

# Annual Construction and Legal Liability

Insurance policy





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# About CGU

CGU Insurance Limited is the underwriter of this insurance policy. Our Australian Business Number is 27 004 478 371. Our Australian Financial Services Licence Number is 238291.

## Intermediary remuneration

CGU Insurance Limited pays remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to Us. The type and amount of remuneration varies and may include commission and other payments. If You require more information about remuneration We may pay Your intermediary You should ask Your intermediary

## About Steadfast

Steadfast is an unlisted public company, comprising over 270 shareholders. Each shareholder is an independent insurance brokerage. This policy is available exclusively through shareholders of Steadfast Group Limited. Steadfast Group Limited does not issue, guarantee or underwrite this policy.

## Important information

### General Insurance Code of Practice

CGU Insurance Limited proudly supports the General Insurance Code of Practice.

The purpose of the Code is to raise standards of practice and service in the general insurance industry.

#### The objectives of the Code are:

- to promote better, more informed relations between insurers and their customers
- to improve consumer confidence in the general insurance industry
- to provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; **and**
- to commit insurers and the professionals they rely upon to higher standards of customer service.

Brochures on the Code are available from your nearest CGU office.

## Our service commitment

CGU Insurance Limited is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that You are not satisfied with the way in which We have dealt with You, as part of Our commitment to customer service, We have an internal dispute resolution process in place to deal with any complaint You may have.

Please contact your nearest CGU office if You have a complaint, including if You are not satisfied with any of the following:

- one of Our products
- Our service
- the service of Our authorised representatives, loss adjusters or investigators; **or**
- Our decision on Your claim.

Our staff will help You in any way they can. If they are unable to satisfy Your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to Our Internal Dispute Resolution Department.

Brochures outlining Our internal dispute resolution process are available from your nearest CGU office.

## Privacy

We collect personal information from You for the purpose of providing You with insurance products and services, and processing and assessing claims. You can choose not to provide this information, however, We may not be able to process Your requests.

We treat Your personal information with care. We will not release Your personal information to anyone other than another insurer or an insurance reference service or as permitted or required by law. In the event of a claim, We may disclose information to and/or collect additional information about You from investigators or legal advisers.

If You wish to update the information We hold about You, please contact Your insurance adviser.

## Extract from the Insurance Contracts Act 1984

Under the terms of the Act, We must advise You about the following:

### Your duty of disclosure

Before You enter into a contract of general insurance with an insurer, You have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that You know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before You renew, extend, vary or reinstate a contract of general insurance. Your duty however does not require disclosure of matters:

- that diminishes the risk to be undertaken by the insurer
- that is of common knowledge
- that Your insurer knows or, in the ordinary course of his business ought to know
- as to which compliance with Your duty is waived by the insurer.

## Non-disclosure

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

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

## Important notices

### 1. Claims

This policy does not provide cover in relation to events that occurred before the contract was entered into.

### 2. Deductible

A Deductible is the sum of money We will not pay in respect of a claim. This Policy and the Schedule detail the Deductibles which may be applicable.

### Policy amendment

Your policy is amended by the addition of the following words in relation to cancellation and premium adjustment:

If you cancel your policy or there is an adjustment for a return premium, we may not provide a refund in respect of any amount paid by you for the Victorian fire services levy for which we are not entitled to reimbursement.

## Annual projects construction and legal liability insurance

The Company and You are identified and referred to in this policy and the Schedule. You having paid, or agreed to pay, to Us, the premium shown in the Schedule for the Policy Period or a premium as advised by Us as applying to any subsequent period, We will provide insurance against the risks described in each Section, subject to the terms, Conditions, Exclusions and Endorsements of this policy.

In issuing this policy, We rely upon the information contained in the Application and any written statements made by You or anyone acting on Your behalf. The insurance applies only in respect of those Items against which a Sum Insured is shown in the Schedule or which are otherwise indicated in the Schedule as being operative.

## General

### Definitions applicable to sections 1 and 2

- 1. Contract** shall mean the contract or agreement between any of the Named Insured under 4 a), b), c) and d), which gives rise to the Contract Works, and includes any sub-contract or sub-contract agreement entered into pursuant to such contract or agreement.
- 2. Deductible** shall mean the amount shown in the Schedule for which We shall have no liability in respect of:
  - a) Section 1, each and every claim or series of claims arising out of any one event.
  - b) Section 2, each and every Occurrence.

**3. Employee** shall mean any person engaged under a contract of service or deemed contract of service or apprenticeship with any of the Named Insured.

**4. Named Insured** shall mean:

- a) You
- b) Your personal representatives
- c) any of Your directors, partners, executives, officers or Employees but only for liability incurred by them while acting within the scope of their duties in such capacity
- d) Additional Insured
  - i. any principal; **or**
  - ii. the head contractor; **or**
  - iii. the project manager; **or**
  - iv. all contractors and sub-contractors not being You but being a legal entity with whom You have entered into a Contract and provided their interests are required to be insured jointly by You, and then only to the extent required by the terms set out in the Contract, and only in respect of work performed as a part of the Project

For the purposes of this policy sub-contractors shall not mean suppliers, manufacturers, design consultants or consultants of any kind whatsoever.

- e) any officers, committees or members of Your canteen, sports, social and welfare organisations and any member of Your fire, first aid, medical or ambulance services whilst acting in their capacity as such and in respect of activities associated with the Project
- f) any legal entity identified by name in the Schedule as having a financial, legal, or equitable interest in the Project, but only in respect of the insurance provided under Section 1 and only to the extent of such financial, legal, or equitable interest.

The Named Insured as outlined above shall represent the entire group as described unless otherwise specified in the Schedule.

- 5. Period of Insurance** means the period commencing at the start of the Project or the date specified in the Schedule, whichever is the later and ceasing at the end of the Defects Liability Period.
- 6. Policy Period** means the period commencing at the inception date shown in the Schedule and ending at the expiry date shown in the Schedule.
- 7. Principal** means the owner or persons or organisation (by whatever name) for or on behalf of whom the Project is being carried out.
- 8. Provisional Premium** shall mean the premium calculated on the basis of the Estimated Turnover of all the Insured Projects at the agreed rates.
- 9. Schedule** shall mean the schedule attaching to this policy.
- 10. Turnover** shall mean the total Estimated Construction Cost of all the Projects We have agreed to cover under this policy.
- 11. Vehicle** shall mean any type of machine on wheels, on skis or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine whilst attached thereto.



**12. We, Us, Our, Company** shall mean CGU Insurance Limited

**13. You, Your, Insured** means the Person(s) or legal entity named in the Schedule

## Insured projects applicable to sections 1 and 2

We will automatically provide cover under Section 1 and Section 2 (if applicable) for each Project You undertake subject to the following:

- a) The Project must be of the type defined in the Schedule.
- b) The Estimated Construction Cost for the Project must be an amount not exceeding the maximum Estimated Construction Cost shown in the Schedule.
- c) The Construction Period for the Project at the time of commencement of the Project must be a period not exceeding the maximum Construction Period shown in the Schedule.

