

Policy Wording

Plant & Machinery



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ABOUT THE INSURER

This insurance is underwritten by various Underwriters at Lloyd's.

Lloyd's can be contacted as follows:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
SYDNEY NSW 2000
AUSTRALIA

ABOUT ATC

This insurance is issued by ATC acting under an arrangement as an agent of various Underwriters at Lloyd's. We act on behalf of and in the interests of various Underwriters at Lloyd's.

Our contact details are:

Address: Level 9, 499 St Kilda Road, Melbourne, 3004
Telephone: (03) 9258 1777
Facsimile: (03) 9867 5540
Website: www.atcis.com.au
Email: info@atcis.com.au

YOUR DUTY OF DISCLOSURE

Before you take out an insurance policy with us, the Insurance Contracts Act 1984 requires you to tell us every matter that is known to you that:

- you know to be a matter relevant to our decision whether to accept the risk and, if so, on what terms, or
- a reasonable person in the circumstances could be expected to know to be a matter relevant to our decision.

Therefore, before you enter (or renew, extend, vary or reinstate) an insurance policy with us you must:

- give us complete and honest answers
- tell us everything You know, and
- tell us everything that a reasonable person in the circumstances could be expected to know and tell us.

Who needs to disclose

You are answering questions on behalf of both yourself and anyone else you want to be covered by this insurance. The duty of disclosure applies to you and everyone else insured by the policy.

How long does the duty of disclosure last

The duty to disclose continues right up to the commencement date of the insurance or the date it is renewed.

What we do not need to be told

You do not need to tell us about any matter that:

- diminishes our risk
- is of common knowledge
- we know or, in the ordinary course of business, ought to know, or
- we say we do not need to know.

Failure to disclose

We can reduce the amount we pay under this insurance for a claim and/or even cancel the insurance cover if you or anyone else insured under the policy fail to comply with the duty of disclosure.

If a non-disclosure is fraudulent, we may treat your policy as if it never existed and (pay you nothing.)

DISPUTE RESOLUTION

We view seriously any complaint made about our products or services and will deal with it promptly and fairly. If you have a complaint please first try to resolve it by speaking to the relevant member of our staff.

If the complaint relates to the insurance cover, we have an Internal Disputes resolution process and suggest you contact our Internal Dispute Resolution Officer on (03) 9258 1777 or by writing to us at the address given above. We will acknowledge receipt of your complaint within 3 working days and, provided we have sufficient information, complete the review within 15 working days. Where we are unable to do so, we will agree to a new timeframe for responding to you. In any case, we will provide you with an update every 10 working days.

If the matter is still not resolved, you may then contact:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21
Angel Place
123 Pitt Street
SYDNEY NSW 2000

Lloyd's Australia offers a no-cost-to-you service and is totally independent and impartial. They will advise you on how to proceed with them in this matter. If they are unable to assist you, they will promptly advise you.

If you are still not satisfied with the final decision relating to a claim under Section 1 (Material Damage) or Section 3 (Machinery Breakdown), and you are a natural person or a small business, you may wish to contact the Financial Ombudsman Service, which is a free independent external disputes resolution service provided to customers to review and resolve complaints where we have been unable to satisfy your concerns.

For further details you can visit their website www.fos.org.au or contact them:

Address: GPO Box 3, Melbourne, VIC, 3001

Telephone: 1300 78 08 08

Email: info@fos.org.au

For a complaint relating to a claim under Section 2 (Liability), Lloyd's Australia will refer your dispute to Policyholder & Market Assistance Department at Lloyd's. Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

This Insurance does not comply with the Insurance Council of Australia's General Insurance Code of Practice.

PRIVACY

ATC and Lloyd's are bound by the requirements of the Privacy Act 1988 (as amended by the Privacy Amendment (Private Sector) Act 2000), which sets out standards on the collection, use, disclosure and handling of personal information.

We collect personal information from you for the purpose of providing you with insurance products and services and for processing and assessing claims.

Personal information is treated with care. We will not release your personal information to anyone else other than Lloyd's, its related entities, your insurance intermediary or as permitted or required by law.

If you make a claim under this insurance, we may disclose information to (and/or collect additional information about you from) claims investigators, claims managers, assessors, lawyers, medical practitioners and health workers, and federal or state regulatory authorities, including Medicare Australia and Centrelink.

You have the right to seek access to your personal information and to correct it at any time.

If you require further information or would like a copy of Our Privacy Policy please contact our Privacy Officer on (03) 9258 1777 or write to us at the address given above. A copy of our Privacy Policy can also be obtained from our website.

The Policy and the Schedule (which expression includes any Schedule substituted for the original Schedule) and all Endorsements (if any) are to be read together, and any word or expression to which a specific meaning has been given in any part of the Policy or the Schedule bears that meaning wherever it appears.

- The Insurance applies only in respect of those Sections against which a Limit of Indemnity or a Sum Insured is shown in the Schedule or which are otherwise indicated in the Schedule as being operative, and is subject to the Endorsements and Excesses as shown in the Schedule;
- The Limit of Indemnity or Sum Insured under any Section is as shown in the Schedule unless otherwise expressed in the Policy or the Endorsements;
- The Insurers will not be liable under this Policy unless Personal Injury or Property Damage giving rise to the claim happens during the Period of Insurance;

Where the insurance is varied or extended by any Endorsement the insurance provided by such Endorsement is subject all the other terms, exclusions and conditions of the Policy in so far as they can apply.

PREAMBLE

Whereas the Insured has made to Us a written Proposal which We have relied upon, and which it is agreed now forms the basis of this Policy and is considered incorporated herein, and subject to the payment of the premium specified in the Schedule, We agree to provide indemnity to the Insured subject to the terms and conditions of the Policy during the Period of Insurance stated in the Schedule or any subsequent period in respect of which payment of the Premium is made and accepted by Us.

1. SECTION 1 – MATERIAL DAMAGE

A. INSURING CLAUSE.

We will indemnify You if the Insured Property suffers any unforeseen and sudden physical loss or physical damage occurring during the Period of Insurance while it is:

- i. within Your care, custody and/or control and:
 - 1. working or at rest;
 - 2. being dismantled for the purposes of cleaning, inspecting, overhauling or repairing; and/or
 - 3. being dismantled for the purposes of moving or in the course of subsequent re-erection,but in all cases only after successful recommissioning;
- ii. on Dry-Hire; and/or
- iii. in inland transit by road, rail, inland or coastal waterways

and while it is within the location described in the Schedule, provided that Our liability under this Section shall not exceed the Sum(s) Insured noted in the Schedule.

B. ADDITIONAL COVER.

If We agree to indemnify You under Section 1 of this Policy, then We will extend such cover for costs and expenses necessarily and reasonably incurred by You or on Your behalf for:

- i. **Expediting expenses.**
Additional costs and expenses incurred for the sole purpose of expediting repairs or replacement. Unless otherwise agreed by Us, such costs and expenses are limited to costs and expenses for –

1. Express delivery within Australia.
Provided that Express delivery will include only carriage by air freight within Australia by the use of licensed airline(s) operating a regular scheduled service, but not Aircraft chartered specifically for such carriage;
2. Your travel costs.
Provided that such travel costs are for regular service fares within Australia, but not Aircraft chartered specifically for such travel;
3. Labour costs
Overtime or penalty rates of labour and other related allowances or accommodation and boarding costs, including meals and other costs associated with them.

Our liability for all expediting expenses under clause 1 B i. shall be limited to the lesser amount of –

- (i.) fifty percent (50%) of the amount payable by Us under Insuring clause A hereof;
- (ii.) \$ 50,000 for any one Event,

unless otherwise noted in the Schedule.

ii. Accessories etc.

Loss of or damage to accessories, tools and spare parts that were attached to or within the Insured Property (but not included in the item's Plant Value noted in the Schedule) at the time of the loss or damage.

Our liability for accessories, tools and spare parts shall be limited to 5,000 in respect of any one such accessory, tool or spare part, or 5% of the Plant Value of the Insured Property lost or damaged, whichever is the lesser amount.

iii. Sign writing

Restoring any sign writing, advertising sign and the like that formed a permanent part of the Insured Property at the time of the loss or damage.

iv. Tyre Replacements

The replacement of any damaged tyre that cannot be safely used again with a new tyre similar in make and specification, provided that immediately before the loss and damage the damaged tyre -

- was not a recap or a retread; and
- had a remaining thread depth that complied with the legal relevant requirements.

v. Protection and Removal

The cost of protecting and removing –

1. Damaged Insured Property to the nearest repair or place of safety, or to any other location that We approve; or
2. Insured Property to a place of safety following it becoming bogged, immobilised or stranded, without loss or damage having occurred,

This additional cover does not extend to provide costs for search, location and/or retrieval of lost or damaged items unless We give Our prior written consent to such costs being incurred.

