

# MICL

Marine Industry Combined Liability

## Policy



MICL-Policy-Aster-LLOYDS-V190625



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LLOYD'S

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## 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 Limited in the first instance.

### Aster Underwriting Pty Ltd

Level 4, Cnr Clifford & Appel Streets  
PO Box 337, Surfers Paradise Qld 4217  
Phone: 07 5579 1660 Fax: 07 5579 1699  
Email: [uw@asteruw.com](mailto: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: [ldraustralia@lloyds.com](mailto:ldraustralia@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 4, Cnr Clifford & Appel Streets  
PO Box 337, Surfers Paradise Qld 4217  
Phone: 07 5579 1660 Fax: 07 5579 1699  
Email: [uw@asteruw.com](mailto: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

This Policy only provides cover in respect of Personal Injury and/or Property Damage and Advertising Liability that occurs during the Period of Insurance. In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to:

### Aster Underwriting Pty Ltd

Level 4, Cnr Clifford & Appel Streets  
PO Box 337, Surfers Paradise Qld 4217  
Phone: 07 5579 1660 Fax: 07 5579 1699  
Email: [uw@asteruw.com](mailto: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.

## 1. DEFINITIONS - words with special meaning:

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

1.1 "Advertising Injury" means:

#### Injury arising out of:

- 1.1.1 libel, slander or defamation, or
- 1.1.2 any infringement of copyright or passing of title or slogan; or
- 1.1.3 unfair competition, piracy, idea misappropriation contrary to an implied contract, or
- 1.1.4 invasion of privacy;  
committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

1.2 "Aircraft" means:

any craft or object designed to travel through air or space, other than model aircraft.

1.3 "Business" means:

the business as described in the Schedule (and, where applicable, as further described in any more specific underwriting information provided to Us at the time when this insurance was negotiated) and shall include:

- 1.3.1 the ownership of premises and/or the tenancy thereof by You.
- 1.3.2 the provision of any sponsorships, galas, canteen, first aid, medical, ambulance or fire fighting services by You or on Your behalf.
- 1.3.3 private work undertaken by Your employees for any of Your directors, partners, proprietors, officers or executives.
- 1.3.4 the provision of any canteen, social and/or sporting clubs or welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your employees.

1.4 "Compensation" means:

monies paid or agreed to be paid by judgment, award or settlement for Personal Injury and/or Property Damage and/or Advertising Injury.

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

1.5 "Employment Practices" means:

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

1.6 "Excess" means:

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

The Excess applicable to this insurance appears in the Schedule.

1.7 "General Liability" means:

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

1.8 "Geographical Limits" means:

- 1.8.1 anywhere in the Commonwealth of Australia and its external territories;
- 1.8.2 elsewhere in the World, but only with respect to:
  - 1.8.2.1 overseas business visits by any of Your directors, partners, officers, executives or employees but not where they perform manual work in North America.
  - 1.8.2.2 Products supplied from the Commonwealth of Australia, but the indemnity granted in relation to such products shall not apply to claims in respect of Personal Injury and/or Property Damage happening in North America where such products have been exported to North America with Your knowledge.

1.9 "Hovercraft" means:

any vessel, craft or device made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

- 1.10** “Incidental Contracts” means:
- 1.10.1 any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault.
  - 1.10.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities.
  - 1.10.3 any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings.
  - 1.10.4 those contracts designated in the Schedule.
- 1.11** “Internet Operations” means:
- 1.11.1 transfer of computer data or programmes by use of electronic mail systems by You or Your employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within Your organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or Trojan horse,
  - 1.11.2 access through Your network to the world wide web or a public internet site by You or Your employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within Your organisation;
  - 1.11.3 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
  - 1.11.4 the operation and maintenance of Your web site.
- 1.12** “Medical Persons” includes but is not limited to:  
medical practitioners, medical nurses, dentists and first aid attendants.
- 1.13** “Named Insured” means:
- 1.13.1 the person(s), corporations and/or other organisations specified in the Schedule,
  - 1.13.2 all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Named Insured;
  - 1.13.3 all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Named Insured after the commencement of the Period of Insurance.
  - 1.13.4 every subsidiary and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary, related or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the divestment.
- 1.14** “North America” means:
- 1.14.1 the United States of America and the Dominion of Canada,
  - 1.14.2 any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
  - 1.14.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.
- 1.15** “Occurrence” means:  
an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in clause 1.17.5) from Your standpoint.  
With respect to Personal Injury or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.  
All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.
- 1.16** “Period of Insurance” means:  
the Period of Insurance specified in the Schedule and any extension thereof which may be agreed in the writing between You and Us.

