

# PACIFIC UNDERWRITING CORPORATION PTY LIMITED

ABN. 77 091 225 535  
AFSL 237270

## PUBLIC AND PRODUCTS LIABILITY INSURANCE (OCCURRENCE WORDING)

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

The Insured named in the Schedule having submitted a proposal form and subject to the payment of the premium specified in the Schedule hereto, the Companies severally agree each for the proportion set against its name, subject to the terms, Exclusions, limitations and conditions contained in or endorsed on or otherwise expressed in the Policy, to provide insurance in the manner and to the extent herein described.

Signed for and on behalf of the Companies named in this Policy

by

at Sydney

on

In accordance with the provisions of the Insurance (Agents and Brokers) Act 1984, Pacific Underwriting Corporation Pty Limited (hereinafter called "PU") hereby gives notice that this contract has been effected under an Authority, given to PU by the Companies named. PU has effected the contract as an agent of the Companies and not an agent of the Insured.

## **PUBLIC AND PRODUCTS LIABILITY INSURANCE POLICY (OCCURRENCE WORDING)**

### **INSURING CLAUSE**

The Companies will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation by reason of Personal Injury or Property Damage occurring during the Period of Insurance and caused by an Occurrence in connection with the Insured's Business as specified in the Schedule.

### **SUPPLEMENTARY PAYMENTS**

With respect to the indemnity afforded by this Policy, the Companies will pay:

1. all charges, expenses and legal costs incurred by the Companies and/or by the Insured with the written consent of the Companies in the settlement or defence of any claim for compensation in respect of which the Insured is entitled to indemnity under this Policy or if sustained would be so entitled;
2. all charges, expenses and legal costs recoverable from the Insured by claimants in connection with said claims;

provided that:

- (a) the Companies shall not be obliged to pay any claim or judgment or to defend any suit after the Companies' Limits of Liability have been exhausted by payment of judgments or settlements;
- (b) if a payment exceeding the Companies' Limits of Liability has to be made to dispose of a claim, the Companies' liability to pay any Supplementary Payments in connection therewith shall be limited to such proportion of the said supplementary payments as the Limits of Liability bear to the amount paid to dispose of the claim;
- (c) the Companies shall not be obliged to pay any Supplementary Payments where indemnity is not afforded by this Policy in respect of a claim for compensation as specified in the Insuring Clause;

provided further that:

The amounts thus incurred, except payments in settlement of claims and suits, are payable by the Companies in addition to the Limits of Liability of this Policy but in no event shall the Companies' liability in respect of these amounts exceed 50% of the Limits of Liability stated in the Schedule.

## LIMITS OF LIABILITY

The limit of the Companies' liability in respect of any one Occurrence shall not exceed the Limits of Liability stated in the Schedule. All Personal Injury and Property Damage arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence.

The total aggregate liability of the Companies during any one Period of Insurance for all claims arising out of the Insured's Products shall not exceed the Limits of Liability stated in the Schedule.

The total aggregate liability of the Companies during any one Period of Insurance for all claims arising out of Pollution shall not exceed the Limits of Liability stated in the Schedule.

## DEFINITIONS

For the purpose of this Policy:

1. The Insured includes each of the following as an Insured under this Policy to the extent set forth:
  - (a) the Named Insured stated in the Schedule;
  - (b) all subsidiary companies (now or here after constituted) of the Named Insured whose places of incorporation are within Australia or any territory of Australia;
  - (c) any director, executive officer, Worker, partner or shareholder of the Named Insured or of a company designated in paragraph (b) above, but only whilst acting within the scope of their duties in such capacity;
  - (d) any office-bearer or member of social and sporting clubs formed with the consent of the Named Insured in respect of claims arising from the duties connected with the activities of any such club.
  
2. Personal Injury means:
  - (a) bodily injury, sickness, disease or disability including death at any time resulting therefrom;
  - (b) false arrest, false imprisonment, wrongful detention or malicious prosecution;
  - (c) wrongful entry or eviction;
  - (d) libel, slander, defamation of character or invasion of right of privacy;
  - (e) assault and battery not committed by or at the Insured's direction unless committed for the purpose of preventing or eliminating danger to persons or property.
  