We will automatically extend cover for Projects previously completed which fall within (a) above for Products Liability, if shown in the Schedule as an Insured Item.

We will include cover for Projects that do not fall within the automatic cover, subject to notification and acceptance prior to commencement of the Project, at terms and conditions to be agreed.

## Type of cover applicable to sections 1 and 2

### Runoff basis

This policy will provide cover for all Projects which commence during the Policy Period as shown in the Schedule.

In the event of cancellation or non-renewal of this policy, cover will continue on all Insured Projects until expiry of the relevant Defects Liability Period. You must declare to Us any Project which has not been completed and for which You require the runoff cover to apply at the end of the Policy Period, and pay any premium adjustment.

# Section 1

## Property Damage

### Cover

#### A. Construction period cover

We will indemnify the Named Insured for Damage to the Project and other Insured Items as specified in the Schedule from any cause, not excluded, occurring at the Project site as set out in the Schedule during the Construction Period including materials, components and equipment to be incorporated in the insured Project, whilst in storage or in transit within the Commonwealth of Australia.

#### B. Commissioning period cover

Where either testing or commissioning of the Project is required by the Contract Conditions, We will indemnify the Named Insured against Breakdown of any of the items the subject of this condition and which

- a) arise out of the performance of the testing or commissioning; **and**
- b) occur and are discovered during the Commissioning Period.

#### C. Defects liability period cover

Where a Defects Liability Period is required by the Contract conditions, We will indemnify the Named Insured for Damage to, the Project from any cause, not hereafter excluded, and which:

- a) manifests itself during the Defects Liability Period; **and**
- b) originates from:
  - i. a cause (unless excluded) occurring and arising out of the Project carried out by the Named Insured during the Construction Period and at the Project Site; **or**
  - ii. any cause (unless excluded) occurring and arising out of the course of operations carried out by the Named Insured on the Project Site in complying with the requirements of the Defects Liability clause in the Contract.

The insurance shall cease to attach to the whole or any separable portion of the Project following cessation of the Defects Liability Period.

### Insured items

Following Damage indemnified under Section 1 Property Damage, Cover A, B or C, We will pay up to the Sums Insured stated in the Schedule, costs and expenses necessarily incurred by the Named Insured for:

#### 1. Contract works sum insured

The Contract Works Sum Insured must be the full Estimated Construction Cost at the commencement of the Period of Insurance. Average will not apply to this Insured Item.

#### 2. Removal of debris

Shall include the cost of:

- a) demolition, removal and disposal of the Damaged parts of the Project and any Existing Structure insured hereunder
- b) demolition, removal and disposal of undamaged parts of the Project necessary to enable the damaged parts of the Project to be restored or replaced. and, where applicable, this insured Item shall also apply to any insured Existing Structures.

Unless another sum insured is shown in the Schedule, this Sum Insured will be limited to 10% of the Estimated Construction Cost. Average will not apply to this Insured Item.

#### 3. Professional fees

Shall include fees for architects, surveyors, consulting engineers, and other such professionals not being Employees of the Named Insured but employed in the reinstatement of insured Damage to the Project (but excluding any fees for the preparation of any claim under this policy).

Unless another sum insured is shown in the Schedule, this Sum Insured will be limited to 10% of the Estimated Construction Cost. Average will not apply to this Insured Item.

#### 4. Expediting expenses

Shall include the costs of express delivery within the Commonwealth of Australia, overtime rates of wages, the hire of additional labour and equipment, and the costs of purchasing resources necessary to reinstate repair or urgently replace Damaged parts of the Project insured by this policy.

Express delivery shall include carriage by airfreight within the Commonwealth of Australia but only by licensed airline(s) utilizing regular scheduled services, and not aircraft chartered specifically for such carriage unless agreed in writing by Us.

Expediting expenses will not include reimbursement of costs incurred solely to compensate for delay in completion of the Project.

Unless another Sum Insured is shown in the Schedule, this Sum Insured will be limited to 10% of the Estimated Construction Cost. Average will not apply to this Insured Item.

#### 5. Mitigation expenses

Shall include the costs and expenses necessarily and reasonably incurred by any of the Named Insured, in containing, mitigating, suppressing or preventing further Damage to the Project.

Unless another Sum Insured is shown in the Schedule, this Sum Insured will be limited to 5% of the Estimated Construction Cost. Average will not apply to this Insured Item.



## 6. a) Construction tools, minor plants and equipment

For insured Damage to construction tools, minor plant and equipment used on or about the Project Site for the performance of the Project during the Construction Period and owned by You.

Average will not apply to this sum insured.

The maximum sum insured will be limited to \$50,000 or any lesser amount shown in the Schedule, with a further limit of \$5,000 current market value applying to each individual item.

## b) Formwork, hoardings, temporary buildings, scaffolding, plant and equipment

For insured Damage to items under this section owned, hired, or for which You have accepted responsibility to insure, used on or about the Project Site for the performance of the Project during the Construction Period.

Average will apply to this Insured Item based on the Sum insured being the current market value of all items used on the Project Site.

## 7. Principal supplied materials

The cost of replacing Principal Supplied Materials in respect of Damage, whilst at the Project Site.

Average will apply to this Insured Item based on the full replacement value of all such materials.

## 8. Existing structures

The costs of replacing Existing Structures located at the Project Site and as shown on the Schedule.

Average will apply to this Insured Item. In applying Average the Sum Insured shall represent the full replacement cost of the structure at commencement of the Period of Insurance.

# Additional benefits

## The cover under section 1 is extended to include the following additional benefits.

### 1. Loss accumulation

For the purpose of the application of the Deductible, all loss or damage resulting from storm, tempest, flood, cyclone, tsunami, earthquake, subterranean fire, volcanic eruption or bushfire, occurring during any period of 72 consecutive hours shall be considered as one instance of Damage whether or not such storm, tempest, flood, cyclone or earthquake is continuous or sporadic in its sweep or scope and whether or not the Damage was due to the same climatic or seismological conditions. Each such instance shall be deemed to have commenced on the first happening of any such Damage, not within the period of any previous such instance.

### 2. Reinstatement of sum(s) insured

Following payment of a claim under this policy, We will automatically reinstate the Sum(s) Insured, provided You pay any additional premium at the original policy rate applicable.

## 3. Escalation and variations

If during the Construction Period there is an increase in the Estimated Construction Cost, the Sum Insured for the Contract Works as specified in the Schedule shall be increased by the same proportion. The amount of such increase shall not exceed 15 per cent of the Sum Insured stated under Insured Item 1 in the Schedule, unless expressly agreed in writing and an additional premium shall be paid at the end of the Construction Period at the original rates in accordance with General Condition 8.