**1.17** “Personal Injury” means:

- 1.17.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;
- 1.17.2 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- 1.17.3 wrongful entry or wrongful eviction or other invasion of privacy;
- 1.17.4 libel, slander or defamation of character, unless arising out of Advertising Injury;
- 1.17.5 assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

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

**1.18** “Pollutants” means:

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

**1.19** “Products” means:

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

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

- 1.19.1 food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit,
- 1.19.2 any vending machine or any other property rented to or located for use of others but not sold by You; and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

**1.20** “Products Liability” means:

Your legal liability for Personal Injury and/ or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such products; but only where such Personal Injury and/ or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such products has been relinquished to others.

**1.21** “Property Damage” means:

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

**1.22** “The Schedule” means:

the most current schedule issued by Us in connection with this Policy.

**1.23** “Tool of Trade” means:

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

**1.24** “Vehicle” means:

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

**1.25** “Watercraft” means:

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



- 1.26** “We, Us, Our, Ourselves” means:  
Certain Underwriters at Lloyd’s of London,
- 1.27** “Worksite” means:  
any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You shall use in connection with such work.
- 1.28** “You, Your, Insured”  
Each of the following is an Insured to the extent specified below :-
- 1.28.1** the Named Insured,
- 1.28.2** every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee, volunteer, seconded and/or work experience person of the Named Insured (including the spouse of any such person while accompanying such person on any commercial trip or function in connection with the Business) or volunteer while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities.
- 1.28.3** any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such employee superannuation fund or pension scheme which is not administered by corporate fund managers.
- 1.28.4** every principal in respect of the principal’s liability arising out of:
- 1.28.4.1** the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy.
- 1.28.4.2** any Products sold or supplied by the Named Insured, but only in respect of the Named Insured’s own acts or omissions in connection with such products.
- 1.28.5** every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of law (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by such law and in any event only for such coverage and Limits of Liability as are provided by this Policy.
- 1.28.6** every officer, member, employee or voluntary helper of the Named Insured’s canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, welfare and/or child care facilities, while acting in their respective capacities as such.
- 1.28.7** any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured’s employees for such person and any employee whilst actually undertaking such work.
- 1.28.8** the estates, legal representatives, heirs or assigns of:
- 1.28.8.1** any deceased or insolvent persons, or
- 1.28.8.2** persons who are unable to manage their own affairs by reason of mental disorder or incapacity, who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clauses 1.28.8.1 and 1.28.8.2 above.
- 1.28.9** every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy.

## 2. INSURING CLAUSES

### 2.1 What We Cover

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

- 2.1.1** Personal Injury, and/or
- 2.1.2** Property Damage; and/or

2.1.3 Advertising Injury;  
happening during the Period of Insurance within the Geographical Limits and caused by or arising out of an Occurrence in connection with the Business as described in the Schedule.

## 2.2 Defence Costs and Supplementary Payments

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

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

2.2.2 pay all charges, expenses and legal costs incurred by Us and/or by You with Our written consent:

2.2.2.1 in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request, or

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

2.2.3 pay all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit and all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon.

2.2.4 pay expenses incurred by You for:

2.2.4.1 rendering first aid and/or surgical or medical relief to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law).

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

2.2.4.3 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.

Provided that the Insurer's limit of indemnity under this Clause 2.2.4 shall not exceed \$100,000 in respect of any one claim or series of claims arising out of one Occurrence.

2.2.5 pay all legal costs incurred by You with Our consent for representation of You at:

2.2.5.1 any Coronial Inquest or Inquiry

2.2.5.2 any proceedings in any court or tribunal in connection with liability insured against by this Policy.