Further, this additional cover does not extend to cover Insured Property that is underground

Our liability for these protection and removal expenses shall be limited to a maximum of \$50,000 (fifty thousand) in the aggregate during any one Period of Insurance.

vi. Locks and Keys

Locks and keys that are lost or damaged or believed to have been duplicated.

Our liability for this extension shall be limited to the lesser amount of 2,500 per set of lock and keys and \$ 5,000 any one Event.

vii. Personal Effects

Loss of or damage to Personal Effects belonging to You or Your Employee driver/s that were contained in Your lost or damaged Insured Property at the time of the loss.

Our liability for this extension shall be limited to the lesser amount of \$ 500 any one item of Personal Effects or \$1,000 any one Event.

viii. Windscreen Replacement

No Excess shall be applicable to the repair or the replacement of a damaged windscreen provided that:

- the damaged windscreen is not part of Insured Property working within the forestry or demolition industries; and
- the damaged windscreen is the only damage incurred during the identifiable Event.

Our liability under the Policy for windscreen repairs and/or replacements shall be limited to a maximum of \$ 5,000 in the aggregate during any one Period of Insurance.

C. BASIS OF SETTLEMENT

We may, at our option, provide an indemnity in respect of loss or damage to Insured Property by payment of cash, replacement or repair up to an amount not exceeding in any one Period of Insurance in respect of any item of Insured Property the amount set opposite thereto in the Schedule and not exceeding in total the Sum Insured, in the manner set out below.

i. Where damage is repairable.

Where damage is repairable, and the costs of repair is less than the Market Value of the damaged item(s) of Insured Property, settlement shall be made on the basis of the costs of restoration to working order and/or condition that existed immediately prior to the Event by using normal work practice and comprising the value of replacement parts, labour charged at standard rates of wages, transport costs at ordinary rates and customs duties, dues or other impost(s) if levied.

Further:

1. No deduction shall be made for depreciation in respect of parts replaced.
2. If You carry out repairs at Your situation or Your own workshop, We will pay the cost of replacement parts, wages and transport cost at ordinary rates and customs duties and other imposts, incurred for the purpose of carrying out the repairs plus a reasonable mark-up for overheads, provided that the person carrying out the repairs is qualified to do so.
3. If it is necessary to replace parts that are unavailable or obsolete, We will not pay more than the estimated cost for similar parts for similar type of plant currently available. Should similar parts prove to be unprocurable, We shall no pay more than the manufacturer's or supplier's latest listed price.
4. The costs of provisional repairs will be borne by Us only if such repair costs constitute part of the final repair costs and do not increase the total repair costs.
5. We will deduct the residual value of any salvaged residual part from the amount otherwise payable by way of indemnity.

ii. Where damage is not repaired.

If any item of lost or damaged Insured Property is not repaired within a period of one (1) year from the date of loss or damage We will only pay the lesser of:

1. the estimated cost of carrying out repairs at or shortly after the date of loss or damage; and
2. the difference in Market Value of the Insured Property immediately prior to and immediately after the Event.

iii. Total Loss.

If the cost of repair is greater than the Market Value of the Insured Property immediately prior to the Event, settlement shall be made on the following basis of Total Loss.

1. Replacement Item or Market Value.
We will at Our option either:
 - a. supply an equivalent replacement item similar in type, capacity and condition to the Insured Property immediately prior to the Event; or
 - b. pay the Market Value of the Insured Property immediately prior to the Event.
2. We will deduct the residual value of any damaged salvaged part(s) of Insured Property from the amount otherwise indemnified.
3. We will also pay any necessary and reasonable costs covered by Additional Cover previously specified, but Our liability for such costs will be limited to the Sum(s) Insured for such costs nominated within the policy wording or in the Policy Schedule.

We will also pay any additional benefits provided by any specific endorsement issued by Us.

iv. Deductible.

Where only one item of Insured Property is lost or damaged then the Excess applicable shall be that noted in the Schedule for a single item.

Our liability to indemnify You for loss or damage under the Policy shall be reduced by the amount of the Excess(es) applicable for each and every lost or damaged item of Insured Property.

Where an Excess is shown for Section 1 and Section 2 A only the highest Excess will apply to the Event/Occurrence.

D. LIMIT OF LIABILITY.

i. Co-insurance

Where the Plant Value appearing against the Insured Item that is lost or damaged is less than 90% of the Market Value of that item (at the inception date of the Period of Insurance), We will only pay that portion of the Basis of Settlement described above, that the declared Sum Insured noted in the Schedule bears to the Market Value of the lost or damaged Insured Item(s)

ii. Limit of Liability.

Our total liability for any claim arising out of any one Event or series of Events arising out of one source or original course shall not exceed:

1. per Item –
 - a. the Plant Value noted in the Schedule set against the lost or damaged Insured Item less the Excess, plus
 - b. any cover provided under Additional Covers allowed under the Policy.

2. Per Event –

- a. the Sum Insured noted in the Schedule as the maximum for any one Event, less any Excess applicable; plus
- b. any cover provided under Additional Covers allowed under the Policy.

2. SECTION 2 – LIABILITY

A. INSURING CLAUSE

We will only cover You under this Section 2 if we have agreed to do so and accepted the cover by including a Limit of Indemnity at the corresponding item in the Schedule.

i. Road Risk Liability.

This Section of the Policy is applicable only if the Insured Property is registered for use on public roads, or has a road permit or conditional registration.

We will indemnify You in respect of compensation (other than aggravated, exemplary or punitive damages) which You shall become legally liable to pay for:

1. Property Damage; and/or
2. Personal Injury,

happening during the Period of Insurance as a result of an Occurrence which arises from the use of Registered Insured Property anywhere within the Commonwealth of Australia.

ii. On-Site Trade Use

We will indemnify You in respect of compensation (other than aggravated, exemplary or punitive damages) which You shall become legally liable to pay for:

1. Property Damage; and/or
2. Personal Injury,

happening during the Period of Insurance as a result of an Occurrence which arises from the Insured Property being used for on-site Trade Use anywhere within the Commonwealth of Australia.

iii. Public Liability

We will indemnify You in respect of compensation (other than aggravated, exemplary or punitive damages) which You shall become legally liable to pay for:

1. Property Damage; and/or
2. Personal Injury,

happening during the Period of Insurance as a result of an Occurrence which arises with Your Business anywhere within the Commonwealth of Australia.

iv. Products Liability.

We will indemnify You in respect of compensation (other than aggravated, exemplary or punitive damages) which You shall become legally liable to pay for:

1. Property Damage; and/or

2. Personal Injury,

happening during the Period of Insurance as a result of an Occurrence which arises from Product(s) in connection with Your Business anywhere within the Commonwealth of Australia.

B. DEFENCE OF CLAIMS OR SUITS

i. General

With respect to the indemnity provided by Section 2 of the Policy, We will:

1. defend in Your name and on Your behalf any claim or suit against You alleging Personal Injury or Property Damage and seeking damages on account thereof even if any allegation(s) made in any such claim or any such suit is or are groundless, false or fraudulent;
2. pay all, charges, expenses and legal costs incurred by Us and/or You with Our prior written consent:
 - a. in the investigation, defence or settlement of any such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request; and/or
 - b. in bringing or defending appeals in connection with such claim or suit;
3. pay all charges 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 under the Policy;
4. pay expenses incurred by You for;
 - a. rendering first aid and/or surgical or medical relief to others at the time of Personal Injury (other than any medical expenses that we are prevented from paying by any law);
 - b. temporary protection of damaged property and undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof; and/or
 - c. purchasing and/or hiring and/or erecting and dismantling or hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide to comply with the requirements of any Government, Local Government or other Statutory Authority;
5. pay all legal costs incurred by You with Our prior written consent for Your representation at:
 - a. any Coronial inquest or inquiry; and/or
 - b. any proceedings in any court or tribunal in connection with the liability insured against by this Policy.

Any amounts We pay pursuant to sub-paragraphs (1) to (5) above shall constitute “Defence Costs” for the purposes of this Policy.

The amount of such Defence Costs incurred, except payments in settlement of claims and

suits, are payable by Us in addition to the applicable Limit of Indemnity shown in the Schedule.

ii. North America Clause

For any claims or suits originating in any courts in North America, the applicable Limit of Indemnity shown in the Policy Schedule shall be inclusive of all Defence Costs.

Provided that:

1. We shall not be obliged to pay any claims or judgment or to defend any suit after Our Limit of Indemnity has been exhausted by payment or judgment or settlement;
2. If payment exceeding Our Limit of Indemnity has been made to dispose of a claim, Our liability for any Defence Costs in connection with it shall be limited to such portion of the said Defence Costs as the Limit of Indemnity bears to the amount paid to dispose of the claims;
3. In no event shall Our liability in respect of Defence Costs exceed fifty percent (50%) of the Limit of Indemnity stated in the Schedule or a maximum of \$ 5,000,000, whichever is the lesser amount.