## Definitions applicable to section 1 only

**1. Average** shall mean and shall apply to any claim when the amount You have specified for an Insured Item is less than the replacement amount of the Insured Item. This means that any payment We might otherwise be required to make under the terms and Conditions of this policy will be reduced in the same proportion as the amount specified bears to 80% of the replacement amount.

Average will apply to each Insured Item, as detailed in the individual Insured Item descriptions.

**2. Breakdown** shall mean Damage caused by mechanical, hydraulic, electrical or electronic failure resulting from defects within a machine or installation which requires repair or replacement to enable normal working to continue.

**3. Commissioning Period** shall mean the period commencing with the final installation of the items specified under the Contract and continuing for 6 weeks or the time specified in the Contract, whichever is the lesser, or the time actually specified in the Schedule.

**4. Construction Period** being the period commencing:

a) on the date specified in the Contract, or on the date of possession of the Project Site, or the actual date of commencement of the works, provided such date is within the Policy Period specified within the Schedule;

and expiring:

b) i. at the time of practical completion of the Project, being when the Contract Works are complete except for minor omissions and minor defects that do not prevent the Contract Works from being operational or reasonably capable of being used for their intended purpose; **or**

ii. with respect to any separable portion of the Project at the time it is taken into use by the Principal; **or**

iii. with respect to any separable portion of the Project at the time it is completed and delivered up to or taken over by the Principal; **or**

iv. with respect to any separable portion of the Project at the time it is completed pending sale or leasing; **or**

v. with respect to the whole of the Project attaining practical completion and subject to a contract of sale cover shall continue for a maximum of 30 days; or completion of the sale whichever occurs first; **or**

vi. on the expiry date specified in the Schedule;

whichever occurs first.

- 5. Contract Works** shall mean the cost of labour and all the materials incorporated in, or to be incorporated in the Project and included within the Estimated Construction Cost at the commencement of the Project.
- 6. Damage** means unforeseen physical loss, destruction or damage neither intended nor expected by the Named Insured in the course of carrying out the Project and the term 'Damaged' shall bear a corresponding meaning wherever it appears in this policy.
- 7. Defects Liability Period** being the period of months specified in the Schedule, and commencing:
- at the expiry of the Construction Period; **or**
  - on the date each separable portion of the Project is taken over or taken into use or occupation by the Principal or for which a certificate of practical completion has been issued;
- whichever occurs first.
- 8. Estimated Construction Cost** shall mean the total of all costs to complete the Project at commencement of the Period of Insurance for all Projects undertaken during the Policy Period.
- 9. Existing Structure** means any permanent building or structure located at the Project site prior to commencement of the Project.
- 10. Insured Items** means all of the individual items shown in the Schedule.
- 11. Major Perils** means fire, lightning, explosion, earthquake, collapse, storm, tempest, flood, water, subsidence, ground heave or landslip.
- 12. Minor Perils** means any other cause of Damage not defined as a Major Peril other than Named Cyclone,
- 13. Principal Supplied Materials** means any item supplied free, by the Principal, for incorporation within the Project and in addition to the Estimated Construction Cost.
- 14. Project** means each Contract Works as described in the Schedule.
- 15. Project Site** shall mean the location or locations specified in the Schedule where the Project is carried out together with all areas surrounding the said location that the Insured shall use in connection with the Project but within the Territorial Limits stated in the Schedule.

## Basis of loss settlement

The amount payable in respect of Damage insured under Section 1 Property Damage will be as set below:

### 1. Contract Works

The costs necessary to repair, reinstate or replace or repair the affected parts of the Project to its condition immediately before the Damage, even though such cost may vary from the original construction cost, less any salvage.

### 2. Existing Structures

The costs necessary to reinstate or replace or repair the affected structure, to its condition when new or pay up to the Sum Insured, shown in the Schedule, less any salvage.

## 3. Plant and Equipment

The amount payable in respect of plant and equipment in respect of Damage will, at Our option, be either:

- The costs necessary to repair the item and return it to its state of serviceability immediately prior to the Damage, less allowance for depreciation in respect of parts replaced; **or**
- In the case where the costs of repair exceeds the current market value We will pay the current market value immediately prior to the Damage., less any salvage.

The Basis of loss settlement for **1. Contract Works** and **2. Existing Structures** shall include but not be limited to:

- the cost of dismantling, re-erection, opening up, cleaning and repainting incurred as a result of an insured event under Section 1
- any fee, contribution or other impost payable to any government, local government or other statutory authority necessarily incurred by a Named Insured because payment of such fees, contribution or impost is a condition precedent to the obtaining of consent to reinstate or replace or repair any of the Project, provided that We shall not be liable for payment of any fines or penalties imposed by any such authorities
- the extra cost of reinstatement (including demolition or dismantling) of Damaged or undamaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made there under or any By-Law or Regulation of any Municipality or other Statutory Authority
- Provided that the amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Named Insured had been required to comply prior to the happening of the loss, destruction or damage
- customs, excise and other duties, taxes and reasonable overhead costs, profit margins, establishment and supervisory charges incurred by a Named Insured.

In all cases the cost of reinstatement shall mean the final cost to a Named Insured after completion of the work of reinstatement, replacement or repair of the Project. Where such work is carried out wholly or in part by a Named Insured, such final costs shall include a margin for overheads and profit, equivalent to the margins and profit contained within the original contract tender.

We will not make any payment unless the Named Insured has produced to Our reasonable satisfaction all accounts, invoices and any other supporting documentation necessary to substantiate that the work of repair, rebuilding or replacement has been effected or is in progress.

We will not pay costs for any alterations, additions, improvements or overhauls nor the cost of any temporary repairs that do not constitute a part of the final repairs.

The Deductible shall be subtracted from the Insured loss amount reduced by the application of Average, where applicable.

At the request of the Named Insured, progress payments on account of any loss recoverable under this Section 1 will be made by Us to or on behalf of the Named Insured at such intervals and/or for such amounts as may be agreed upon, subject to the Named Insured complying with Our request for relevant claim details and where necessary upon the production of a report by the loss adjuster (if appointed). Any such payment shall be deducted from the finally agreed claims settlement figure.

## Limitation

With respect to each Project insured, the maximum amount of our liability will not exceed the Sum(s) Insured for each Insured Item as stated in the Schedule, less the application of any Deductible.