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

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

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

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

## 2.3 Limits of Liability and Excess Subject to clause 2.2 above and clause 2.4 and 2.6 below:

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

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

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

#### 2.4 Additional Benefit

##### - Claims Preparation Costs

In addition to the amount of cover provided by this Policy, We will pay up to \$20,000 for reasonable professional fees and such other expenses incurred by You for the preparation of claim under this Policy.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under clause 2.2 of this Policy.

#### 2.5 Additional Benefit - Towing

The cover provided by this Policy is extended to include liability assumed by You under contracts of customary towage for the purpose of entering or leaving port or manoeuvring within the port.

#### 2.6 Additional Benefit - Removal of Wreck

Unless otherwise insured elsewhere & such insurance limit of indemnity has been exhausted, the cover provided by this Policy is extended to include the expenses of the removal of the wreck of the Vessel from any place owned, leased or occupied by You, including any location and waterways for the purpose of delivery, repairs, testing and commissioning. Our liability under this Additional Benefit will not exceed the Limit of Liability shown on the schedule in respect of any one claim and in the aggregate any one period of insurance.

#### 2.7 Additional Benefit – Hotwork Extension

Subject to the occupation shown in the Certificate of Insurance the cover provided by this Policy is extended to include the Insured's liability in respect of or arising in connection with hotwork on any product, vessel or craft including those previously engaged in the carriage of cargoes including ammunition, explosives, bulk oil, flammable liquids or gas.

It is a condition that the rules, regulations and requirements of the port or government authorities at the place where the work is being carried out have been complied with including obtaining a gas free certificate and/or any other certificates or authorisation that may be required.

Hotwork means any work conducted by You which involves the use of oxy-acetylene torches, welding or oil tank cleaning equipment.

#### 2.8 Additional Benefit - Detention

The cover provided by this Policy is extended to include Your liability for detention of any vessel or craft as a consequence of loss or damage to such vessel or craft resulting in a claim which is the subject of this Policy but this extension will not cover any liability for detention accepted and incurred by You under contract express or implied except to the extent that You would be liable for detention independently of any provision in that contract.

### 3. WHAT WE EXCLUDE

We do not cover any liability:

#### 3.1 Property owned by You

for Property Damage to property owned by You, other than vessels or craft owned and constructed by the Insured and undergoing sea trials, however this cover excludes any liability in respect of:  
Damage to such vessel or craft.

#### 3.2 Property in Your care, custody or control

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

##### 3.2.1 the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors.

- 3.2.2 premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of the Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises.
- 3.2.3 premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business, or any other property temporarily in Your possession for the purpose of being worked upon; but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work.
- 3.2.4 any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your business.
- 3.2.5 any property (except property that You own) not mentioned in clauses 3.2.1 to 3.2.4 above whilst in Your physical or legal care, custody or control where You have accepted or assumed legal liability for such property. Provided that Our liability under this clause 3.2.5 shall not exceed the limit of liability set out for Public and Products Liability in respect of any one claim or series of claims arising out of any one Occurrence.
- 3.3 Vehicles
  - for Personal Injury or Property Damage arising out of the ownership, possession or use by You of any Vehicle:
    - 3.3.1 which is registered or which is required under any legislation to be registered, or
    - 3.3.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected); but Exclusions 3.3.1 and 3.3.2 shall not apply to:
      - 3.3.3 Personal Injury where:
        - 3.3.3.1 that compulsory liability insurance or statutory indemnity does not provide indemnity, and
        - 3.3.3.2 the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.
    - 3.3.4 any Vehicle (including any tool or plant forming part of or attached to or used in connection with such vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Worksite.
    - 3.3.5 the delivery or collection of goods to or from any Vehicle.
    - 3.3.6 the loading or unloading of any Vehicle.
    - 3.3.7 any Vehicle temporarily in Your custody or control for the purpose of parking.
- 3.4 Aircraft
  - for Personal Injury and/or Property Damage arising from:
    - 3.4.1 the ownership, maintenance, operation or use by You of any Aircraft.
- 3.5 Damage to Products
  - for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to the specific part and only that part of such product to which the damage is directly attributable.
- 3.6 Faulty Workmanship
  - for the cost of performing, completing, correcting or improving any work undertaken by You.
- 3.7 Loss of Use
  - for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:
    - 3.7.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
    - 3.7.2 failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 3.7.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such products or work have been put to use by any person or organisation other than You.