C. ADDITIONAL COVER.

In respect of Section 2 A i.– Road Risk Liability only, the following specific additional covers are provided:

i. Substitute Vehicles

Insured Property for the purpose of this Insuring Clause shall include registered items of plant that are not owned by You, but are in Your possession as a substitute item while Your item of plant is undergoing repairs or is being serviced.

ii. Movement of Other Machines

We will pay You all amounts that You become legally liable to pay as compensation arising out of Property Damage happening during the Period of Insurance, within the Location specified in the Schedule, that was caused by You having moved or attempted to move, any other machine that was parked in a position which prevented or impeded the loading, unloading or lawful passage of Your vehicle.

iii. Removal of Debris

We will insure You for costs necessarily incurred in cleaning up or removing debris resulting from a covered Occurrence in which goods have fallen or leaked from Registered Insured Property. However, our liability under this extension in respect of any one Occurrence shall be limited to \$ 50,000.

iv. Sea Transportation

We will insure You for General Average and Salvage Charges incurred as a result of a covered Occurrence involving Registered Insured Property while in transit by sea between

places in Australia.

v. Towing Disabled Vehicles

We will insure You for any Occurrence to any disabled machine being towed by Registered Insured Property, but not if it was being towed for any type of reward.

vi. Trailers

We will insure You for any Occurrence in connection with the use of any trailer attached to a Registered Insured Property.

D. CROSS LIABILITY

For the purpose of this Policy the word 'Insured' shall be considered as applying to each party comprising the Insured in the same manner as if a separate Policy had been issued to each of them.

Notwithstanding the above, the Limit of Indemnity does not apply to each Insured separately but will apply to all such Insured's in the aggregate so the Limit of Indemnity will not be increased for any one Occurrence as stated in the Schedule and will not exceed the sum stated in the Schedule.

E. LIMIT OF LIABILITY

Except where otherwise specifically provided to the contrary Our Limit of Indemnity shall not exceed the amount stated as the Limit of Indemnity in the Schedule for any one Occurrence.

Our total Aggregate liability during any one Period of Insurance for Product Liability claims shall not exceed the Limit of Indemnity noted in the Schedule.

In respect of payments made under Sections 2 A or 2 B , We shall not be liable for the amount of the Excess shown in the Schedule in respect of each and every Occurrence.

3. SECTION 3 – MACHINERY BREAKDOWN

A. INSURING CLAUSE

If You request cover under this Section and it is shown as being insured on the Schedule, We shall indemnify You against Breakdown in a Machine during the Period of Insurance.

Specific Exclusion 15a shall not apply to this Section.

B. LIMIT OF LIABILITY AND BASIS OF SETTLEMENT

The indemnity under this Section shall not exceed the lesser of the following:

1. The reasonable cost in total of doing the following:
 - a) of dismantling and transporting the Machine if necessary to repair the part,
 - b) repairing (or replacing, if necessary) the part to a condition equal to is condition immediately prior to the Breakdown, and
 - c) re-commissioning, re-erecting and/or re-installing the Machine following the repair (or replacement) of the part
2. The Market Value of the Machine immediately prior to the Breakdown
3. An amount that indemnifies You against Breakdown, and
4. The Sum Insured

We will at Our option decide which of the above will be paid.

If a part is replaced that is no longer available, the indemnity will not exceed the manufacturer's or supplier's last published price for that part.

The Excess shall apply to each machine for each Breakdown.

C. SPECIFIC EXCLUSIONS TO SECTION 3

The following exclusions are in addition to the General Exclusions and the Specific Exclusions to Sections 1 and 3.

We shall not indemnify You under this Section for:

1. physical loss or damage of tyres caused by the application of brakes or bursting, puncturing, cutting or wearing,
2. physical loss or damage to batteries,
3. safety devices lost or damaged as a consequence of their operation or use,
4. physical loss or damage caused by or arising out of: preventative maintenance work; alterations, additions, improvements or overhauls; replacement or restoration following gradual deterioration; or restoring loose connections or joints where no other component failure has occurred,
5. Physical loss or damage arising out of the Machine being subjected to tests involving abnormal stresses or intentionally overloaded or occurring prior to successful initial commissioning.

GENERAL EXTENSIONS TO SECTIONS 1 AND 2

1. Automatic Inclusion/Deletion.

If You acquire a replacement or additional item(s) of Insured Property valued at not more than \$ 2,000,000 per item of a similar type to those of Insured Property specified in the Policy Schedule during the Period of Insurance, We will insure that replacement or additional item under the Policy from the date on which You acquire it, but you must notify Us:

- a. Immediately if the value of the replacement or additional item exceeds \$500,000; or
- b. Within 30 days of acquisition if the value of the replacement of additional items does not exceed \$ 500,000.

If You dispose of or sell any Insured Property, or pass any Insured Property from Your care, custody or control with the intention of disposing of, or selling it, cover for such item will cease at the time of any such disposition, sale or passing of property from Your care custody or control.

An appropriate adjustment of the Premium will be made upon receipt by Us of the notification of the acquisition or disposal.

2. LPG Conversion

Your insurance cover under this Policy will not be prejudiced by modification of Insured Property to operate on liquefied gas, provided that the modification has been carried out in accordance with all relevant statutory and regulatory standards.

3. Other Interested Parties

In the event of any loss or damage to Insured Property which is the subject to a lease or other financing arrangement whereby a financier retains security over the property, the financier will be an Insured under this Policy but only to the extent of the financier's remaining interest in the Insured Property at the time when the loss or damage is suffered.

4. Hold Harmless (Subrogation Waiver)

We will waive any right or remedies or relief to which We may become entitled by subrogation against any person or organisation where You have been required by contractual agreement to release such person or organisation from liability. However, this extension does not apply to Dry-Hire arrangements or contracts.

5. Hired-In items.

Subject to the terms and provisions of those Sections -

- a. We will provide cover under Section 1 for hired-in mechanically propelled machines. However, the maximum cover granted under this extension is \$25,000 in the aggregate for all hired-in items during any one Period of Insurance.
- b. We will provide cover under Section 2 for Personal Injury and Property Damage arising during the Period of Insurance as a result of an Occurrence involving the use of Hired-in mechanically propelled machines. However,
 - i. the maximum cover granted under Section 2 for hired-in items is the Limit of Indemnity shown in the Schedule; and

- ii. We will not be liable for any Property Damage to the hired-in mechanically propelled machine(s).

6. Finance Gap Protection.

In the event that -

- a. Insured Property sustains loss or damage covered under Section 1 of this Policy; and
- b. The Market Value for the lost or damaged item(s) of Insured Property, at the time of the loss or damage, is less than the amount owed by You under a valid hire purchase, leasing or other financial agreement;

We will pay You for the difference between the Market Value at the time of the loss and the amount owed, less -

- i. any payment and interest of finance in arrears at the date of loss or damage;
- ii. any discount in respect of finance charges and interest for the unexpired term of such hire purchase or leasing agreement at a date not exceeding 30 days after the date of the loss or damage; and
- iii. any payments which on the date of the loss or damage has not been made solely because such payment under the terms and conditions of the particular agreement has not actually become due.

Provided that:

- i. You are not more than 30 days in arrears with any payments at the date of the loss or damage;
- ii. Our limit of liability under this extension shall not exceed 30% of the Market Value at the time of the loss or damage.

7. Ongoing Hire Costs

In the Event that Insured Property sustains loss or damage covered by Section 1 of this Policy, We will insure You for the cost necessarily incurred or owed while the lost or damaged hire machine is being repaired or replaced, provided that:

- a. You will pay the first seven (7) calendar days (following the loss or damage) of hire costs by way of an additional Excess; and
- b. the amount payable under this Extension in any one Period of Insurance shall not exceed \$ 10,000 or as otherwise specified in the Schedule.

8. Finance Payment Protection

In the Event that:

- a. Insured Property sustains loss or damage covered under Section 1 of this Policy; and
- b. You are making payments under a valid hire purchase, leasing or other financial agreement on such lost or damage item(s) of plant or equipment at the date of loss or damage,

We will indemnify You for such payments, by paying You the equivalent of the daily proportion of Your "Actual Finance Payments", from the time of the loss or damage until Your plant or equipment is replaced, repaired or cash settled, provided that:

- i. You will pay ten percent (10%) of the Actual Finance Payments by way of additional Excess;
- ii. the period of indemnity under this Extension is limited to a maximum of six (6) months from the time of loss or damage;
- iii. You take all reasonable precautions to comply with all reasonable requests from Us to minimise the period of disruption to Your Business;
- iv. the amount payable under this extension in any Period of Insurance shall not exceed \$ 10,000 unless otherwise specified in the Schedule.

“Actual Finance Payments” for the purpose of this extension means the actual finance payments due and paid by You for the period less any balloon or residual payments which fell due during the period.

9. Goods on Hook Liability

We will indemnify you under Section 1 of this Policy for loss or damage to goods or materials being lifted or lowered or positioned by a crane, or lifting device provided that such goods or materials have been prepared for lifting, lowering or positioned in accordance with safe working practice.

