

# INDUSTRIAL SPECIAL PLANT (ISP)

Product Disclosure Statement  
and Policy wording



UAA

# PART 1 – PRODUCT DISCLOSURE STATEMENT

## A. About this booklet

This document is a Product Disclosure Statement (PDS) and Insurance Policy Wording.

If the Insured is :

- A small business with less than 20 employees, or a manufacturer with less than 100 employees; and
- requesting cover for Motor Vehicles with a carrying capacity of less than 2 tonne (whether for personal or business use);

this booklet becomes a Product Disclosure Statement for that part of the insurance.

The information provided in this booklet is designed to assist the Insured make an informed decision about their insurance needs. Important Notices contains information you need to know before taking out a Policy including the cost, the Insurers dispute resolution system and cooling off rights. The Policy Wording details all the benefits, terms, conditions and exclusions relating to the Policy. If we issue you with an insurance Policy, you will be given a Policy Schedule. The Policy Schedule sets out the specific cover selected by you and should be read together with the Policy Wording.

Other documents may form part of the PDS. Any such documents will be dated and will include a statement identifying them as part of the PDS. If any major omissions, updates or corrections need to be made to the PDS a Supplementary PDS may be provided. In either case the relevant document will be provided to the Insured with the PDS.

The Policy Wording and the Policy Schedule forms the legal contract between the Insured and Insurer, so please keep them in a safe place for future reference. If you require further information about this product please contact your Financial Services Provider.

## B. Who provides this insurance

The Policy is underwritten by QBE Insurance (Australia) Limited (QBE Australia), ABN 78 003 191 035, AFS Licence No. 239545 of 82 Pitt Street, Sydney.

This Policy is arranged by Underwriting Agencies of Australia Pty Limited (UAA), ABN 86 003 565 302, AFS Licence No. 238517 of 175 Scott Street Newcastle.

In arranging this Policy UAA are acting under an authority given to it by QBE. It will be acting as the agent of QBE not as agent for the Insured.

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## About QBE Australia

QBE Insurance (Australia) Limited is a member of the QBE Insurance Group (ASX: QBE). QBE Insurance Group is Australia's largest international general insurance and reinsurance group, and one of the top 25 insurers and reinsurers worldwide. The company has been operating in Australia since 1886 and continues to provide industry-leading insurance solutions that are focused on the needs of intermediaries and their clients. QBE is a household name in Australian insurance, backed by sizeable assets, and well known as a strong and financially secure organisation

## About UAA

UAA is one of Australia's leading specialist underwriting agencies for mobile plant and construction equipment. The company that is now UAA was founded in 1972 in Newcastle NSW where our current head office and administration centre is located. In support of our Australia wide client base, we have additional offices located in Brisbane, Sydney, Melbourne, Adelaide and Perth.

UAA became an underwriting agency in 1988 and as of 1 July 2008, UAA is a majority owned subsidiary of QBE Insurance Group. UAA's focus is on developing long term relationships built on mutual respect, trust and reliability.

## C. Important Information

### 1. The Policy: Contents and Structure

- (a) The terms of the contract of insurance between the Insurer and the Insured are recorded in the Policy, which is made up of:
  - (1) the Policy Schedule;
  - (2) the parts of the General Section and other Sections in this document indicated by the Schedule as being included in the contract of insurance;
  - (3) the Endorsements; and
  - (4) the Important Notices in the Proposal.
- (b) Sections 1, 2, 4, 5, 6 and 7 each contain at least two sub-sections:
  - (1) The Cover – which defines what things and events are insured; and
  - (2) The Indemnity or Limits of Indemnity – which explains what and how much the Insurer will pay.
- (c) Section 3 contains Additional Benefits relevant to Sections 1 and 2.
- (d) The Insurer shall not be liable to indemnify the Insured under Section 4 (Consequential Loss) unless the Insured concurrently holds Damage cover under Section 1, Breakdown Damage cover under Section 5 or another contract of insurance providing cover equivalent to Section 1 or Section 5.
- (e) The Insurer shall not be liable to indemnify the Insured under a Section that is not shown in the Schedule as included in the Policy.

### 2. Significant Benefits and Features

Damage	Covers sudden and unforeseen physical loss or Damage to a Machine during the Period of Insurance
Hired-In Plant (Liability to Owner)	Covers the Insured for liability to the owner of a hired Machine for sudden and unforeseen physical loss or Damage during the Period of Insurance.
Financial Protection	Covers the Insured for Consequential Loss that occurs during the Indemnity Period if a Machine suffers Damage or Breakdown Damage causing Interruption.
Breakdown	Covers Breakdown Damage that occurs in a Machine during the Period of Insurance.
Road Risk	Covers Legal Liability for Property Damage arising from a Machine being used as a Road Vehicle during the Period of Insurance.
Broadform Liability	Covers Legal Liability for Personal Injury, Property Damage and Advertising Injury caused by an Occurrence in connection with the Business.