## Exclusions applicable to section 1

We shall not be liable for:

1. The cost of repairing, replacing or rectifying Damage caused by a defect in design, plan, specification, materials or workmanship. Provided that We will pay the cost of Damage resulting directly from such fault, defect, error or omission, less the cost which would have been incurred in repairing replacing or rectifying such fault, defect, error or omission, immediately prior to the loss occurring.
  2. We agree that the Project shall not be regarded as damaged solely by virtue of the existence of any defect in design, plan, specification, materials or workmanship.
  3. The cost of repairing, replacing or rectifying Damage due to Breakdown of second hand machinery or any plant and equipment not forming part of the Project.
  4. Damage discovered only at the time an inventory is taken.
  5. Damage to, cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes, securities and computer systems, software and data.
  6. Damage caused by, erosion, wasting or wearing away, abrasion, corrosion, rust, oxidation, gradual deterioration, or any gradually operating cause. Provided that this exclusion shall be limited to the discrete parts or portions of the Project which are directly and immediately affected and shall not be deemed to exclude any Damage to any correctly executed parts or portions of the Project, which may result therefrom.
  7. The cost of normal upkeep or routine making good.
  8. Consequential loss, loss of use, penalties, fines, liquidated damages, or aggravated, punitive or exemplary damages, or loss or Damage in connection with guarantees of performance or efficiency.
  9. Damage occurring during the course of ocean marine transit including unloading following ocean marine transit, other than transit within Australian coastal waters, in connection with the Project. Provided that this exclusion shall not apply to materials and/or property awaiting loading onto vessels or craft or following discharge and landing at ships slings.
  10. Damage to any vessel, craft or thing made or intended to float on or in, or travel on or through, water or air, or any plant, tools, equipment or other things in, on or attached to, any such vessel or craft.
  11. Damage to property for which You are relieved of responsibility under the terms of any Contract or agreement.
  12. Damage to hoists, cranes and other plant and equipment, Vehicles of any kind, tools, and Employees effects used in and about the performance of the Contract Works, unless a Sum Insured is shown in the Schedule.
  13. Damage due to embezzlement or fraudulent misappropriation by any Employee: provided always that this exclusion shall not apply to theft consequent upon forcible and violent entry to or felonious concealment upon the Project Site committed by an employee of the Insured.
  14. Damage arising out of the imposition of abnormal operational conditions, intentional overloading or overheating or experiments.
  15. The cost of repairing or replacing parts on any construction plant and equipment, requiring periodic or frequent replacement repair or maintenance. This includes but is not limited to:
    - i. fuses, shear-pins, rupture plates, or other expendable load limiting devices
    - ii. bits, drills, knives, saw blades or other cutting devices
    - iii. dies, moulds, patterns, pulverising and crushing surfaces, screens, sieves, filters, batteries, tyres, tracks
    - iv. ropes, belts, chains, elevator and conveyor belts
    - v. flexible pipes, jointing and packing material
  16. Damage to floor and wall finishes or coverings, contents of, or any consequential loss in respect of any Existing Structures.
  17. Damage arising from any abandonment of the Project or cessation of work for more than 30 consecutive days.
  18. Damage to any vegetation forming part of the Project which is caused by or arises from disease, lack of water, excess water or replanting operations.
  19. Damage to any roadworks unless cover is included by Endorsement.
  20. Damage to pipe trenches unless cover is included by Endorsement, but this exclusion shall not apply to pipe trenching forming part of the construction of a building
  21. The cost of:
    - i. additional dewatering expenses incurred because the quantities of water exceed those allowed for in the Contract
    - ii. expenses incurred for additional installations and facilities for the discharge of run-off or underground water
    - iii. expenses incurred for grouting or any other measures to remedy leakage of water into excavations, foundations or basements
    - iv. loss or damage due to failure of the dewatering system if such failure could have been avoided by sufficient standby facilities.
- Notwithstanding anything contained in (i) – (iii) above, We will indemnify the Named Insured against the cost of dewatering necessary to provide initial access to, and to allow repairs to be effected to previously completed sections of the Project whether Damaged or undamaged following insured Damage but not exceeding the cost of dewatering which was being incurred immediately prior to the Damage occurring.

# Section 2

## Legal Liability

### Introduction

This Section forms part of this policy only if shown in the Schedule and, if so, must be read together with the Definitions, terms, Conditions, Exclusions and Limitations expressed in this policy and the Schedule.

### Cover

#### 1. What we cover

We agree (subject to the terms, Claims Procedures, General Conditions, Exclusions, Definitions and Limits of Liability incorporated herein) to pay to the Named Insured or on their behalf all sums they shall become legally liable to pay as compensation:

- a) in respect of General Liability
- b) in respect of Products Liability

happening during the Policy Period within the Geographical Limits and caused by or arising out of an Occurrence in connection with Your Projects or Products.

#### 2. Defence costs and supplementary payments

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

- 2.1 defend the Named Insured and, on their behalf, any claim or suit against them alleging such Personal Injury, Property Damage or Advertising Injury, and on Your behalf, any claim or suit alleging such Personal Injury, Property Damage caused by or arising out of any of Your Products, and seeking damages on account thereof, even if any of the allegations of such claim or suit is groundless, false or fraudulent
- 2.2 pay all charges, expenses and legal costs incurred by Us and/or by a Named Insured or You with Our written consent:
  - 2.2.1 in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of a Named Insured or Your attendance at hearings or trials at Our request; **or**
  - 2.2.2 in bringing or defending appeals in connection with such claim or suit
- 2.3 pay all charges, expenses, and legal costs recoverable from or awarded against a Named Insured or 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 judgement which does not exceed the limit of Our liability thereon
- 2.4 pay expenses incurred by a Named Insured or You for:
  - 2.4.3 rendering first aid and/or surgical or medical relief to others at the time of any Personal Injury (other than any medical expenses, which We are prevented from paying by any law)

- 2.4.4 temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof
- 2.4.5 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which a Named Insured or You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority
- 2.5 pay all legal costs incurred by a Named Insured or You with Our consent for representation of a Named Insured or You at:
  - 2.5.6 any Coronial Inquest or Inquiry
  - 2.5.7 any proceedings in any court or tribunal in connection with liability insured against by this policy.

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

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments. Where We are prevented by law or otherwise from making payments on behalf of a Named Insured, We will indemnify the Named Insured for legal liability incurred to the extent that such liability is covered by this policy.

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

#### 3. Limits of liability and deductibles

Subject to clause 2 above and clause 4 below:

- 3.1 The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims for General Liability arising out of any one Occurrence
- 3.2 The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Policy Period, for Products Liability.

The applicable Limit of Liability will not be reduced by the amount of any Deductible payable by a Named Insured.

#### 4. Additional benefit – claims preparation costs

In addition to the amount of cover provided by this policy, We will pay up to \$20,000 for reasonable professional fees and such other expenses incurred by the Named Insured for the preparation of claim under this policy. The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under clause 2 of this policy.



# Definitions

## Applicable to section 2 only

### 1. **Advertising Injury** means Injury arising out of:

- 1.1 libel, slander or defamation; **or**
- 1.2 any infringement of copyright or passing off of title or slogan; **or**
- 1.3 unfair competition, privacy, idea misappropriation contrary to an implied contract; **or**
- 1.4 invasion of privacy committed or alleged to have been committed during the Policy Period in any advertisement, publicity article, broadcast or telecast and caused by or arising out of the Named Insured's advertising activities.

