedule.

We pay only once for loss or damage from the same event covered by this Policy even if it is covered under more than one section of the Policy.

If we recommend that you pay any penalty, consent to any order directing you to pay any penalty or otherwise settle or resolve any Claim under this Policy, 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 agree.

We may be entitled to refuse to pay or to reduce the amount of a Claim if:

- it is in any way fraudulent, or
- any fraudulent means or devices are used by you or anyone acting on your behalf to obtain any benefits under this Policy.

# STATUTORY LIABILITY EXTENSION

## Preamble

In consideration of the premium being paid by the Insured to the Insurer and in reliance upon the written statements and declarations contained in the proposal form or insurance broker's quotation submission, the Insurer agrees to indemnify the Insured in accordance with the following extension wording.

## 1. Notice to the Insured

This extension provides cover on a Claims made and notified basis.

- 1.1 A Claim must be made against the Insured during the Period of Insurance; and
- 1.2 The Insured must notify the Insurer in writing of such Claim during the Period of Insurance.

## 2. Insuring Clause

Subject to the terms and conditions of this extension, the Insurer will pay to or on behalf of the Insured any Loss arising from any Claim in respect of a Wrongful Breach that occurs after the Retroactive Date.

## 3. Definitions

- 3.1 "Act" means any Act of the Parliament of Australia and any Act of the Parliaments of the States or Territories of Australia, including any subordinate or delegated legislation made under those Acts; and any amendment, consolidation or re-enactment of any of the above Acts or legislation.
- 3.2 "Business" means the business conducted by the Insured as described in the Schedule.
- 3.3 "Claim" means the receipt by the Insured of any written or verbal notice from a regulatory authority which alleges a Wrongful Breach and imposes a Penalty upon the Insured for the Wrongful Breach or asserts that the Insured is liable to pay a Penalty.
- 3.4 "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)
Trade Practices Act 1974 (Cth)	Competition and Consumer Act 2010 (Cth)

Part 2 of the Australian Securities and Investments Commission Act 2001  
And any amendment, consolidation or re-enactment of any of those Acts.
- 3.5 "Deductible" means the amount stated in the Schedule and applies to all amounts payable under this extension.
- 3.6 "Defence Costs" means necessary and reasonable legal costs and expenses, including witness costs and expenses, but excludes wages, salaries or other remuneration of the Insured, in defending any prosecution or threatened prosecution.
- 3.7 "Employee" means any person who is, was, or becomes engaged as an employee under a contract of employment with the Insured.
- 3.8 "Insured" means:
  - 3.8.1 The organisation named as the Insured in the Schedule, including any past, present or future Officer, employee or work experience student whilst acting in the performance of their duties or employment;
  - 3.8.2 Any subsidiary company of the Insured named in the Schedule which is:
    - 3.8.2.1 Incorporated within Australia including subsidiaries;
    - 3.8.2.2 Controlled by the Insured and over which the Insured assumes active management;
  - 3.8.3 Outside Directorship held by an Officer;  
Provided that:
    - 3.8.3.1 Coverage 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
    - 3.8.3.2 Coverage 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.

- 3.9 "Joint Venture" means any enterprise undertaken jointly by the Insured and any other party.
- 3.10 "The Insurer" means Certain Underwriters at Lloyds of London.
- 3.11 "Loss" means any Penalty and Defence Costs.
- 3.12 "Officer" means any past, present or future director, executive officer (as defined by the Corporations Act) or company secretary of the Insured.
- 3.13 "Outside Directorship" means an executive position held by an Officer of the Insured in connection with the Business at the specific request of the Insured in any corporation, joint venture, partnership, trust or other enterprise which is not included in the Definition of the Insured. In this Definition, a reference to Insured shall mean the Insured as defined in Clauses 3.8.1 and 3.8.2.
- 3.14 "Penalty" means any fine, infringement fee or monetary sum imposed by any Regulatory Authority on and payable by the Insured pursuant to any Act for a Wrongful Breach by the Insured but excluding:
- 3.14.1 Any amounts payable as compensation;
  - 3.14.2 Any compliance, remedial, reparation or restitution costs;
  - 3.14.3 Any damages, including any exemplary or punitive damages;
  - 3.14.4 Any consequential economic loss;
  - 3.14.5 Any legal costs and associated expenses.