3. Property Damage means physical damage to or destruction of tangible property including the loss of use thereof at any time resulting therefrom.

4. Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage neither expected nor intended from the Insured's standpoint.
5. Worker means any person defined as such under any relevant Workers' (or Workmen's) Compensation Act or Ordinance.
6. Act of Terrorism means an act including but not limited to the use of force or violence and/or the 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, ethnic or similar purposes or reasons including the intention to influence any government and/or to put the public, or any sector of the public, in fear.
7. Medical Persons means:
  - (a) legally qualified registered nurses and first-aid attendants;
  - (b) legally qualified medical practitioners and dentists not directly employed by the Insured.
8. The Insured's Products means anything (after it has ceased to be in the Insured's possession or under the Insured's control) manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the Insured (including any container thereof other than a Vehicle).
9. Vehicle means any type of machine on wheels or on self laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.
10. Tool of Trade means the intended use of a vehicle whilst engaged on a work site.

Tool of Trade does not include:

  - (a) vehicles whilst in transit to or from or within any work site;
  - (b) vehicles used for transport or haulage.
11. Pollution means the discharge, dispersal, release, seepage, migration or escape of any solid, liquid, gaseous or thermal irritant or contaminant including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste (including materials to be recycled, reconditioned or reclaimed) into or upon land, the atmosphere or any watercourse or body of water.
12. Watercraft means any vessel, craft or thing made or intended to float on or in or travel on or through water.
13. Aircraft means any vessel, craft or thing made or intended to fly or travel in or through the atmosphere or space.

14. Hovercraft means any vessel, craft or thing made or intended to float on or in or travel on or through the atmosphere or water.
15. Policy includes this document (with Schedule) and each Endorsement or Memoranda issued by the PU and attached or intended to be attached to it.
16. Internet Operations means:
  - (a) transfer of computer data or programs by use of electronic mail systems by the Insured or the Insured's employees, including for the purpose of this Definition only, part-time and temporary staff, contractors and others within the Insured's organisation whether or not such data or programs contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb or Trojan horse;
  - (b) access through the Insured's network to the world wide web or a public internet site by the Insured's employees, including for the purpose of this Definition only, part-time and temporary staff, contractors and others within the Insured's organisation;
  - (c) access to the Insured's intranet (meaning internal company information and computing resources) which is made available through the world wide web for the Insured's customers or others outside the Insured's organisation; and
  - (d) the operation and maintenance of the Insured's web site.

## EXCLUSIONS

This insurance does not apply to:

1.
  - (a) Personal Injury to any of the Insured's workers arising out of or in the course of their employment in the Insured's Business;
  - (b) Personal Injury to any person who is, pursuant to any legislation relating to Workers' Compensation, deemed to be a Worker of the Insured;
  - (c) liability for which the Insured is entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to Workers' Compensation, whether or not the Insured is a party to such contract of insurance;
  - (d) liability imposed by the provisions of any Workers' Compensation legislation or any industrial award or agreement or determination.
2. Property Damage to:
  - (a) property owned by or leased or hired to the Insured;
  - (b) property in the Insured's physical or legal control;

but this Exclusion 2. shall not apply to liability for Property Damage to:

- (i) premises which are leased or hired to the Insured where such Property Damage is caused by fire, explosion, water discharging or leaking from any pipe or water system or by impact caused by any Vehicle;
  - (ii) Vehicles (not belonging to or used by or on the Insured's behalf) in the physical or legal control of the Insured where such Property Damage occurs whilst any such Vehicles are in a car park owned or operated by the Insured;  
Cover under this Section (ii) does not apply if the Insured, as part of the Insured's Business, is a car park owner or operator for reward;
  - (iii) workers' property.
3. (a) Property Damage to the Insured's Products if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof;
- (b) claims in respect of the cost of performing, completing, repairing, correcting or improving any work undertaken by or on behalf of the Insured.
4. Damages claimed for the withdrawal, recall, inspection, repair, replacement, or loss of use of the Insured's Products or any property of which such Products form a part, if such Products, or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
5. Liability arising out of the ownership, maintenance, operation or use by the Insured of any:
- (a) Aircraft or Hovercraft;
  - (b) Watercraft exceeding 8 metres in length.
6. (a) Personal Injury arising out of the ownership, maintenance, operation or use by the Insured of any Vehicle in respect of which compulsory insurance is or should be available for such Personal Injury;
- (b) Property Damage arising out of the ownership, maintenance, operation or use by the Insured of any Vehicle in respect of which there is required to be in force a policy of compulsory liability insurance;
- provided that this Exclusion 6. (b) does not apply to Vehicles whilst being operated or used by or on behalf of the Insured as a Tool of Trade.
7. Liability assumed by the Insured under any contract or agreement provided that this Exclusion 7. does not apply to:
- (a) liabilities which would have been implied by law in the absence of such contract or agreement;
  - (b) liabilities assumed by the Insured under a warranty of fitness or quality as regards the Insured's Products;
  - (c) contracts or leases of real or personal property except where such liabilities arise from the Insured's obligations to effect insurance over such property;
  - (d) those contracts specified in the Schedule.

8. (a) liability in respect of the rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith;
- (b) liability arising out of advice, design, formula or specification;

provided that this Exclusion does not apply to:

- (i) the rendering of or failure to render medical advice or service by Medical Persons employed by the Insured to provide first aid and other medical services on the Insured's premises;
  - (ii) advice given in respect to the use of the Insured's Products, which is not given for a fee.
9. (a) Personal Injury or Property Damage caused by or arising out of Pollution but this Exclusion 9. does not apply to Pollution which is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place and occurs outside of the United States of America or Canada;
  - (b) any costs and expenses incurred in the prevention, removing, nullifying or clean-up of Pollution but this Exclusion 9. (b) does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury or Property Damage and which occurs outside of the United States of America or Canada;
  - (c) the actual, alleged or threatened Pollution caused by any of the Insured's Products discarded, dumped, abandoned or thrown away by others.
10. (a) claims made and actions instituted within the United States of America or Canada or any other territory coming within jurisdiction of the courts of the United States of America or Canada;
  - (b) claims and actions to which the laws of the United States of America or Canada apply;
  - (c) claims in respect of Personal Injury or Property Damage caused by or arising out of the Insured's Products exported to the United States of America or Canada;

provided that this Exclusion 10. does not apply to claims and actions arising from:

- (i) the presence of any travelling executives or salesmen who are normally resident in Australia or its territories whilst in the United States of America or Canada;
  - (ii) the Limit of Liability in respect of coverage provided under Item (i) is inclusive of all Supplementary Payments.
11. Claims in respect of Personal Injury or Property Damage (including loss of use of property) directly or indirectly caused by, contributed to by or arising from exposure to asbestos or materials containing asbestos.
  12. Liability arising out of the publication or utterance of a libel or slander:
    - (a) made prior to the commencement of the Period of Insurance; or

- (b) made at the Insured's direction with knowledge of the falsity thereof; or
  - (c) related to advertising, broadcasting, telecasting or publishing activities conducted by or on the Insured's behalf.
13. Liability directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or expropriation including lawful seizure, resumption, confiscation, nationalisation, requisition, rejection of the Insured's Products, destruction or damage to property by or under the order of any Government or Public or Local Authority.
14. Personal Injury or Property Damage directly or indirectly caused by contributed to or arising from:
- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. For the purpose of this Exclusion only, combustion shall include any self-sustaining process of nuclear fission;
  - (b) nuclear weapons material.
15. Liability in respect of punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.
16. Liability arising out of the Insured's Products that are Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery.
17. Liability in respect of fines, penalties or liquidated damages.
18. (a) Personal Injury or Property Damage arising directly or indirectly out of or in any way involving the Insured's Internet Operations.
- This Exclusion does not apply to Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site.
- This Exclusion also does not apply to liability which arises irrespective of the involvement of the Insured's Internet Operations.
- Nothing in this Exclusion shall be construed to extend coverage provided under this Policy to any liability which would not have been covered in the absence of this Exclusion.
- (b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
- (i) the use of computer hardware or software; or
  - (ii) the provision of computer or telecommunication services by or on behalf of the Insured; or



- (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including Property Damage caused by any computer virus.