- 3.8** Product Guarantee  
for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.
- 3.9** Product Recall  
for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.
- 3.10** Advertising Injury  
for Advertising Injury:
- 3.10.1** resulting from statements made at Your direction with knowledge that such statements are false.
  - 3.10.2** resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
  - 3.10.3** resulting from any incorrect description of Products or services.
  - 3.10.4** resulting from any mistake in advertised price of Products or services.
  - 3.10.5** failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability.
  - 3.10.6** incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.
- 3.11** Asbestos  
for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by or arising from exposure to asbestos or materials containing asbestos.
- 3.12** Breach of Duty  
arising out of any breach of duty owed in a professional capacity or professional advice; or professional service; or advice concerning design, formulation or specification; or advice comprising or in any way relating to inspection or assessment of real, tangible or other property whether by pre-purchase inspection or otherwise; or any error or omission connected therewith by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion shall not apply to claims:
- 3.12.1** for Personal Injury and/or Property Damage arising from such breach of duty.
  - 3.12.2** arising out of the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.
  - 3.12.3** arising out of advice which is not given by You for a fee.
  - 3.12.4** arising out of advice given in regard to Products.
- 3.13** Contractual Liability  
which has been assumed by You under any contract or agreement that requires You to:
- 3.12.5** effect insurance over property, either real or personal.
  - 3.12.6** assume liability for, Personal Injury or Property Damage regardless of fault; provided that this exclusion shall not apply with regard to:
    - 3.13.1.1** liabilities which would have been implied by law in the absence of such contract or agreement; or
    - 3.13.1.2** terms as to merchantability, quality, fitness or care implied by law or statute; or
    - 3.13.1.3** liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.
- 3.14** Employers Liability
- 3.14.1** for Bodily Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers' Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.  
Provided that this Policy will respond to the extent that Your liability would not be covered under any such policy, fund, scheme or self insurance arrangement had You complied with its obligations pursuant to such law.
  - 3.14.2** imposed by:
    - 3.14.2.1** the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been

imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement.

3.14.2.2 any law relating to Employment Practices.

Notwithstanding anything herein contained to the contrary, it is hereby declared and agreed that Exclusions 3.14.1 and 3.14.2 are extended to include the following proviso:

“Provided always that Exclusions 3.14.1 and 3.14.2 shall not apply with respect to:

3.14.3 liability of others assumed by the Named Insured under a written contract or agreement.” All other terms and conditions of this Policy remain unaltered.

For the purpose of Exclusions 3.14.1 and 3.14.2:

- (a) the term ‘Worker’ means any person deemed to be employed by You pursuant to any Workers’ Compensation Law.
- (b) the term ‘Bodily Injury’ means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

### 3.15 Fines, Penalties, Punitive, Exemplary or Aggravated Damages

for any fines, penalties, punitive, exemplary or aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

### 3.16 Information Technology, Computer Data, Programme and Storage Media

3.16.1 for Personal Injury or Property Damage arising directly or indirectly out of, or in any way involving Your Internet Operations, or

3.16.2 for 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:

3.16.2.1 the use of any computer hardware or software

3.16.2.2 the provision of computer or telecommunication services by You or on Your behalf

3.16.2.3 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:

3.16.3 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

3.16.4 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

### 3.17 Defamation

for defamation:

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

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

3.17.3 related to advertising, broadcasting, publishing or telecasting activities conducted by You or on Your behalf.

### 3.18 Liquidated Damages

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

### 3.19 Pollutants

3.19.1 for Personal Injury and/or Property Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any water course or body of water.