Notwithstanding Clause 3.14.5, the Insurer will pay any reasonable legal costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this extension. 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 3.14.1 to 3.14.4, the Insurer 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 3.14.1 to 3.14.4.

- 3.15 "Period of Insurance" means the period of insurance specified in the Schedule.
- 3.16 "Reasonable Grounds for Defence" means:
- 3.16.1 The Insured has reasonable prospects of success in avoiding the quantum of any Penalty alleged in the Claim; or
  - 3.16.2 The Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim by entering a defence or pleading not guilty, 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 Reasonable Grounds for Defence will not exist if the Claim is capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.

In the event that an agreement on reasonable prospects for success cannot be reached between the Insurer and the Insured, a Senior Counsel (to be mutually agreed upon by the Insurer and the Insured) shall, as an expert and not an arbitrator, make such determination. Until the Senior Counsel has made a determination the Insurer may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this extension as it considers appropriate.

In the event that agreement on the appointment of a Senior Counsel cannot be reached, such Senior Counsel shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

- 3.17 "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 authorized to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.
- 3.18 "Retroactive Date" means the date specified in the Schedule.
- 3.19 "Territorial Limits" means anywhere in Australia.

- 3.20 “Wrongful Breach” means any act, error or omission which occurs in connection with the Business, within the Territorial Limits and after the Retroactive Date, whereby:
- 3.20.1 The Insured contravenes an Act or is involved in the contravention of an Act;
  - 3.20.2 The Insured commits an offence pursuant to an Act; or
  - 3.20.3 Such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.

#### 4. Limit of Indemnity and Deductible

The Insurer’s liability under this extension in respect of all Losses arising out of all Claims covered by this extension shall not exceed the Limit of Indemnity specified in the Schedule any one Claim and in the aggregate during the Period of Insurance.

All Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

The Deductible is the first amount for each and every Claim which is to be borne by the Insured.

#### 5. Defence Costs

The Insurer agrees to pay all Defence Costs incurred with the Insurer’s prior written consent in connection with any Claim in respect of a Wrongful Breach where the Insured has Reasonable Grounds for Defence provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this extension.

Provided that the Insurer shall not be obliged to provide such consent unless the Insurer is satisfied that the Insured has Reasonable Grounds for Defence.

Provided that the Insurer shall not be liable for legal costs and/or expenses where indemnity is not provided by this extension.

#### 6. Exclusions

- 6.1 This extension does not provide indemnity in respect of any Claim:
- 6.1.1 Based upon, attributable to or in consequence of:
    - 6.1.1.1 Any wilful, intentional or deliberate Wrongful Breach;
    - 6.1.1.2 A wilful, intentional or deliberate failure to comply with any lawful notice, enforcement order, direction, enforcement proceeding or any other proceeding under any Act;
    - 6.1.1.3 Any Wrongful Breach caused by gross negligence or recklessness by the Insured;
    - 6.1.1.4 A dishonest, fraudulent or malicious act or omission of the Insured, provided that cover is provided to any Insured who is innocent of and has no prior knowledge of such conduct. Such Insured shall as soon as practicable after becoming aware of such conduct, advise the Insurer in writing of all relevant facts.
    - 6.1.1.5 The Insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;
    - 6.1.1.6 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 proper performance of their duties as Officers and Employees;
    - 6.1.1.7 A Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;
    - 6.1.1.8 Any Wrongful Breach pursuant to Sections 182, 183, 601FE or 601JD of the Corporations Act; and any amendment, consolidation or re-enactment of any of those Sections;
    - 6.1.1.9 A Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
    - 6.1.1.10 A Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
    - 6.1.1.11 Asbestos, asbestos products and/or products containing asbestos;
  - 6.1.2 Made, threatened or in any way intimated against the Insured prior to the Period of Insurance;
  - 6.1.3 Arising from any matter disclosed to any insurer, including the Insurer, prior to the Period of Insurance as either a Claim or fact which may give rise to a Claim against the Insured;
  - 6.1.4 Arising from any facts of which the Insured was aware prior to the commencement of the Period of Insurance and which the Insured knew, or ought reasonably to have known, to be facts which may give rise to a Claim;
  - 6.1.5 Arising from any Wrongful Breach where the Insured knew, or ought reasonably to have known, prior to the Period of Insurance that there had been such a Wrongful Breach;
  - 6.1.6 For any Loss or part of any Loss which is attributable to the period after the Insured knew, or ought reasonably to have known, that its conduct was a Wrongful Breach;