However, our liability to indemnify you under this extension shall be limited to a maximum amount of \$ 50,000 (fifty thousand) any one Event unless otherwise specified in the Schedule.

OPTIONAL EXTENSIONS

The following optional extensions will be added for Your benefit, if the Policy Schedule indicates that such options have been requested and accepted.

Such optional extensions are subject to all the terms, conditions and exclusions of the Policy.

10. Underground Risks

Notwithstanding anything contained herein to the contrary this Policy is extended to cover loss or damage to Insured Plant whilst underground. This optional extension shall exclude the cost of recovery to the surface of the insured plant. Further, it is a condition for cover under this extension that the damaged Insured Property is recovered to the surface at Your own cost.

11. Railways and Rail-works or Rail Activities

Notwithstanding anything contained herein to the contrary this Policy is extended to cover loss or damage or legal liability directly or indirectly arising from Insured Plant whilst working on railways or rail-works or rail activities.

12. Agreed Value

In the event that Insured Property sustains loss or damage covered under Section 1 of this Policy, for which we decide that settlement by repair is not viable, then We will pay the “agreed value” (calculated in the manner described in this extension) on any item of Insured Property specified in the Schedule, provided that:

- a. the agreed value was supplied by a registered valuer (approved by Us) prior to the Period of Insurance and also prior to any subsequent period of renewal of the Policy; and
- b. the valuation is not more than two (2) years old at the last inception or renewal date of the Policy.

In the event that no agreed value has been specified in the Schedule, We will indemnify You in accordance with the Basis of Settlement otherwise provided in the Policy.

13. Appreciation of Plant Value

In the event that:

- a. Insured Property sustains loss or damage covered under Section 1 of this Policy; and
- b. the Market Value of the lost or damaged item(s) of plant or equipment at the time loss or damage is sustained is greater than its Sum Insured noted in the Schedule;

We will pay the Market Value up to a limit of 120% of the Sum Insured noted in the Schedule for the lost or damaged Insured Property, provided that the Sum Insured noted in the Schedule was not less than 90% of the Market Value for the item at the commencement of the Period of Insurance.

14. Substitute Hire Cost

In the event that Insured Property sustains loss or damage covered under Section 1 of this Policy, We will indemnify You for the costs necessarily incurred to hire a substitute machine as consequence of the loss or damage, provided that:

- a. Our liability under this Extension will not exceed three (3) months hiring charges unless otherwise specified in the Schedule; and

- b. You will pay the first seven (7) calendar days (following the loss or damage) of the hire costs by way of an additional Excess; and
- c. the amount payable under this Extension in any Period of Insurance shall not exceed \$ 50,000 (fifty thousand) unless otherwise specified in the Schedule.

15. Extended Dry Hire

We will indemnify you or persons using Your plant or equipment with Your consent, for loss or damage of Your plant or equipment when it is hired out provided that :

- a. You have ensured, as far as can be reasonably expected, that all relevant licences, permits, tickets and knowledge of statutory obligations are held by the hirer and any person employed by the hirer to operate Your plant and equipment;
- b. the hirer has agreed to observe the terms of the Policy (a copy of which is to be supplied by You upon request of the hirer); and
- c. the loss or damage was caused by the Operator's error and You prove that You provided the hirer with a reasonable standard and level of operating instructions.

Provided that You have complied with (a) above, then a failure by the Operator or hirer to comply with the licences, permits, tickets and statutory obligations with regard to (a) above will prevent the Operator or the hirer, but not You, from being indemnified under this extension.

16. Plant and Equipment in Watercraft

Notwithstanding anything contained to the contrary in this Policy, loss or damage to Insured Property whilst mounted on any watercraft is not excluded, provided that any mounted plant or transit of plant has been certified by a qualified marine surveyor as seaworthy and the carrying watercraft has all the necessary and legally required certifications of seaworthiness.

EXCLUSIONS

GENERAL EXCLUSIONS

We shall not be liable and will not indemnify You for loss or damage or legal liability:

1. War etc.

directly or indirectly caused by, occasioned by or through or in consequence of any of the following -

- a. war, invasion, act of foreign enemy, hostilities, or war-like operations (whether war be declared or not), civil war; or
- b. rebellion, revolution, insurrection, mutiny, civil-commotion assuming the proportions of or amounting to a popular rising, military or usurped power, a group of malicious persons acting on behalf of or in connection with any political organization, or
- c. riot, strike, lock-out; or
- d. conspiracy, confiscation, commandeering, or
- e. requisition or destruction or damage by order of any government de jure or de facto or by any public authority.

2. Nuclear

- a. to or from property eligible for insurance by the relevant local Nuclear Insurance Pool and/or Association; or
- b. directly or indirectly caused by or contributed to by or arising from or aggravated by any of the following
 - i. ionizing radiation from a contamination by radioactivity from a nuclear fuel or from nuclear waste or from the combustion of nuclear fuel;
 - ii. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
 - iii. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; and/or
 - iv. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

3. Inventory Losses

discovered only at the time of taking an inventory or during routine servicing.

4. Wilful Acts

directly or indirectly caused by, or arising out of, or aggravated by the wilful act or wilful negligence of the Insured or his representative.

5. Licensed or Permitted Operator

occurring while You are, or anyone with Your consent, is operating Insured Property without being the holder of a current licence, except where that person is permitted to so operate the Insured

Property by law.

6. Alcohol and Drugs

caused by or arising out of the use, operation or preparation for operation of any Insured Property by anyone who, at the time of the Event/Occurrence:

- a. was under the influence of any prohibited drug or intoxicating liquor; or
- b. had a percentage of alcohol in their breath, blood or urine in excess of the percentage permitted by law in the State or Territory where the Event/Occurrence took place; or
- c. who subsequently refused to provide or allow the taking of a sample of breath, blood or urine for testing; or
- d. had a trace of a prohibited drug in their breath, blood, saliva or urine in excess of the limit permitted by law in the State or Territory where the Event/Occurrence took place.

However, We will indemnify You if You did not know or could not reasonably have known of the above circumstances but We will not indemnify nor waive Our right of subrogation against the Operator.

7. Overloading

occurring while Insured Property is overloaded or loaded and/or configured in a manner other than that for which the Insured Property was designed at the time of such Event/Occurrence whilst being used by a licensed Operator, but this exclusion will not apply provided that You (being the owner of the Insured Property) are able to prove :

- a. that such overloading, or loading or configuration was unintended and not deliberate by the Operator; and
- b. that the actions of the Operator or any of Your employees involved, leading up to the loss or damage or liability fell within generally accepted industry practice; and
- c. that the Operator had been provided with a standard of training and operating instructions in the use of plant and equipment that was within generally accepted industry practice and that You had no knowledge of the Operator's actions which had caused the loss, damage or liability and that You were not the Operator.

8. Unroadworthy Condition

caused or contributed to by the unsafe or unroadworthy condition of Insured Property unless You could not have reasonably detected that condition.

9. Improper Use

which occurs as the result of the use of Insured Property:

- a. for any illegal purpose with Your knowledge and consent; or
- b. for any race, trial, test, contest or in preparation for any of these; or
- c. for any purpose other than that for which it was designed.

10. Requisition

caused by the lawful seizure or requisition of Insured Property or by other operation of law arising from any breach of contract, agreement or obligation.

11. Underground Risks

occurring while the Insured Property is underground unless otherwise specifically agreed in the Schedule.

12. Damages Fines and Penalties

- a. for any fines or penalties imposed by law;
- b. for any liquidated damages;
- c. for any aggravated or punitive or exemplary damages;
- d. for any damages resulting from the multiplication of compensatory damages; and/or
- e. for any penalties (contractual or otherwise) for non-completion or delay in completion, non-compliance with any contract conditions or extra cost of working;
- f. for force majeure (whether declared or not); or
- g. for any other consequential financial loss.

13. Electronic Data

arising directly or indirectly out of:

- a. any total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- b. any error in creating, amending, entering, deleting or Electronic Data;
- c. any total or partial inability of failure to receive, send, access or Electronic Data for any time or at all, and/or
- d. any Business interruption losses resulting from any event referred to in (a) to (c) above,

regardless of any other contributing cause or Event, whenever it may occur, unless such loss or damage or legal liability arises as a direct consequence of physical damage to Insured Property which is otherwise insured under this Policy.

However, any accidental physical damage to an Insured Item, which originates directly from an action of You to Your own property, and which causes or is caused by any of the matters referred to in (a) to (c) above, are all covered, subject to all the other provisions of the Policy.

For the purpose of this Exclusion only -

Electronic Data means – facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

14. Terrorism

for costs or expense directly or indirectly caused by, contributed by, resulting from, or arising out of or in connection with Any Act of Terrorism, regardless of any other cause or Event contributing concurrently or in any other sequence to the loss.