### 2. **Aircraft** means any craft or object designed to travel through air or space, other than model aircraft.

### 3. **Compensation** means monies paid or agreed to be paid by judgment, award or settlement for Personal Injury and/or Property Damage and/or Advertising Injury. Provided such Compensation is only payable in respect of an Occurrence to which this insurance applies.

### 4. **Employment practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of the Named Insured's Employees.

### 5. **General liability** means legal liability of any of the Named Insured for Personal Injury, Property Damage or Advertising Injury caused by or arising out of an Occurrence happening in the course of tendering for Projects and all activities associated activities therewith and carrying work in connection with Your Projects other than Products Liability.

### 6. **Geographical limits** means:

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

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

### 8. **Incidental contracts** means:

- 8.1 any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault
- 8.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities

8.3 any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings

8.4 those contracts designated in the Schedule.

### 9. **Medical persons** includes but is not limited to medical practitioners, medical nurses, dentists and first aid attendants.

### 10. **North America** means:

- 10.1 the United States of America and the Dominion of Canada
- 10.2 any state or territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada
- 10.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.

### 11. **Occurrence** means any event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in clause 12.5) from the Named Insured standpoint.

With respect to Personal Injury or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence. All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

### 12. **Personal injury** means:

- 12.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish, and/or mental injury, including loss of consortium or services resulting therefrom
- 12.2 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation
- 12.3 wrongful entry or wrongful eviction or other invasion of privacy
- 12.4 libel, slander or defamation of character, unless arising out of Advertising Injury
- 12.5 assault and battery not committed by the Named Insured or at the direction of the Named Insured, unless committed for the purpose of preventing or eliminating danger to persons or property.
- 12.6 In the event of Personal Injury or claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability, such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

**13. Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. 'Waste material' includes materials that are intended to be recycled, reconditioned or reclaimed.

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

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

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

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

**16. Property damage** means either:

- 16.1 physical loss, destruction of or damage to tangible property, including the loss of use thereof at anytime resulting there from; **or**
- 16.2 loss of use of tangible property which has not been physically lost, destroyed or damaged, provided that such loss of use is caused by or arises out of an Occurrence; **or**
- 16.3 obstruction, loss of amenities, trespass, nuisance or Interference with any right of way, light, air or water; **or**
- 16.4 stoppage of or interference with pedestrian, vehicular, air, rail or waterborne traffic.

The term 'loss of use' is deemed to include economic loss suffered by any person or party consequent upon physical, destruction of or damage to any other person's or party's property.

**17. Tool of trade** means a vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by a Named Insured at Your premises or on any Project site. Tool of Trade does not include any Vehicle whilst travelling to or from a Project site or Vehicles that are used to carry goods to or from any premises.

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

## Exclusions applicable to section 2

### We do not cover any liability

#### 1. Property owned by a named insured

for Property Damage to property owned by the Named Insured.

#### 2. Property in care, custody and control

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

- 2.1 the personal property, tools and effects of any of their directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of their visitors
  - 2.2 premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, the Named Insured for the purpose of the Project, but no cover is provided by this policy if any Named Insured has assumed the responsibility to insure such premises
  - 2.3 premises (and/or their contents) temporarily occupied by the Named Insured for the purpose of carrying out work in connection with the insured Project
  - 2.4 any other property temporarily in the Named Insured possession for the purpose of being worked upon, but no indemnity is granted for Damage to that part of any property upon which the Named Insured are or have been working if the Damage arises solely out of such work
  - 2.5 any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicles) not belonging to or used by the Named Insured, whilst such Vehicle is in a car park owned or operated by the Named Insured provided that the Named Insured does not operate the car park for reward, as a principal part of their Project
  - 2.6 any property (except property that the Named Insured owns) not mentioned in clauses 2.1 to 2.5 above whilst in the Named Insured physical or legal care, custody or control where they have accepted or assumed legal liability for such property. Provided that Our liability under this clause 2.6 shall not exceed \$100,000 in respect of any one claim or series of claims arising out of any one Occurrence.
- #### 3. Vehicles
- for Personal Injury or Property Damage arising out of the ownership, possession or use by the Named Insured of any Vehicle:
- 3.1 which is registered or which is required under any legislation to be registered; **or**
  - 3.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).



Provided that exclusions 3.1 and 3.2 shall not apply to Personal Injury where:

- i. that compulsory liability insurance or statutory indemnity does not provide indemnity: and the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by the Named Insured of legislation relating to Vehicles.
- ii. any Vehicle (including any tool or plant forming part of or attached to or used in connection with such vehicle) is being operated or used by a Named Insured or on their behalf as a Tool of Trade at the Named Insured premises or on any Project site.
- iii. it arises from the delivery or collection of goods to or from any Vehicle.
- iv. it arises from the loading or unloading of any Vehicle
- v. any Vehicle temporarily in the Named Insured's custody or control for the purpose of parking.

#### **4. Aircraft, hovercraft or watercraft**

for Personal Injury and/or Property Damage arising from:

- 4.1 the ownership, maintenance, operation or use by the Named Insured of any Aircraft or Hovercraft
- 4.2 the ownership, maintenance, operation or use by the Named Insured of any Watercraft exceeding eight (8) metres in length, whilst such Watercraft is afloat. Provided that exclusion 4.2 shall not apply with regard to claims arising out of
  - 4.2.1 Watercraft used in operations carried out by any independent contractors for whose conduct the Named Insured may be held liable
  - 4.2.2 Watercraft owned by others and used by the Named Insured for business entertainment
  - 4.2.3 hand propelled sailing craft not exceeding eight (8) metres in length whilst such craft is in territorial waters.

#### **5. Aircraft products**

arising out of any Products which, with Your knowledge is intended for incorporation into the structure, machinery or controls of any Aircraft.

#### **6. Damage to products**

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

#### **7. Faulty workmanship**

for the cost of performing, completing, correcting or improving any work undertaken by the Named Insured.

#### **8. Loss of use**

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

- 8.1 a delay in or lack of performance by the Named Insured or on their behalf of any contract or agreement; **or**

- 8.2 failure of Your Products to meet the level of performance, quality, fitness or durability impliedly warranted or represented by You; but this exclusion 8.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by the Named Insured or on their behalf after such products have been put to use by any person or organisation other than a Named Insured.

#### **9. Product guarantee**

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

#### **10. Product recall**

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

#### **11. Advertising injury**

for Advertising Injury:

- 11.1 resulting from statements made at the direction of the Named Insured with knowledge that such statements are false
- 11.2 resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract
- 11.3 resulting from any incorrect description of Products or services
- 11.4 resulting from any mistake in advertising price of Products or services
- 11.5 from failure of Products or service to conform with advertised performance, quality, fitness or durability
- 11.6 incurred by an Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

#### **12. Asbestos**

for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by or arising from exposure to asbestos or materials containing asbestos.