- 6.1.7 Deliberately or intentionally solicited by the Insured. This exclusion does not apply to Officers and Employees where such Claims arise in the discharge of their duties as Officers and Employees;
- 6.1.8 Any Defence Costs incurred or paid before the consent of the Insurer has been given in accordance with the provisions of this extension;
- 6.1.9 For any Loss or part of any Loss arising from or which is attributable to the Insured's participation in any Joint Venture. Provided that this exclusion shall not apply to Outside Directorship as defined in Definition 3.12;
- 6.1.10 For any Penalty:
  - 6.1.10.1 Imposed pursuant to any law of any country, state or territory outside the Territorial Limits;
  - 6.1.10.2 Imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with such Penalty.
- 6.2 The Insurer shall not be liable to pay the amount of the Deductible in respect of each Loss.

## 7. Continuous Cover

If the Insured was aware of any facts that might give rise to a Claim prior to the commencement date of the Period of Insurance and had not notified the Insurer of such facts prior to the commencement date of the Period of Insurance, then Exclusion 6.1.4 will not apply to the notification of a Claim resulting from such facts, provided that:

- 7.1 The failure to notify such facts was not a fraudulent misrepresentation or fraudulent nondisclosure by the Insured; and
- 7.2 The Insured has been insured continuously under a Statutory Liability Policy or this extension with the Insurer and was so insured by the Insurer at the time the Insured first became aware of such facts; but
- 7.3 Indemnity will be considered under the terms and conditions of the Policy or this extension (including limits of liability and deductibles) in force when the Insured first became aware of such facts; and
- 7.4 The Insurer will reduce its liability to the extent of any prejudice suffered as a result of the Insured's failure to notify such facts giving rise to a Claim prior to the commencement date of the Period of Insurance.

## 8. Conditions

- 8.1 In the event of a Claim, the Insured must give immediate notice in writing to the Insurer of such Claim. At the same time the Insured must enable the Insurer to reasonably investigate the Claim for the purpose of determining liability under this extension including but not limited to the following:
  - 8.1.1 Provide comprehensive details of any notice, circumstance or Claim together with any documentation, information and relevant details;
  - 8.1.2 Use best endeavours to preserve all property, products, appliances and plant which may assist in the investigation or conduct of the Claim;
  - 8.1.3 Co-operate with the Insurer and its appointed representatives in all aspects of the Claim.
- 8.2 The Insured must take all reasonable care and do and concur to do all things reasonably practicable to avoid or prevent a Wrongful Breach, or diminish a Loss.
- 8.3 The Insured shall not make any admission, offer, promise or payment in respect of any Claim, or agree to pay any Penalty or consent to any order directing the Insured to pay any Penalty without the prior written consent of the Insurer.

The Insurer shall not be liable for any such Penalty incurred without its consent, and such consent will not be unreasonably withheld by the Insurer.