“Any Act of Terrorism” includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division

thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a Section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation or government(s) de jure or de facto and which:

- a. involves violence against one or more persons; or
- b. involves damage to property;
- c. endangers life other than that of the person committing the action;
- d. create a risk to health or safety of the public or a Section of the public; or
- e. is designed to interfere with or to disrupt an electronic system.

This exclusion also excludes loss of or damage to Insured Property of whatsoever nature directly or indirectly caused by, or resulting from or in connection with any action taken in controlling, preventing, suppressing, retaliating or responding to any act of Terrorism.

The Policy is one where the *Terrorism Insurance Act 2003* applies. We will provide cover as may be required by the Act, notwithstanding the exclusion contained herein.

SPECIFIC EXCLUSIONS SECTIONS 1 AND 3 ONLY

15. Electrical or Mechanical Breakdown

due to or resulting from -

- a. electrical or mechanical breakdown, failure, breakage or derangement;
- b. freezing of coolant or other fluid;
- c. defective lubrication or lack of oil or coolant;
- d. explosion of any boiler or pressure vessel subject or internal steam or fluid pressure or of any internal combustion engine.

However, if any Event causing damage which is otherwise insured under this Policy causes any of (a) or (b) or (c) or (d) above We will indemnify you for such consequential loss or damage.

Specific Exclusion 15a above shall not apply to Section 3

16. Marine Exposure

- a. due to the total or partial immersion of Insured Property in water;
- b. to waterborne vessel or craft;
- c. whilst Insured Property is used for Trade Use on any watercraft; or
- d. whilst Insured Property is in the course of ocean marine transit,

unless otherwise agreed to by Us and acknowledged by specific endorsement.

17. Wear and Tear and General Maintenance.

- a. that is wear, tear, corrosion, erosion, oxidization or gradual deterioration due to atmospheric conditions or otherwise.

- b. to replaceable or exchangeable tools or parts and attachments such as (but no limited to) cutting tools, knives, crushing, pulverizing, pressing and punching tools, drills, bits, drills, blades, saw blades and edges;
- c. to dies, moulds, patterns, templates, surfaces, screen and sieves
- d. to replacement parts and commodities such as (but not limited to) fuels, bulbs, X-Ray tubes, filters, seals, ropes, belts, caterpillar tracks, chains, elevator and conveyor bands, roller covering links, jointing, packing materials, connecting wires, regularly replaced, hoses, flexible pipes, batteries, tyres, tracks, heating elements, electrical contacts, and any other part or parts which require periodic or frequent replacement;
- e. to overload, fuses, shear pins, rupture plates or similar protective devices;
- f. to costs relating to the normal maintenance service or adjustment of Insured Property.

However, any loss or damage incurred under any of paragraphs (a) to (e) (inclusive) shall not be excluded if such loss or damage occurred as a direct result of a sudden or unforeseen external Event otherwise covered under the Policy.

18. Minor Visual Damage

to Insured Property that only has a visual effect. This means loss or damage that

- a. does not increase the risk of material damage to the Property Insured, nor
- b. does it decrease the output of the Property Insured.

19. Relinquished Custody

of Insured Property -

- a. where You have entrusted any Insured Property to anyone posing as a prospective buyer; or
- b. where You have entrusted any Insured Property under any hire purchase or lease agreement, and do not have legally enforceable conditions of hire in place making the hirer or lessee responsible loss or damage; or
- c. where You have entrusted any Insured Property under any hire purchase or lease agreement and the conditions of hire or lease include any damage waiver or any conditions restricting our rights of subrogation,

unless otherwise agreed to by Us and acknowledged by specific endorsement.

20. Security for Debt

of Insured Property where the Insured Property stands as security for a debt and is the subject of repossession or seizure by any financier.

21. Warranty and Maintenance Agreements

for which the supplier or manufacturer is responsible by law or under contract, or sale or warranty, condition or which is covered under a Maintenance Agreement.

22. Design

arising directly or indirectly from any defect, fault or failure in or of the design or specification of the Insured Property.

23. Plant Operation

- a. that occurred while Insured Property was undergoing a test of any kind except as required by law;
- b. that occurred while Insured Property was used, operated or prepared for operation in any manner or for any purpose other than for which it was designed. However, if You have given instructions or taken precautions that are adequate to prevent such use and did not know or could not reasonably be expected to know that the Operator was using the Insured Property in that manner, the We will not deny the claim under this exclusion (b), but We will not waive Our rights of subrogation against the Operator.
- c. caused by the failure to provide Insured Property with adequate or appropriate fuel, oil, lubricant or coolant; or
- d. occurring while any crane insured by the Policy is being used in a lifting operation in which the load is shared or rigged for sharing with other cranes, unless otherwise agreed to by Us and acknowledged by specific endorsement.
- e. occurring while Insured Property is used beyond the manufacturer's recommended safe working limits.

24. Down Hole Items

to Down Hole Items while in the ground unless:

- a. nominated with specific Plant Value in the Schedule; and
- b. agreed to by Us and acknowledged by specific endorsement.

25. Road Vehicles

to vehicles designed and registered for general road use unless these vehicles are exclusively used on construction sites and unless otherwise agreed by Us and acknowledged by specific endorsement.

26. Known Faults or Defects

due to any faults or defects existing at the time of commencement of this Policy within the knowledge of You or Your representative, whether such faults or defects were known to Us or not.

27. Abandonment

Indemnity for the cost of retrieving and/or removing any insured plant abandoned by you.

SPECIFIC EXCLUSIONS SECTION 2 ONLY

Exclusions Applicable to Section 2 A i, A ii, A iii and A iv

28. Employment Liability

- a. for Personal Injury to any Employee arising out of or in the course of their employment with You;
- b. caused, arising from or in any way connected with, any provision of any applicable *Workers' or Workmen's Compensation* or *Accident Compensation* legislation; or

- c. caused by, arising from or in any way connected with, 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 any such industrial award or agreement or determination or contract of employment or workplace agreement; or
- d. for which You are or would have been entitled to seek indemnity under any policy of insurance, fund, scheme or self insurance arrangement, required pursuant to any legislation relating to *Workers' or Workmen's Compensation* or *Accident Compensation* of any State or Territory (whether such insurance is effected or not).

For the purpose of this exclusion Employee means any person engaged under a contract of service or apprenticeship with You but does not include any person employed under such a contract who is excluded from the definition of 'worker' under any applicable *Workers' or Workmen's Compensation* or *Accident Compensation* legislation.

29. Property in Your Physical or Legal Control

for Property Damage to the following property that is not owned by You but which is in Your physical or legal control:

- a. any Aircraft or watercraft;
- b. any Vehicle or item of plant, equipment or tool leased by You or on loan to You;
- c. any Vehicle in a car park owned or operated by You for reward as a principal part of Your Business; and/or
- d. that part of any property that You are working directly upon when the Property Damage results from Your work.

This exclusion (d) does not apply to –

- i. Property Damage to other property that is in Your physical or legal control. However Our liability to indemnify You for Property Damage to any such property will be limited to \$ 250,000 any one Occurrence and in the aggregate during the any one Period of Insurance unless otherwise specified in the Schedule.
- ii. Property Damage to other property while in the course of being lifted, lowered or otherwise moved by a lifting device operated by You, or while such property is being prepared for lifting, lowering or moving. However, Our liability to indemnify You for Property Damage to any such property will be limited to the amount specified for 'Goods on Hook' in the Schedule.

30. Property Owned by You

for Property Damage to property that You own, or

- a. liability directly or indirectly arising out of Your tenant's or lessees' activities (whether business activities or otherwise); or
- b. liability arising from Your failure to properly maintain property that You own, unless You could not have known that maintenance was required.

31. Design, Formula or Specification

for Property Damage or Personal Injury arising directly or indirectly from the design, formulation or specification of any goods or services or any instructions, advice or information on the characteristics, use, storage or application of any Products provided by You.

32. Watercraft and Aircraft

for Property Damage and Personal Injury caused by or arising directly or indirectly out of or in connection with:

- a. any watercraft exceeding eight (8) metres in length where such Watercraft is not Owned by You but is used by You for Business entertainment;
- b. the ownership, repair, construction, maintenance or servicing of any Aircraft or installation of any property in or on any Aircraft;
- c. the ownership, use or control of any area on which Aircraft take off, land, load/ unload, taxi, are housed, maintained or refuelled.

33. Professional Advice

arising directly or indirectly from the rendering or failure to render professional advice or service by You, however, this exclusion shall not apply to:

- a. Personal Injury or Property Damage arising from the provision of professional advice or service;
- b. the provision of first aid and other medical advice and services by persons employed by You other than qualified medical practitioners.

34. Pollution

- a. for Property Damage or Personal Injury directly or Indirectly arising out of the discharge, dispersal, release or escape of Pollutants;
- b. for the cost of removing, nullifying or cleaning-up Pollutants, and
- c. for the cost of preventing the escape of Pollutants.