#### **13. Breach of professional duty**

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

- 13.1 arising out of the rendering of or failure to render professional medical advice by Medical Persons employed by the Named Insured to provide first aid and other medical services on Your premises
- 13.2 arising out of advice which is not given by the Named Insured for a fee
- 13.3 arising out of advice given in respect of the use or storage of Your Products.

#### 14. Design, specification and formula

caused by or arising out of any Named Insured making or formulating a design or specification within the domain of the architectural, engineering, scientific, chemical, actuarial, statistical, economic, financial or medical profession.

Provided that exclusion 14 shall not apply in respect of any formulation of a design or specification in regard to any Products, for which You have not charged a fee for that formulation of a design or specification.

#### 15. Contractual liability

which has been assumed by the Named Insured under any contract or agreement that requires the Named Insured to:

- 15.1 Effect insurance over property, either real or personal
- 15.2 Assume liability for, Personal Injury or Property Damage regardless of fault. Provided that this exclusion shall not apply with regard to:
  - 15.2.1 liabilities that would have been implied by law in the absence of such agreement; **or**
  - 15.2.2 liabilities assumed under incidental contracts; **or**
  - 15.2.3 terms, regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; **or**
  - 15.2.4 liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this policy.

#### 16. Employers liability

- 16.1 for Bodily Injury to any Worker in respect of which the Named Insured are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Worker's Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected. Provided that this policy will respond to the extent that the Named Insured's liability would not be covered under any such policy, fund, scheme or self insurance arrangement had the Named Insured complied with its obligations pursuant to such law.
- 16.2 Imposed by:
  - 16.2.1 the provisions of any Industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement.
  - 16.2.2 any law relating to Employment Practices.

For the purpose of Exclusions 16.1 and 16.2.

    - a) The term 'Worker' means any person deemed to be Employed by the Named Insured pursuant to any Worker's Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be their Workers, **and**
    - b) the term 'Bodily Injury' means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

#### 17. Fines, penalties, punitive, exemplary or aggravated damages

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

#### 18. Electronic data and software

in respect of any claim of whatsoever nature which consists of, or arises directly or indirectly out of, or in connection with:

- a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or Software
- b) error in creating, amending, entering, deleting or using electronic Data and/or Software
- c) total or partial inability or failure to receive, send, access or use Electronic Data and/or Software for any time or at all; from any case whatsoever, regardless of any other contributing cause or event whenever it may occur.

Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or, processing or electromechanical data processing or electronically controlled equipment. Software means programs, procedures and routines associated with the operation of electronic or electromechanical data processing or electronically controlled equipment, including any operating systems.

#### 19. Libel and slander

for libel and slander:

- 19.1 resulting from statements made prior to the commencement of the Policy Period
- 19.2 resulting from statements made at the Named Insured's direction with knowledge that such statements are false
- 19.3 relating to advertising, broadcasting or telecasting activities conducted by a Named Insured or on their behalf.

#### 20. Liquidated damages

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

#### 21. Vibration, weakening and removal of support

for Damage to Property in connection with:

- a) vibration; **or**
- b) removal or weakening of, or interference with, support to land, buildings or any other property.

This exclusion shall not apply when a separate Limit of Indemnity is shown in the Schedule.

#### 22. Insured projects

for the cost of repairing or replacing any of the Projects or Insured Items covered under Section 1 of this policy.

#### 23. Pollutants

- 23.1 for Personal Injury or Property Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water.
- 23.2 for the cost of testing and monitoring for, removing, nullifying, or cleaning up of Pollutants.

23.3 Provided that with respect to any such liability which may be incurred anywhere other than North America, exclusions 23.1 and 23.2 shall not apply where such discharge, dispersal, release or escape is caused by a sudden and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

## Conditions applicable to section 2

### 1. Bankruptcy or insolvency

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

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

### 2. Cross liabilities

This insurance extends to indemnify:

2.1 each of the parties comprising the Named Insured; **and**

2.2 each of the Insured(s) hereunder, separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in clauses 2.1 and

2.3 in respect of claims made by any other of such parties. Provided always that:

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

### 3. Release

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

Notwithstanding Condition 6 of this policy, We agree to waive all Our rights of subrogation against such Authority or persons or Parties in the event of any Occurrence for which a claim for indemnity may be made under this policy.

## General exclusions applicable to sections 1 and 2

We shall not be liable for:

### 1. Terrorism

liability directly or indirectly caused by or contributed to by, or arising from or happening through or in connection with any act of terrorism. Terrorism is defined as an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

### 2. War

any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, terrorism, military or usurped power or confiscation or nationalisation, or requisition or destruction of or damage to property by or under the orders of any government or public or local authority.

### 3. Radioactive contamination

any Damage to property, consequential loss, liability of whatsoever nature, directly or indirectly caused by, or contributed to, by, or arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste
- b) any nuclear assembly or nuclear component thereof, nuclear weapons or material.

### 4. Cessation of work

Damage, arising from any abandonment of any Project or cessation of work for more than 30 consecutive days.

### 5. Insolvency

any loss or damage, or legal liability of whatsoever nature, directly or indirectly caused by, or due to the non-availability of funds to finance the Contract Works, or for the repair or replacement of the Contract Works.

## Date recognition special exclusion

There is no insurance under this policy in respect of any claim of whatsoever nature which consists of, or arises directly out of, or in connection with the failure or inability of any:

- a) electronic circuit, microchip, integrated circuit, microprocessor, embedded system, BIOS or other instruction set, hardware, software, firmware, program, computer, data processing equipment, telecommunication equipment or systems, or any similar device; **or any**
- b) media or systems used in connection with any of the foregoing; whether the property of the Named Insured or not, at any time to achieve fully and successfully any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote, represent or express a date, including, but without being limited to, any failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of or in connection with:

- i. anything referred to in (a) or (b) recognising, using or adopting any date, day of the week or period of time, otherwise than as, or other than, the true or correct date, day of the week or period of time; **or**
- ii. the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) or (b) above.

### Exception to date recognition special exclusion

However, this special exclusion will not exclude any claim for subsequent loss or destruction of or damage to any property or consequential loss which is solely and directly caused by a Defined Contingency (as defined here under), arising under any of the sections listed hereunder, but only to the extent that such claim would otherwise be insured under those sections.

### Section 1 – Definition

For the purposes of this special exclusion only, 'Defined Contingency' shall mean fire, lightning, explosion (other than loss or destruction of or damage to boilers and pressure vessels), aircraft and other aerial devices or articles dropped there from, riot, civil commotion, strikers, locked out workers, persons taking part in labour disturbances, malicious persons, earthquake, storm, flood, escape of water from any tank or apparatus or pipe, impact by any road vehicle or animal, or theft (other than theft by employees).

## General conditions applicable to sections 1 and 2

### Precedent to liability

#### 1. Your duty

Our liability is conditional upon:

- a) Payment of the premium. We will not make any claim payments on any claims until You have actually paid the premium
- b) Notification of changes. Notification as soon as possible by You to Us, of any change materially varying any of the facts or circumstances existing at the commencement of this policy, or subsequent extension in time of this policy
- c) Observance of policy terms. The observance of the terms of this policy by You and by any other person entitled to indemnity under this policy.