19. Personal Injury or Property Damage of whatsoever nature directly or indirectly caused by, resulting from or in connection with any:

- (a) Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Personal Injury or Property Damage; or
- (b) action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

In any claim or suit or other proceedings where the Companies allege that by reason of this Exclusion 19. any liability is not covered by this Policy the burden of proving that such liability is covered shall be upon the Insured.

20. liability arising directly or indirectly, 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;
- (b) media or systems used in connection with any of the foregoing;

whether the property of the 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 to correctly 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 in (a) or (b) above, 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;
- (ii) the operation of any command or logic which has been programmed or incorporated into anything referred to in (a) or (b) above.

21. any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from, or in consequence of, or in any way involving any actual or probable causal elements (e.g. prions) and any connected, possible illness in the area of transmissible spongiform encephalopathy (TSE) such as, for example, bovine spongiform encephalopathy (BSE) or new variant Creutzfeldt-Jakob disease (vCJD).

22. any Personal Injury, Property Damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to mould, mildew, fungus, spores or other microorganism of any type, nature or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This Exclusion applies regardless whether there is:

- (i) any Property Damage;

- (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence;
- (iii) any loss of use, occupancy or functionality; or
- (iv) any action required, including but not limited to repair, replacement, removal, clean-up, abatement, disposal, relocation or steps taken to address medical or legal concerns.

This Exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part for these matters

## CONDITIONS

1.
  - (a) Notice in writing shall be given as soon as possible to PU of every Occurrence, or claim (including any writ, summons, proceedings impending prosecution and/or inquest) in respect of which there may arise liability under this Policy;
  - (b) The Insured shall not without the Companies' consent in writing make any admission, offer, promise or payment in connection with any Occurrence or claim and if the Companies so desire shall be entitled to take over and conduct in the Insured's name the defence or settlement of any claim and the Companies may make such investigation, negotiation and settlement of any claim or suit as they deem expedient;
  - (c) The Insured shall use the best endeavours to preserve any property, products, appliances, plant or other things which might prove necessary or useful by way of evidence in connection with any claim and so far as may be reasonably practicable no alteration or repair shall be effected without the Companies' consent until the Companies shall have had an opportunity of inspection;
  - (d) The Companies shall be entitled to prosecute in the Insured's name at the Companies' own expense and for the Companies' own benefit any claim for indemnity for damages or otherwise;
  - (e) The Companies shall have full discretion in the conduct of any proceedings in connection with any claim and the Insured shall give all information and assistance as the Companies may require in the prosecution, defence or settlement or any claim;
  - (f) In the event of an Occurrence, the Insured shall promptly take at the Insured's expense all reasonable steps to prevent other Personal Injury or Property Damage from arising out of the same or similar conditions, but such expense shall not be recoverable under this policy;
  - (g) The Companies shall be entitled to attend any inquest in respect of which there may arise liability under this Policy.
2. The Companies may at any time pay to the Insured in respect of all claims against the Insured arising directly or indirectly from the one source or original cause the amount of the liability or such other amount specified in respect thereof (after deduction of any sum or sums already paid by the Companies which sum or sums would reduce the amount of Companies' unfulfilled liability in respect thereof) or any lesser sum for which the claim or claims can be settled and upon such payment the Companies shall relinquish conduct or control of and be under no further liability under the Policy in connection with such claim or claims except for costs charges and expenses recoverable from the Insured in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently) or incurred by the Companies or by the Insured with the Companies' written consent prior to the date of such payments.
3. The Insured shall:
  - (a) take reasonable precautions to:

- (i) prevent Personal Injury and Property Damage;
    - (ii) prevent the manufacture, sale or supply of defective products; and
    - (iii) comply and ensure that the Insured's workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any Public Authority in respect thereof for the safety of persons and property.
  - (b) at the Insured's own expense take reasonable action to trace, recall or modify any products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.
4. Where more than one party comprises the Insured each of the parties shall be considered as a separate and distinct entity and the word Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in an increase of the Companies' Limits of Liability in respect of any Occurrence or Period of Insurance.
  5. This Policy includes the interest of any principal in respect of that principal's vicarious or contingent liability for the acts or omissions of one of the Insureds designated in Definition 1. in the performance by them of work for that principal, but subject always to the extent of cover and Limits of Liability provided for in this Policy.
  6. This Policy is issued by PU on the basis that the Insured has paid or has agreed to pay the premium referred to in the Schedule within 30 days from the commencement of the Period of Insurance.
  7. The Insured must provide PU with immediate written notice of:
    - (a) every change which materially varies any of the facts or circumstances existing at the commencement of this Policy that comes to the Insured's knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be the Insured's knowledge; and
    - (b) if the Insured does not provide such notification before the happening of an Occurrence giving rise to a claim under this Policy then, subject to the Insurance Contracts Act, 1984, the Companies may refuse to pay a claim, either in whole or in part.
  8. The terms of this Policy bind all parties until otherwise changed. Such change will not be effective until confirmed in writing by PU.
  9. This Policy does not include the interest of any person other than those expressed in Definition 1, of this Policy.
  10. In the event of payment under this Policy to or on behalf of the Insured, the Companies shall be subrogated to all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist the Companies in the exercise of such rights.

11. If the Insured makes a claim under this Policy in respect of an Occurrence recoverable under this Policy which Occurrence is or may be covered in whole or in part by any other insurance, then the Insured must advise the Companies of the full details of such other insurance when making a claim under this Policy. Subject to the Insurance Contracts Act, 1984, the Companies reserve their rights to seek contribution from the other insurer(s).
12. This Policy shall be governed in accordance with the Laws of the Commonwealth of Australia and the State or Territory where the Policy was issued. Any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the courts of Australia.
13. The Named Insured may cancel this Policy by giving notice in writing to PU.

The Companies may cancel this Policy in any of the circumstances set out in the Insurance Contracts Act, 1984.

After cancellation as aforesaid, the premium for the period prior to cancellation shall be adjusted on a pro rata basis plus 20% of the annual premium.

When the premium is subject to adjustment, cancellation will not affect the Insured's obligation to supply such information as the Companies may require for the adjustment of the premium. Cancellation will not affect the Insured's obligations to pay the amount of adjustment applicable up to the date of cancellation.

14. The Companies shall be permitted but not obligated to inspect the Insured's property and operations at any time. Neither the Companies' right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe. The Companies may examine and audit the Insured's books and records at any time during the Period of Insurance and extensions thereof and within three years after the final termination of this Policy, as far as they relate to the subject matter insured.
15. If the first or renewal premium for the Policy or any part thereof shall have been calculated on estimates furnished by the Insured, then the Insured shall keep an accurate record containing all particulars relative thereto and shall at all times allow the Companies to inspect such record. The Named Insured shall within thirty days after the expiry of each Period of Insurance furnish to PU such particulars and information as the Companies may require. The premium for such period shall thereupon be adjusted and any difference paid by or allowed to the Insured as the case may be subject to receipt and retention of any minimum premium charged by the Companies.
16. Nothing contained in this Policy shall be construed to reduce or waive either the Insured's or the Companies' privileges, rights or remedies available under the Insurance Contracts Act, 1984, as amended.
17. If the Insured has entered into any agreement which excludes or limits a right which the Insured may have against any party, then, subject to the Insurance Contracts Act, 1984, the Companies will not be liable for any claim under this Policy to the extent of such Exclusion or limitation.

18. In the event that a dispute arises between the Companies and the Insured out of or otherwise in relation to this agreement, then:
- (a) Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the “**Dispute Notice**”) requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
  - (b) If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
    - 1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (**LEADR**) (or other appropriate professional body as agreed by the parties); or
    - 2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
      - (a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
      - (b) will act as an expert and not as an arbitrator;
      - (c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
      - (d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
      - (e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

(c) Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon the Companies may be served upon:

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

**Suite 2, Level 21**

**Angel Place**

**123 Pitt Street**

**Sydney**

**NSW 2000**

**Australia**

who has authority to accept service and to appear on the Companies' behalf.

If proceedings are instituted against any one of the Companies, all Companies participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- (d) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- (e) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- (f) Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.