Parts (a),(b) and (c) of this exclusion shall not apply to Property Damage and Personal Injury that arose from an unexpected, unintended sudden and instantaneous cause which took place at a clearly identified point in time during the Period of Insurance.

35. Asbestos

- a. for Personal Injury directly or indirectly arising out of:
 - i. the inhalation of;
 - ii. fears of inhalation of;
 - iii. of the consequences of exposure to or inhalation of, asbestos, asbestos fibres or any derivatives of asbestos; and/or
- b. for that part of any loss, cost or expense for the cost of cleaning up, or of removal of, or damage to, or loss of use of property arising out of any asbestos, asbestos fibres or any derivatives of asbestos.

For the purpose of this exclusion 'Asbestos' means any of the following minerals - 'Chrysotile', 'Amosite', 'Crocidolite', 'tremolite', 'anthophyllite' and 'actinolite' and includes any product in which any of these minerals has been used.

36. Contractual Liability

- a. for any liability for Property Damage arising out of Your failure to arrange or maintain adequate insurance where required under a contract or agreement;
- b. for any liability that you may have assumed under a contract or agreement. However cover will be provided for Property Damage and Personal Injury and resulting financial loss claims for which you may be legally liable to pay as a result of an indemnity and/or hold harmless terms of a contract only to the extent that such claim result from your negligence in the performance of your business services.

37. Internet Operations

for any liability directly or indirectly caused by or arising from Your Internet Operations.

Internet Operations for the purpose of this Exclusion means any of the following –

- a. the use of electronic mail systems by You or Your employees, including part-time and temporary staff, and others within Your organisation;
- b. access through Your network to the World Wide Web or a public internet site by You or Your employees, including part-time and temporary staff, and others within Your organisation;
- c. access to Your intranet (meaning Your internal company information and computing resources) which is made available through the World Wide Web to Your Customers or others outside Your organisation;
- d. the operation and maintenance of Your web site.

This exclusion will not apply to legal liability arising out of any material which is already in print by a manufacturer in support of its Product, including but not limited to Product use and safety instructions or warnings, and which is also reproduced on Your web site, but will apply to any other advice or information located on Your web site that is used for the purpose of attracting customers.

38. Admission of Liability

for any liability assumed by You as a result of any admission made by You whether oral or in writing.

39. Types of Work

for Property Damage or Personal Injury arising directly or indirectly out of:

- a. the construction, alteration, repair, restoration, extension, installation, demolition or dismantling of buildings, runways or structures (whether permanent or not), including lighting, power supply, gas supply, fire protection, security and communications systems, testing and commissioning, site clearance, earthmoving, excavation, tunnelling, boring, laying of foundations/footings, landscaping and the provision of roadways and other access works forming or to form part of any :
 - i. area of any airport where airships and airplanes take off and land, taxi and load/unload. This includes runways, the aprons adjacent to runways, airbridges and Aircraft standing areas. This does not include the interior of the airport terminal to which the public and the airport staff have normal access.
However, this part of this exclusion does not exclude Property Damage and Personal

Injury directly or indirectly arising out of vehicular movements within the airport perimeter, provided such movements are conducted within the guidelines and regulations as established by the relevant regulatory authority;

- ii. railway, rail works, or rail activities; and/or
 - iii. oil, gas, chemical or petro-chemical plants; and/or
- b. the demolition of buildings or structures involving the use of explosives or implosion techniques,

unless such costs are otherwise agreed to by Us and acknowledged by specific endorsement.

ADDITIONAL EXCLUSIONS APPLICABLE TO SECTION 2 A i - ROAD RISK ONLY

40. Trade Use

for any liability arising directly or indirectly from Insured Property being used or operated for Trade Use or which is otherwise covered under insuring clause 2 A ii.

41. Compulsory Personal Injury Legislation

for any liability for Personal Injury incurred where You are partly or wholly insured under any compulsory statutory insurance scheme, or would have been so insured but for Your failure, or the failure or someone acting on Your behalf, to

- a. insure or register the Insured Property; or
- b. lodge a claim; or
- c. notify the relevant authority of the Event; or
- d. comply with any term or condition of any such scheme.

42. Dangerous Goods

occurring while the insured Vehicle is in use for, or is attached to any other machine in use for, the commercial carriage of any substance to which the Australian Code for the Transport of Dangerous Goods by Road or Rail applies, unless the Code has been complied with. In respect of an Occurrence arising out of such use, Our liability under Section 2 A i of the Policy shall not exceed \$ 1,000,000 any one capital Occurrence any one item of plant carrying dangerous goods unless noted otherwise in the Policy Schedule.

43. Registered Vehicles in the Northern Territory

for any liability to pay compensation in respect of Personal Injury arising as a result of the use of any item of Insured Property that is Registered in the Northern Territory of Australia.

44. Driver, Employee and Family Members

for any liability arising out of Personal Injury to anyone who, at the time of the Occurrence, was:

- a. operating or in charge of the Insured Property;
- b. Your employee;
- c. a member of Your immediate family.

45. Loading and Unloading

for any liability caused directly or indirectly by or in connection with any operation of loading, unloading, delivery or collection to or from Your Vehicle, except for the operation of loading or unloading products onto or from Your Vehicle direct to a fixed place of rest beside Your Vehicle.

ADDITIONAL EXCLUSIONS APPLICABLE TO SECTION 2 A ii – ON- SITE TRADE USE ONLY

46. Vehicles

for any liability for Property Damage or Personal Injury directly or indirectly arising out of the use of any Vehicle that is legally or which is by law required to be registered or required to have third party bodily injury insurance.

This exclusion shall not apply where such vehicle is unregistered, or is registered however the third party bodily injury insurance that has been effected does not provide cover, and is at the time of the occurrence:

- a. on or within 250 metres from a project site;
- b. within 250 metres of the place where it is normally stored.

47. Underground Services

for any liability for Property Damage to underground services an Excess of \$ 5,000 will be applicable unless You have first ascertained from the relevant authorities the actual position of such services, in which the case the Excess will be \$ 1,000.

For the purpose of this Exclusion 'underground services' means sewers, water pipes, gas pipes, electric, fibre optic or telecommunications wires or cables and their support structures.

48. Insured Property on Rails

for any liability occurring while Insured Property is on rails, other than as cargo.

49. Products Liability

for any liability for any Occurrence that is caused directly or indirectly by or arises out of any of Your Product(s).

ADDITIONAL EXCLUSIONS APPLICABLE TO SECTION 2 A iii – PUBLIC LIABILITY ONLY

50. Vehicles

for any liability for Property Damage or Personal Injury directly or indirectly arising out of the use of any Vehicle that is legally or which is by law required to be registered or required to have third party bodily injury insurance.

This exclusion shall not apply where such vehicle is unregistered, or is registered however the third party bodily injury insurance that has been effected does not provide cover, and is at the time of the occurrence:

- a. on or within 250 metres from a project site;

- b. within 250 metres of the place where it is normally stored.

51. Advertising Liability

for Advertising Liability that is caused by or arises out of:

- a. a breach of contract, other than misappropriation of advertising ideas contrary to an implied contract;
- b. an infringement or passing off of a trade mark, service mark, copyright item or trade name on any Products, goods or services sold, offered for sale or advertised, other than an infringement of titles or slogans;
- c. the incorrect description of the price of Products, goods or services;
- d. the failure of Products, goods or services to conform with advertised performance, quality, fitness or durability criteria.

52. Libel and Slander

for Personal Injury caused by:

- a. the publication of libellous or slanderous statements made prior to the Period of Insurance; or
- b. any statement made by or at Your direction if You could reasonably be expected to know that the statement was false, libellous, slanderous or illegal.

53. Underground Services

for any liability for Property Damage to underground services an Excess of \$ 5,000 will be applicable unless You have first ascertained from the relevant authorities the actual position of such services, in which the case the Excess will be \$ 1,000.

For the purpose of this Exclusion 'Underground Services' means sewers, water pipes, gas pipes, electric, fibre optic or telecommunications wires or cables and their support structures.

54. Insured Property on Rails

for any liability occurring while Insured Property is on rails, other than as cargo.

55. Products Liability

for any liability for any Occurrence that is caused directly or indirectly by or arises out of any of Your Product(s).

ADDITIONAL EXCLUSIONS APPLICABLE TO SECTION 2 A iv – PRODUCTS LIABILITY

56. Repair, Replacement and Recall of Your Products

- a. for the inspection, repair, removal or replacement of Your Product(s) or Property Damage to Your Products other than Property Damage to Your Product(s) that is caused directly by You while repairing, servicing or treating Your Product(s); or
- b. for the recall of -
 - i. any or all of Your Product(s);
 - ii. work performed by You or for You;
 - iii. property that incorporates or has incorporated any of Your Product(s);

- iv. property worked on by You or worked on by others for You; or
- c. for any liability assumed by any warranty or guarantee given by You, other than any warranty as to the safety of Your Product(s) implied by Statute.