#### 2. Breach of conditions or warranty

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

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

Provided always that, upon discovery of any such fact or circumstance referred to above, Your officer responsible for insurance matters shall give written notice thereof to Us as

soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium that We may require.

### 3. Non-Imputation

Where this insurance is arranged in the joint names of more than one Insured, as described in Definition 4 applicable to Sections 1 and 2, it is hereby declared and agreed that:

- a) Each Insured shall be covered as if it made its own proposal for this insurance
- b) Any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured.

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

### 4. Reasonable care

The Named Insured must take all reasonable precautions to:

- a) prevent:
  - i. Personal Injury and Damage to Property, **and**
  - ii. the manufacture, sale or supply of defective Products
- b) comply with, and ensure that the Named Insured's employees, servants and agents comply with, all laws and bylaws, regulations and recognised standards for the safety of persons or property
- c) ensure that only competent employees use, operate, maintain and service plant and equipment
- d) maintain all premises, fittings, plant and equipment in sound condition
- e) take immediate action to trace, recall or modify all products that You know, or have reason to suspect, contain a deficiency.

### 5. Subrogation and allocation of the proceeds of recoveries

Subject to Condition 6 'Subrogation Waiver', any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or of obtaining relief of indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying the Named Insured in respect of legal liability under this insurance. Should the Named Insured incur any legal liability which is not covered by this insurance:

- a) due to the application of a Deductible; **and/or**
- b) where the amounts of any judgments or settlements exceed the applicable Limit of Liability

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



## 6. Subrogation waiver

Notwithstanding Condition 5 We hereby agree to waive Our rights of subrogation under this policy against:

- a) each of the parties described under General Definition 4 applicable to Sections 1 and 2
- b) any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this policy.

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

## 7. Payment of limit of liability

We may at any time pay to the Named Insured the appropriate Limit of Indemnity (after deducting from it any amounts already paid) or any lesser amount for which a claim or claims may be settled. In doing so, We will relinquish the conduct of, and shall be under no further liability in connection with, such claim or claims except for costs and expenses incurred before We made such payments.

## 8. Premium adjustment

Within thirty (30) days of expiry of the Policy Period, You shall furnish to Us a declaration and details of the estimated or actual final construction cost for each of the insured Projects commenced during the Policy Period.

Where the final Turnover differs from the estimated Turnover, then the final Premium for this policy shall be determined by applying the agreed rate to the final Turnover.

The difference between the final premium and the Provisional Premium will be calculated and will be:

- i. the amount payable by You if the final Turnover exceeds the estimated Turnover; **or**
- ii. the amount refunded by Us if the final Turnover is lower than the estimated Turnover.

We shall not be called upon to refund more than thirty per cent (30%) of the Provisional Premium.

## 9. Jurisdiction

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

## 10. Cancellation

- a) Subject to General Conditions 2 and 3, We may cancel this policy in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984.
- b) Under Section 60 of the Insurance Contracts Act 1984, We may cancel this policy at any time where:
  - i. it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; **or**
  - ii. it is an interim contract of general insurance.
- c) If We cancel this policy, cancellation shall take effect at the earlier of the following times:

- i. the time when another policy of insurance between You and Us or some other insurer, being a policy that is intended by You to replace this policy is entered into; **or**
  - ii. at 4.00pm on the thirtieth (30th) business day after the day on which notification was given to You.
- d) You may cancel this policy at any time by notifying Us in writing.
  - e) After cancellation, We will refund the premium for the time remaining on this policy, less any non-refundable duties, unless You have made a fraudulent claim. Subject to the application of a minimum premium, if any.

## 11. Inspection by us

We (or agents appointed by Us) have the right to inspect and examine, by mutual appointment, any Project.

## 12. Transfer of interest

No interest in this policy can be transferred without Our written consent.

## 13. Goods and services tax

Where We make a payment under this policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that a Named Insured are, or will be, or would have been entitled to under A New Tax system (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

Where We make a payment under this policy as compensation instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that a Named Insured would have been entitled to under A New tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

# Claims procedures

## 1. Notification

As soon as possible after the happening of any occurrence, accident or event which may give rise to a claim against Us, You or Your legal representative must:

- a) advise details to Us and send written confirmation within 30 days
- b) take all reasonable steps to minimise the loss or Damage or liability and to prevent any further loss, Damage or liability
- c) take all reasonable precautions to preserve any things which might prove necessary or useful by way of evidence in connection with any claim
- d) advise the nearest Police Station in the case of property lost, stolen or vandalised, and obtain a written Police report if requested by Us
- e) take all practical steps to recover any property
- f) retain all Damaged property for inspection by Us.

## 2. Our rights of conduct and recovery

- a) We shall have full discretion in the conduct, defence or settlement of any claim. This includes the right to instruct lawyers to provide advice as to liability and to represent the Named Insured.
- b) Subject to the provisions of the Act We have the right to recover or obtain contribution from any person against whom the Named Insured may be able to claim and the right to take action in their name.

You and any other person entitled to benefit under this policy must not hinder these rights and must give all such information and cooperation as We may require.

## 3. Authority for repairs or replacement

Where a claim arises, the Named Insured must not authorise repairs to, or arrange replacement of, any of the property relevant to the claim without Our consent.

## 4. Admission of liability

Subject to the provisions of the Insurance Contracts Act 1984, You or any person making a claim under this policy must not make any admission of liability or payment or promise, or offer of payment in connection with any such claim, without Our written consent.

## 5. Verification of claim

The Named Insured will, at their own expense, furnish Us with:

- a) a statement in writing containing particulars of the property affected and its value; **and**
- b) such books of account and other business books, computer records, vouchers, invoices, balance sheets, and other documents, proofs, information, explanations and other evidence and any statutory declaration as We may require for the purpose of investigating or verifying a claim under this policy and the Named Insured, and their accountants, must cooperate fully in this regard.

## 6. Other insurances

The Named Insured must furnish Us with a statement giving details of the other insurances which may also provide cover on any property hereby insured.

## 7. Inspection of damage

- a) Upon notification of any loss or damage being given to Us, a Named Insured may carry out repairs or make good any minor damage, but in all other cases the Named Insured must give Us, Our employees or agents an opportunity to inspect the loss or damage before any repairs or alterations are effected.
- b) If no inspection is carried out by or on behalf of Us within a period of time which is reasonable, having regard to the location of the risk, weather conditions and any other relevant factors, the Named Insured may proceed with such repairs or replacement.

## Endorsements

The following Endorsements apply to and form part of this policy but only where the title appears and is activated in the Schedule. The terms, Conditions and Exclusions of this policy remain otherwise unaltered.