3.19.2 for the cost of removing, nullifying, or cleaning up of Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than North America, Exclusions 3.19.1 and 3.19.2 shall not apply where such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

### 3.20 War, Terrorism, Radioactivity

for 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:

3.20.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under order of any government or public or local authority, or

3.20.2 Any Act(s) of Terrorism.

For the purpose of this exclusion, an Act of Terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, 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) de jure or de facto, and which:

3.20.2.1 involves violence against one or more persons, or

3.20.2.2 involves danger to property; or

3.20.2.3 endangers life other than that of the person committing the action; or

3.20.2.4 creates a risk to health or safety of the public or a section of the public; or

3.20.2.5 is designed to interfere with or to disrupt an electronic system.

3.20.3 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 the above.

Provided that Exclusion 3.20.3 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

### 3.21 Institute Cyber Attack

Subject only to clause 3.21.1 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

3.21.1 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 1.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

## 4. CLAIMS CONDITIONS

### 4.1 Notification of Occurrence, Claim or Suit

You shall give:

4.1.1 written notice to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this Policy.

4.1.2 all such additional information that We may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or Occurrence shall be forwarded to Us as soon as practicable after they are received by You.

4.1.3 Written notice (including facsimile transmission) must be given to Us via Aster Underwriting Pty Ltd.

### 4.2 Your Duties in the Event of an Occurrence, Claim Or Suit

- 4.2.1 You shall not, without Our written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim.
- 4.2.2 You shall use the best endeavours to preserve all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We have had an opportunity of inspection.
- 4.2.3 You shall, when so requested, provide Us with details of any other insurances current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury and covering any of the liability insured by this Policy.
- 4.3 Our Rights Regarding Claims**
- 4.3.1 Following the happening of any Occurrence in respect of which a claim is, or may be, made under this Policy, We shall have full discretion in the conduct of any proceedings in connection with any claim. You shall give such information and assistance that We may reasonably require in the prosecution, defence or settlement of any claim.
- 4.3.2 We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
- 4.3.2.1 the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability in respect thereof); or
- 4.3.2.2 any lesser sum for which the claim(s) can be settled.
- 4.3.3 Upon making such payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for Defence Costs and Supplementary Payments:
- 4.3.3.1 recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
- 4.3.3.2 incurred by Us, or by You with Our written consent, prior to the date of such payment.
- 4.4 Goods and Services Tax**
- You must inform Us of the extent to which You are entitled to an input tax credit for the premium each time that You make a claim under this Policy. No payment will be made to You for any GST liability that arises on the settlement of a claim under this Policy when You have not informed Us of Your entitlement or correct entitlement to an input tax credit.
- Notwithstanding anything contained in this Policy (including the Schedule and any endorsements attached hereto) to the contrary, Our liability will be calculated after taking into account:
- 4.4.1 any input tax credit to which You, or any claimant against You, is entitled for any acquisition relevant to a claim paid under this Policy; and
- 4.4.2 any input tax credit to which You, or any claimant against You, would have been entitled were You or the claimant to have made a relevant acquisition; and
- 4.4.3 the GST exclusive amount of any supply made by You which is relevant to Your claim.
- If the applicable Limit of Liability is not sufficient to cover Your claim, We will only pay GST (less any relevant input tax credit) that relates to Our proportion of Your claim.
- The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the A New Tax System (Goods and Services Tax) Act 1999.
- Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, Claims Conditions, General Conditions, Exclusions or Definitions of this Policy other than as stated above.

## 5. GENERAL CONDITIONS

- 5.1 Adjustment of Premium**
- If the first premium of any renewal premium for this Policy or any part thereof shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow Us to inspect such record.
- You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may require as soon as reasonably practicable. The premium for such Period shall thereupon be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.
- 5.2 Alteration of Risk**



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

### 5.3 Bankruptcy or Insolvency

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

In case of execution against You of any final judgment covered by this Policy being returned 'unsatisfied' by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against Us in the same manner, and to the same extent as You but not in excess of the Limit of Liability

### 5.4 Breach of Condition or Warranty

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

- 5.4.1 breach of a condition or warranty without Your knowledge or consent, or
- 5.4.2 error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of "You, Your, Insured"; or
- 5.4.3 error in name, description or situation of property or
- 5.4.4 failure to report any property and/or entity and/or insurable exposure in which You have an interest.