- 8.4 The Insurer shall be entitled, but not obligated, to take over the conduct in the name of the Insured the investigation, defence (including appeal and resisting appeal) and settlement of any Claim.

Any amount incurred by the Insurer shall be deemed part of Defence Costs.

- 8.5 If the Insurer grants indemnity under this extension in respect of any Claim, then the Insurer shall be subrogated to all the Insured's rights of recovery in respect of such Claim whether or not payment has in fact been made and whether or not the Insured has been compensated in full for their loss. Each Insured must, at its own cost, provide all reasonable assistance to the Insurer (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The Insured must not do anything that may prejudice the Insurer's position or its potential or actual rights of recovery against any party. Any amounts recovered by the Insurer shall be allocated in the following order – recovery costs, uninsured loss, Limit of Indemnity and Deductible.

- 8.6 Where the Insurer recommends to the Insured to pay any Penalty, consent to any order directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then the Insurer is entitled to reduce its liability to the Insured to the extent of any prejudice suffered by the Insurer by reason of the Insured's failure to so agree.

- 8.7 If the Insured continues to defend a Claim where the Insurer has refused to provide consent in accordance with Clause 5 and the Insured is successful in respect of that Claim, then consent as set out in Clause 5 shall be deemed to have been given at the time it was first requested by the Insured. For the purpose of this condition, "successful" means that the outcome of the Claim established that at the time at which the Insurer refused consent, the Insured has Reasonable Grounds for Defence.
- 8.8 This extension shall be interpreted in accordance with the laws of Australia or any State or Territory as applicable, and all claims for indemnity under this extension shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the extension shall be submitted to the exclusive jurisdiction of the Australian Courts.
- 8.9 The Insured 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.
- 8.10 The Insured may cancel the Policy and this extension at any time by giving notice in writing to the Insurer.

The Insurer may cancel the Policy and this extension at any time where:

- 8.10.1 It is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments;
- 8.10.2 The Insured has failed to notify the Insurer of any specific act or omission where such notification is required under the terms or conditions of the Policy or this extension; or
- 8.10.3 The Insured has acted in contravention of or omitted to act in compliance with any term of the Policy or this extension which empowers the Insurer to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by the Insurer shall take effect either at the time when another contract of insurance between the Insured and the Insurer or some other insurer (being a contract that is intended by the Insured to replace the Policy and this extension) is entered into or at 4pm on the third business day after the date on which notice was given to the Insured by the Insurer (whichever is the earlier).

- 8.11 Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies for the purposes of receiving any notice of cancellation pursuant to Clause 8.10, or any other notice, statement, document or information relating to the Policy and this extension. Where the Insured has an insurance broker, nothing in this paragraph shall restrict the Insurer's right to notify the broker as agent of the Insured.
- 8.12 Except to the extent that the Insured is compelled by law to do so, the Insured shall not release to any third party or otherwise publish details of:
- 8.12.1 The nature of the liabilities insured by this extension;
- 8.12.2 The extent of cover provided by this extension; or
- 8.12.3 The amount of the premium specified in the Schedule, without the written consent of the Insurer.
- 8.13 Where this extension provides any indemnity to the Insured which is prohibited by law, this extension shall be varied by operation of this Clause 8.13 so that this extension does not respond to the extent that the indemnity is prohibited by law.
- 8.14 8.14.1 Failure by any Insured to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any Insured to the Insurer shall not prejudice the right of any other Insured to cover under this extension.
- 8.14.2 Failure by any Insured to comply with any terms and conditions of this extension shall not prejudice the right of any other Insured to cover under this extension.

Cover is only provided to an Insured who is innocent of and has no prior knowledge of such conduct. Such Insured shall as soon as practicable after becoming aware of such conduct, advise the Insurer in writing of all relevant facts.

- 8.15 To the extent of any inconsistency, the provisions of this extension prevail over those of the Policy.

Nothing contained in this extension shall in any way serve to increase the Limit of Indemnity stated in the Schedule.