### End1 Unsealed Roads Limitation

We will indemnify the Named Insured against Damage to unsealed road works, being road works that are completed or partially completed but have not received at least one application of weatherproof course, but only up to a maximum length as shown in the Schedule either in one continuous section or in the aggregate

### End2 Open trench limitation

We will indemnify the Named Insured against Damage to incomplete Trenches being partially or completely excavated, with or without pipes, ducts or cables laid therein prior to backfill and final compaction, but only up to a maximum length as shown in the Schedule either in one continuous section or in the aggregate.

We will not indemnify the Named Insured under this Endorsement against:

- i. the cost of rectifying any subsidence of completed backfill regardless of the cause
- ii. the cost of cleaning pipes, the ends of which have not been sealed by the end of each working day to prevent entry of water and or debris
- iii. the cost of rectifying displacement of pipes or ducts by water unless such pipes and ducts have been secured by the end of each working day by backfill placed in a manner intended to counteract pipe buoyancy.

### End3 Dewatering

Notwithstanding anything to the contrary contained in this policy We will not indemnify the Named Insured against any costs associated with the installation and operation of any dewatering equipment or any other costs of dewatering.

### End4 Tunnels, shafts and declines

We will not indemnify the Named Insured against any costs incurred for:

- i. grouting of unsound earth or rock strata
- ii. any measured to control water inflow
- iii. the provision of linings, cribs, sets or other support(s) removal or excavation material in excess of the minimum excavation line provided in the plans
- iv. dewatering
- v. installations and facilities for the discharge of run-off or underground water
- vi. refilling of cavities resulting from overbreak
- vii. loss or damage due to failure of the dewatering systems, if such failure could have been avoided by sufficient standby facilities
- viii. loss or damage or dewatering costs directly or indirectly caused by the ingress of water through the tunnel, shaft or decline entrance unless such ingress is caused by the failure of the water diversion or protective bunds.



However, notwithstanding anything contained in i) to ix) above, We will indemnify the Named Insured against the cost of:

- a) i) replacing previously installed grouting, linings, cribs, sets or other support(s) which have been damaged as a consequence of any insured Damage
  - ii) additional grouting, permanent linings, cribs, sets or other support(s) necessary to reinstate previously completed sections of the Project which have been damaged as a consequence of any insured Damage, less the cost of linings, cribs, sets or other support(s) which would have been incorporated into the original construction to deal with any physical conditions of the ground surrounding the Project if the condition had been detected or anticipated prior to the insured Damage.
- b) removal of collapsed ground material necessary to provide access to the location of any insured Damage and to provide a clear working area to allow repairs to be effected to previously completed sections of the Project
  - c) dewatering necessary to provide initial access to, and to allow repairs to be effected to previously completed sections of the Project whether damaged or undamaged following any insured Damage but not exceeding the cost of dewatering which has been incurred immediately prior to the insured Damage.

Clauses (b) and (c) above will be subject to the Removal of Debris Sum insured in the Schedule.

## End5 Partial occupancy

Notwithstanding anything to the contrary contained in this policy We will indemnify the Named Insured for Damage to the Project following partial occupancy, however no cover will be provided for any stock, contents, the occupiers fixtures or fittings or any property belonging to Employees or visitors.

## End6 Loss of stabilising fluid

We will not indemnify the Named Insured for any loss of or Damage of Bentonite or any other stabilising medium whilst being used.

## End7 Formwork, hoardings, temporary buildings, scaffolding, major plant and equipment. First loss basis

Notwithstanding anything to the contrary in this policy it is agreed that the Sum Insured in respect of Insured Item 6 b) shall not be subject to Average.

## End8 Action of the sea

We shall not be liable for loss or damage resulting from normal action of the sea. Normal action of the sea means:

- a) tidal movement
- b) currents, whether tidal or otherwise caused
- c) wave action, whether wind or tidal driven
- d) sediment transport; **or**
- e) any other normal behaviour patterns of the marine environment.

This Endorsement shall not apply where it can be demonstrated that such loss or Damage has resulted from an

action of the sea of a type that has not occurred during the previous ten year period.

The onus of proving this Endorsement does not apply rests with the Insured.

## End9 Piling foundations and retaining walls.

We shall not be liable in respect of piling foundation and retaining wall works for expenses incurred for:

1. replacing or rectifying piles or retaining wall elements:
  - a) which have become misplaced or misaligned or jammed during their construction; **or**
  - b) which are lost or abandoned or damaged during driving or extraction; **or**
  - c) which have become obstructed by jammed or damaged piling equipment or casings
2. rectifying disconnected or declutched sheet piles
3. rectifying any leakage or infiltration of material of any kind
4. filling voids or for replacing lost bentonite
5. as a result of any piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity
6. reinstating profiles or dimensions.

## End10 Average to apply to contract works

It is noted and agreed that the clause headed Insured Item 1 under Section 1 of this policy is deleted and replaced by the following

### Contract Works

The Contract Works Sum Insured must be the full Estimated Construction Cost at the commencement of the Period of Insurance. Average will apply to each and every loss otherwise insured by this policy, subject to the application of the policy Escalation and Variations allowance.

### End11 Transfer basis

It is noted and agreed that the clauses headed

- 'Type of Cover Applicable to Section 1 and 2', **and**
- General Conditions applicable to Sections 1 and 2 – '8. Premium adjustment' are deleted and replaced as follows:

## Type of cover applicable to sections 1 and 2

### Transfer basis

This policy will provide cover for all Contract Works which are undertaken during the Policy Period as shown in the Schedule.

In the event of cancellation or non-renewal of this policy all cover will cease at the end of the Policy Period.

### 1. Premium adjustment

Within thirty (30) days of expiry of the Policy Period, You shall furnish to Us a declaration and details of the actual Contract Works, and the amount expended thereon, for each of the insured Projects undertaken during the Policy Period.

Where the actual Annual Turnover differs from the estimated Annual Turnover, then the final Premium for this Policy shall be determined by applying the agreed rate to the actual Annual Turnover.

The difference between the final premium and the Provisional Premium will be calculated and will be:

- i. the amount payable by You if the actual Annual Turnover exceeds the estimated Annual Turnover; **or**
- ii. the amount refunded by Us if the actual Annual Turnover is lower than the estimated Annual Turnover. Provided that in any circumstance We shall not be called upon to refund more than thirty per cent (30%) of the Provisional Premium.

### **Additional definition**

Annual Turnover: The total value of all Contract Works undertaken during the Policy Period for each and every insured Project.

### **End12 Cover for partly completed Projects**

In the circumstances where End11 applies, coverage under this policy extends to include Damage to those parts of the Project constructed prior to the start of the Policy Period.

### **End13 Welding, Flame Cutting, Application of Heat**

The Named Insured must ensure that all welding and flame cutting complies with the Australian Standards 'AS1674.1-1997 and AS1674.2-2003 Safety and Welding in Allied Process' and their amendments.



## Contact details

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