57. Lack of Maintenance

for Property Damage or Personal Injury arising directly or indirectly from lack of maintenance of Your Product(s).

INTERPRETATION

1. INTERPRETATION

In this Certificate of Insurance unless the context otherwise clearly indicates –

- a. Words and expressions importing any one gender include any other gender, and words and expressions importing any two genders shall include the third gender;
- b. Words and expressions importing the singular number shall include the plural number and vice versa;
- c. Words and expressions including without limitation the word 'person' importing natural persons shall include any firm, corporation, unincorporated body or other body corporate and vice versa;
- d. Words and expressions for which a Definition has been given in the Dictionary shall bear that meaning wherever they appear in this Certificate of Insurance.
- e. A reference to any Act of a Parliament includes a reference to any amendment, re-enactment, variation or extension thereof or statutory provision in substitution therefore;
- f. References to any agreement or other instrument or document include references to that agreement, instrument or document as varied or supplemented from time to time;
- g. Headings, emboldments and underlinings, or any of them, shall not affect the construction of this Certificate of Insurance and references to headings, clauses, sub-clauses, paragraphs and the Schedule are to be construed as references to the same in this Certificate of Insurance.
- h. The governing law shall be the law for the time being and from time to time in force in the State of Victoria.

2. DICTIONARY

Unless the context otherwise clearly indicates:

Advertising Liability – means injury arising out of:

- i. libel or slander;
- ii. infringement of copyright or passing off of title or slogan;
- iii. unfair competition, piracy or idea misappropriation contrary to an implied contract, or
- iv. invasion of privacy,
committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast arising out of any activities conducted by You in the course of advertising Your Products goods or services.

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

Breakdown - means sudden and unexpected breaking, distortion, seizing, malfunction, or failure of any mechanical, electrical or electronic part of a Machine that occurs during the course of the normal

operation of the Machine that prevents the normal use of the Machine and necessitates immediate repair or replacement to allow its normal use.

Business – means all Your business activities and operations including –

- i. ownership and tenancy of premises;
- ii. the provision or management of canteen, social, sports, welfare, child care organisations for Your employees;
- iii. internal first aid and ambulance services,
- iv. directly associated with those described in the Schedule.

Certificate of Insurance – means this Certificate of Insurance issued to You by Us as Your Policy.

Down Hole Items – means drill pipes, drill rods, drill shanks, jointing sleeves, collars, rock bits and reamers.

Dry Hire - means the hiring out of an item of Insured Property without a driver/Operator.

Endorsement – means a written Document headed as such from time to time issued by Us to You during the currency of the Policy and noting the terms and conditions upon which We have agreed to alter or vary the cover provided under the Policy.

Event - means an event, including continuous and repeated exposure to substantially the same general conditions, which results in unforeseen and sudden physical loss or damage to Insured Property.

For the purposes of this Policy, all such loss and/or damage that occurs during each period of 72 consecutive hours shall be considered as one Event if it arises from the same meteorological or seismological conditions, whether continuous or sporadic in their sweep or scope. Further, each event shall be deemed to have commenced on the first happening of any such physical loss or damage not within the period of any previous event.

Excess – sometimes referred to as deductible, means the amount shown in the Schedule that You will bear for each and every Occurrence/Event of injury/loss or damage payable under the Policy.

The Excess shown in the Schedule may be:

- i. A specific monetary amount; or
- ii. A percentage of the Sum Insured for the item damaged or as a percentage of the loss or damage.

Goods and Services Tax. – for the purpose of this Policy GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning given to these 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 of that Premium.

Incidental Contract - means

- i. any written rental agreement or lease for real or personal property not requiring an obligation to insure such property or to be strictly liable for such property regardless of fault;
- ii. 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, water disposal facilities, telephone and telecommunication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- iii. any written contract with any railway authority for the loading, unloading and/or transport and/or storage of Products including contracts relating to the operation of railway sidings;
- iv. those contracts designated in the Schedule.

Insured - means

- i. For all Sections of the Policy, 'You', 'Your' means the Insured named in the Schedule.
- ii. For Section 2 A i Road Risk, 'You', 'Your' also included:
 1. anyone using or in charge of Registered Insured Property with Your consent but excluding hirers;
 2. any authorised passenger of Registered Insured Property;
 3. Your employer or Principal where Registered Insured Property was, at the relevant time, driven or used on their behalf with Your consent, but excluding hirers.
- iii. For Section 2 A ii On-site Trade Use or 2 A iii Public Liability, 'You', 'Your' also includes:
 1. any of Your directors, executive officers or employees but only while acting within the scope of their duties in such capacity;
 2. any principal but only for the principal's vicarious liability that arises out of work performed by You for that principal provided that work –
 - a. the work was carried out by You in an attempt to comply with a contract to perform work that was made between You and the principal; and
 - b. Our liability shall not exceed the required amount specified in the contract documentation.
 3. any office bearer or member of any of the following organisations that are formed with Your consent:
 - a. a canteen, social, sports, welfare or child care organisation that is for Your employees; or
 - b. an internal first aid, fire brigade or ambulance service, but only while those persons are acting within the scope of their duties in such capacity.
- iv. For Section 2 A iv Products Liability 'You', 'Your' also includes:
 1. any of Your directors, executive officers or employees while acting within the scope of their duties in such capacity;
 2. any office bearer or member of any of the following organisations that are formed with Your consent:
 - a. a canteen, social, sports, welfare or child care organisation that is for Your employees; or

- b. an internal first aid, fire brigade or ambulance service, but only while those persons are acting within the scope of their duties in such capacity.

Insured Property – means mobile and stationary items of plant specifically noted in the Schedule as Insured Property.

Limit of Indemnity - means the amount shown in the Schedule with respect to Section 2.

Machine - means an item of machinery identified in the Schedule for the purpose of Section 1, and includes any attachment to the Machine that is either identified in the Schedule, is permanently attached to the Machine, or has a Market Value at the commencement of the Period of Insurance (or at the date the Machine was added to the Schedule) no more than \$10,000 or 10% of the Sum Insured for that Machine, whichever is the lesser

Maintenance Agreement - means an agreement that provides for the repair of faults and/or Breakdowns that happen in the course of normal operation, including the cost of all parts and labour

Market Value – means the value of Insured Property at a normal sale or, if that value cannot be established, the value taking profit expectations and factors such as age, wear and tear, location, obsolescence and usability into account.

Operator – means an appropriately licensed driver or an appropriately licensed operator of Insured Property.

Occurrence – means:

- i. An event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage that is neither expected nor intended (other than in the circumstances set out in part (ii)(4) of definition of Personal Injury) from the standpoint of a reasonable person.
- ii. Continuous or repeated exposure to a particular set of conditions does not constitute damage unless consequential physical loss or damage occurs.
- iii. All Occurrences of a series consequent upon or attributable to one source or original cause occurring over a period of no more than 72 hours shall be deemed to be one Occurrence.
- iv. All Advertising Liability arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used or to the number of claimants) shall be deemed to be one Occurrence.

Period of Insurance - means the period shown in the Schedule

Personal Effects – means personal property generally carried or worn excluding cash, negotiable instruments, mobile phones, lap top computers, personal computers, electronic organizers, portable music players, video recorders, cameras or tools and equipment.

Personal Injury – means:

- i. bodily injury, death, sickness, personal injury, disease, illness, disability, shock, fright, mental anguish and mental injury including loss of consortium or services resulting there from.
- ii. Without limiting the foregoing Personal Injury may arise as a result of:
 1. false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
 2. wrongful entry or wrongful eviction or other invasion of privacy;
 3. the publication or utterance of libel, slander or other defamatory or derogatory material, or publication of utterance in violation of any individual's right of privacy except:
 - a. when the first such publication or utterance is related to any publication or utterance prior to the commencement of the Policy; or
 - b. when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.
 4. assault and battery not committed by or at the direction of an Insured unless committed for the purpose of preventing, eliminating or mitigating the effects or actual or possible danger to persons or property.

Plant Value - means the Sum Insured shown in the Schedule with respect to each individual item of plant

Policy – means the Certificate of Insurance issued by Us and consists of-

- i. this document;
- ii. the Schedule attached hereto and provided by Us to You at the time of issue of the Policy, or from time to time issued by Us to You in substitution therefore; and
- iii. any written Endorsement or Endorsements issued by Us to You during the currency of Your Policy;
- iv. the Schedule and all Endorsements shall be deemed to be incorporated into and form part of the Policy.

Pollutants – means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, chemicals or waste, and includes legionnaires disease or any other air-borne disease or virus into or onto any land, soil, vegetation, crop, foodstuff, stockfeed, building, structure, watercourse, underground water supply, aquifer, body of water, or into the atmosphere. Provided that waste for these purposes shall include but not be limited to all materials which have been or are intended to be recycled, reconditioned or reclaimed.