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

### 5.5 Cancellation of this Policy

By You

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

By Us

- 5.5.2 Subject to General Conditions 5.4 and 5.12, We may cancel this Policy in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984 (as amended).

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

- 5.5.2.1 the time when another policy of insurance between You and Us or some other insurer, being a policy that is intended by You to replace this Policy, is entered into; or
- 5.5.2.2 at 4.00 p.m. on the thirtieth (30th) business day after the day on which notification was given to You.

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

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

### 5.6 Cross Liabilities

This insurance extends to indemnify:

- 5.6.1 each of the parties comprising the Named Insured, and
- 5.6.2 each of the Insureds hereunder,

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

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in clauses 5.6.1 and 5.6.2 in respect of claims made by any other of such parties.

Provided always that:

- 5.6.3 each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, Exclusions and Definitions of this Policy in the same manner and to a like extent as though separate policies had been issued, and
- 5.6.4 in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

## 5.7 Inspection and Audit

We shall be permitted, but not obligated, to inspect Your premises and operations at any reasonable time. Neither Our right to make inspections, nor Our failure to make inspections, nor the making of any inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

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

## 5.8 Jurisdiction

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

## 5.9 Premium Funders

If the premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, then subject to Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at the request of the premium funding company, after substantiation of the debt and default in payment by You has been made and proven to Us, by giving You not less than three (3) business days written notice to that effect, following which a refund will be made to the premium funding company of the proportionate part of the premium applicable to the unexpired Period of Insurance.

## 5.10 Reasonable Precautions

You must:

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

5.10.2 take reasonable precautions to prevent:

5.10.2.1 Personal Injury, Property Damage and Advertising Injury.

5.10.2.2 the manufacture, sale or supply of defective Products, and comply, and ensure that Your employees and agents comply, with all statutory obligations, by-laws or regulations imposed by any public authority in respect of Your Products for the safety of persons or property.

5.10.2.3 at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or have reason to suspect.

## 5.11 Release

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

Notwithstanding General Condition 5.14 of this Policy, We agree to waive all Our rights of subrogation against any such Authority or persons or parties in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

## 5.12 Non-imputation

Where this insurance is arranged in the joint names of more than one Insured, as described in clause 1.13.1, it is hereby declared and agreed that:

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

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

5.12.3 any knowledge possessed by any Insured shall not be imputed to the other Insured(s).

## 5.13 Foreign Currency

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

If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed

upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date when the award was made or settlement was agreed upon; subject always to the applicable Limit of Liability.

#### 5.14 Subrogation and Allocation of the Proceeds of Recoveries

Subject to General Condition 5.15 'Subrogation Waiver', any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying You in respect of legal liability under this insurance.

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

5.14.1 due to the application of an Excess; and/or

5.14.2 where the amounts of any judgments or settlements exceed the applicable Limit of Liability;

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

#### 5.15 Subrogation Waiver

Notwithstanding General Condition 5.14 We hereby agree to waive all Our rights of subrogation under this Policy against:

5.15.1 each of the parties described under clause 1.28.

5.15.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.

#### 5.16 SEVERAL LIABILITY

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

### OPTIONAL ADDITIONAL BENEFITS – Only included if shown on the policy schedule

NAMED SUB-CONTRACTORS ENDORSEMENT

PRINCIPALS ENDORSEMENT

FAULTY WORKMANSHIP ENDORSEMENT

QUEENSLAND ELECTRICAL CONTRACTORS ENDORSEMENT

ELECTRICAL CONTRACTOR OCCUPATIONAL LICENSING FOR TASMANIA

VICTORIAN PLUMBERS

CUSTOMERS' VEHICLES

MOTOR TRADE - inspection reports and certificates where you charge a fee (personal injury or property damage)

MOTOR TRADE – inspection reports and certificates where you charge a fee (financial losses only)

FINANCIAL LOSS (Products & Services)

FINANCIAL LOSS (Products Only)

PRODUCTS EXPORTED TO NORTH AMERICA

## 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 Lloyd's 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
- 3.15 "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. Other than as amended above, the terms of this Policy shall continue to apply.