Product(s) – means anything that is not in Your physical custody or in Your legal control that has been manufactured, grown, extracted, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, treated, installed, assembled, erected or constructed by You in the course of Your Business including any packaging and containers (other than a Vehicle) used to package or contain Your Product(s).

Products Liability – means any liability for an Occurrence that is caused by or arises out of Your Products.

Property Damage – means:

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

Registered Insured Property – means the Insured Property and associated attachments that

- i. are registered; or
- ii. are for public road use where -
 1. a conditional registration or permit is held, or
 2. an unconditional registration or permit is legally required to be held and is so held.

Schedule – means the Schedule attached to the Policy and headed as such and any substitute document headed as such from time to time issued by Us to You.

Sum Insured – means both-

- i. the sum set opposite an item of Insured Property in the Schedule;
- ii. the total sum of all items of Insured Property.

Total Loss – means when We decide that it is uneconomical to repair the Insured Property

Trade Use – means use in excavating, digging, grading, scraping, drilling, lifting, pumping, spraying, loading and unloading, vacuuming and the like including the process of setting up for such operations and reverting from such operative format to travel/transit configuration. It does not include transit to or from a worksite but does include travel within a worksite if simultaneously used for work.

Vehicle – means any machine, including attachments, that is designed to travel on wheels or on self-laid tracks and to be propelled by a power source other than manual or animal power.

We/Our/Ours/Us – means the Insurer shown in the Schedule.

You/Your/Yours – means the Insured as defined in the Policy and the Schedule.

CONDITIONS

GENERAL CONDITIONS

1. Average

For Sections 1 and 3, if the Plant Value for an item of Insured Property is less than 90% of its Market Value immediately prior to the to the Event causing physical loss or damage or the Breakdown (except in the case of destruction or permanent loss by theft) the indemnity will be reduced by the following formula:

(Indemnity multiplied by Plant Value) divided by 90% of Market Value

2. Misrepresentation and Non-disclosure.

If You have:

- a. failed to disclose any matter which You were under a duty to disclose to Us; or
- b. made a misrepresentation to Us before the Policy of Insurance was entered into,

and if We would not have entered into the Policy for the same Premium and or on the same terms and Conditions expressed in the Policy but for the failure to disclose the misrepresentation, then:

- i. Our liability in respect of any claim shall be reduced to an amount which places Us in the same position in which We would have been placed if the failure to disclose had not occurred or the misrepresentation had not been made; or
- ii. If the failure to disclose or misrepresentation was fraudulent We may avoid the Policy.

Where more than one Party is insured under the Policy, any non-disclosure or misrepresentation will only affect the party responsible for the non-disclosure or misrepresentation and no other party.

3. Observance of Terms and Conditions

It is a condition precedent to Our liability under the Policy that each of the following conditions be complied with:

- a. The observance of the Terms, Conditions and Endorsements of and to the Policy by any person or entity insured under it so far as they relate to anything to be done or complied with by any persons or entities insured;
- b. The truth of the verbal and written statements made to Us by any of the persons or entities insured or their representatives or agents prior to concluding the Policy;
- c. The notification as soon as practical by any of the persons or entities insured of any alteration of risk which materially affects this insurance.

4. Reasonable Care

You and/or Your employees or agents, must at Your or their own expense use due diligence to:

- a. take all reasonable precautions to prevent or minimise loss or damage;
- b. comply with all reasonable recommendations made by Us to prevent or minimise loss or damage;
- c. comply with all statutory requirements and recommendations of manufacturers and suppliers; and
- d. prevent the Occurrence of Personal Injury and Property Damage insured against under this Policy.

5. Entitlement

Each person, entity or organisation entitled to insurance under this Policy will be separately subject to its terms as if such person, entity or organisation were You.

6. Claims Co-operation

On the happening of an Event for which a claim is made of may be made under the Policy We may at Our election:

- a. take over the conduct in Your name of the defence or settlement of the claim;
- b. at Our own expense and for Our own benefit conduct proceedings or prosecute any action to enforce Your rights against others whether or not any payments have been made by Us in respect of such claim; and/or
- c. receive from You all assistance and information We may reasonable require for the purpose of defending or settling such claim or the pursuit of any rights of recovery from others.

7. Subrogation

Any Insured shall at Our request and expense do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by Us for the purpose of enforcing any rights, remedies, or of obtaining any relief or indemnity from other parties to which We will become entitled or subrogated upon Our paying for or making good any Personal Injury or Property Damage, or loss or damage under the Policy, whether such acts or things shall be or become necessary or required before or after their indemnification by Us.

8. Alteration of Risk

- a. **Material Alteration.**
You or Your agents must notify Us as soon as possible in writing of any material alteration(s) to Our exposure under the Policy:
- b. **Minimisation of Risk and Compliance with Directions.**
Where Our exposure under the Policy is altered, You must at Your own expense take such additional precautions as may be necessary to minimize the risk of any claim arising under this Policy and must comply with any of Our reasonable directions and requirements.
- c. **Agreement to Material Alterations.**
No material alteration will be made or allowed by Us whereby the risk is increased unless first agreed to by Us in writing.

9. Inspection

We or Our employees or agents will at any reasonable time have the right to inspect any examine at any location, any item, plant or piece of equipment associated directly or indirectly with the risk insured, the subject matter of the Policy, and You must provide to Us, Our employees or agent all details and information that we may reasonably require for that purpose.

10. Defective Product(s)

You will, at Your own expense, trace, recall and modify any of Your Product(s) that You know to, or You reasonably suspect may, contain any defect or deficiency.

11. Other Insurances

In the event of a claim You must give Us written notice if You have any other insurance covering the loss or damage to the Insured Property, or liability cover for Personal Injury or Property Damage.

12. Assignment

No interest in this insurance can be transferred to anyone other than an existing Insured party under this Policy without Our written prior consent.

13. Reinstatement of Sum Insured

Following any claim being paid or settled under this Policy We will reinstate the Sum(s) Insured under Section 1 and/or Section 3, provided that You pay any additional premium that may be reasonably required by us.

14. Goods and Services Tax

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/Plant Limit of indemnity or the other limits of cover including GST;
- b. registered for GST, We will pay the Sum Insured/Plant Limit of indemnity or the other limits of insurance and where You are liable to pay an amount of GST in respect of acquisition relevant to Your claim (such as services to repair a damaged item insured under the Policy) We will pay the GST amount.

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

You must advise Us of Your 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/Plant Value of indemnity or the other limit of insurance cover, We will only pay the amount of 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.

15. Payment of Premium

You will promptly pay the premium under this Policy together with any adjustments of premium and other amounts charged for the Policy and for any renewal, extension or Endorsement thereof.

16. Cancellation

This Policy may be cancelled:

- a. by You at any time by giving notice in writing to Us. Such cancellation will be effective from the date upon which we physically receive Your notice. Upon receipt of such notice You will be entitled to a pro rata refund of premium for that portion of the Policy not utilized, less 10%;
- b. by Us in accordance with the provisions of the *Insurance Contracts Act 1984*. You will be entitled to a pro rata refund of premium for that portion of the Policy not utilized.

Subject at all times to any minimum Policy premium in force at the time of cancellation.

CONDITIONS APPLICABLE TO SECTION 1 AND 3 ONLY

17. Notice of Claims

In the event of a claim under Section 1 and/or Section 3 of the Policy the following Conditions apply:

- a. following discovery of any loss or damage that might give rise to a claim under the Policy, Your or Your representative must:
 - i. notify Us as soon as possible and confirm such notification in writing giving an indication of the nature and extent of the loss, destruction or damage;
 - ii. take all steps within Your power to minimise the extent of the loss or damage;
 - iii. preserve all parts affected and make them available for inspection by Us, Our employees or agents;
 - iv. furnish all such information and documentary evidence as We may reasonably require; and
 - v. notify the police of any actual or attempted theft, burglary or malicious damage.
- b. Upon notification of any loss or damage being given to Us, You may carry out repairs or may make good any minor damage, but in all cases You must give Us, Our employees or agents an opportunity to inspect the loss or damage before any repairs or replacements are effected. If no inspection is carried out by Us or on Our behalf within a period of time that is reasonable having regard to the location of the risk, the weather conditions and any other relevant factors, You may proceed with such repairs and replacement.
- c. We will not pay for any additional damage to any item caused by the failure to repair that item properly and without delay.

CONDITIONS APPLICABLE TO SECTION 2 ONLY

18. Notice of Claims

In the event of any Occurrence likely to give rise to a claim under Section 2 of this Policy You must:

- a. at Your own expense, take such immediate actions as may be necessary to minimise the extent of Personal Injury and Property Damage;
- b. as soon as possible give notice in writing of such Occurrence to Us;
- c. send to Us immediately on receipt by You any letter, claim, writ, summons or proceeding in whatever court or tribunal which may have been commenced or threaten against You, and
- d. make no admission, offer, promise, payment, offer of indemnity to any party without Our prior written consent.