### 3. Duty of Disclosure – What the Insured must tell the Insurer

Before you enter into a contract of general insurance with an Insurer, the Insured has a duty, under the Insurance Contracts Act 1984 to disclose to the Insurer certain information needed by the Insurer to decide whether to insure the Insured and anyone else to be insured under the Policy and on what terms. The Duty of Disclosure is different depending on whether this is a new Policy or not.

#### New business

Where the Insured is entering into this Policy for the first time (that is, it is new business and is not being renewed, varied, extended or reinstated) the Insured must tell the Insurer everything they know and that a reasonable person in the circumstances could be expected to tell the Insurer, in answer to the specific questions the Insurer asks. When answering these questions the Insured must be honest.

#### Who needs to tell the Insurer

It is important to understand the Insured answers the Insurers questions in this way for the Insured and anyone else to be covered by the Policy.

#### Non-Disclosure

If the Insured fails to comply with their Duty of Disclosure, the Insurer maybe entitled to reduce its liability under the contract in respect of a claim or may cancel the policy. If the Insured answers the Insurers questions fraudulently, the Insurer may also have the option of avoiding the contract from the beginning.

### Renewals, variations, extensions and reinstatements

Once the Policy is entered into and is no longer new business then the Insured's duty to the Insurer changes. The Insured is required before the contract is renewed, varied, extended or reinstated, to tell the Insurer everything they know and that a reasonable person in the circumstances could be expected to know, that is relevant to the Insurer's decision on whether to insure the Insured and anyone else to be insured under the Policy, and if so, on what terms.

#### You do not have to tell the Insurer about any matter

- that diminishes the risk;
- that is of common knowledge;
- that the Insurer knows or should know in the ordinary course of Our business as an Insurer; or
- which we indicate we do not want to know.

#### Non-Disclosure

If the Insured fails to comply with their Duty of Disclosure, the Insurer maybe entitled to reduce its liability under the contract in respect of a claim or may cancel the policy. If the Insured answers the Insurers questions fraudulently, the Insurer may also have the option of avoiding the contract from the beginning.

#### 4. Changes to the Insured's circumstances

The Insurance Policy is based on what the Insured has told the Insurer. If something changes, please contact your Financial Services Provider to ensure your cover remains unaffected.

The Insurer must be notified of anything that changes the value of your assets or about a change to your business. When you tell the Insurer of any changes to your business you will be issued with a revised Policy Schedule and you may be asked to pay additional premium. If the Insured fails to advise the Insurer of all changes, unfortunately, your policy may not provide the cover you need and we may not pay part or all of a claim.

#### 5. The cost of this insurance Policy

The total Premium is the amount the Insured is charged for this insurance Policy. It includes the amount which has been calculated for the risk and the taxes and government charges applicable. The Premium and taxes and government charges will be shown on the Policy Schedule.

When calculating the Premium a number of factors are taken into account. These and the degree to which they affect your Premium, will depend on the information you give to us. The key factors that impact Premium include:

- (a) the type of Business the Insured operates and which sections you elect to take cover under and the Sum Insured that is relevant to your Business. In addition, your claims history may also impact the Premium.
- (b) if the Insured elects to have a higher or lower Excess where this is an option.

- (c) For plant and equipment, mobile Machines, static Machines and Motor Vehicles the type, age, location and use of these Machines and /or Motor Vehicles, along with the age and experience of the operator or driver may impact on the Premium.
- (d) For Broadform Liability the turnover of the Business, the number of staff, wage roll, engagement of contractors and / or labour hire personnel may impact the Premium

#### 6. Overdue Premium

The Insured must pay the Premium on time otherwise the Policy may not operate and there will be no cover.

#### 7. Paying your annual Premium

The Insured must pay the annual Premium by the due date to your Financial Services Provider. If your Premium is unpaid by this date or your payment is dishonoured this Policy will not operate and there will be no cover.

#### 8. Cooling-off information

The Insured may return an insurance Policy after the decision to buy it, the Policy may be cancelled and full refund received. To do this the Insured should notify the Financial Services Provider electronically or in writing within 21 days from the date the Policy commenced.

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

If the Insured's Policy is for an event that will start and finish within the 21 day cooling-off period, the Insured can only exercise the right before the event starts or the expiry of the cooling-off period, whichever is the earlier.

#### 9. Average

- (a) Important Notice 5 in the Proposal notified the Insured about 'Average', which is the consequence of under-insurance (see General Condition F.1).
- (b) In Sections 1, 2 and 5, the 'Average' formula applies where the Sum Insured for the relevant Machine is less than 90% of its Market Value calculated at the time of Damage.

#### 10. Excess

An Excess is the amount the Insured may be required to pay if a claim is made. The excesses applicable are set out in the Policy Schedule. Any additional excesses are shown in Part 2, Terms and conditions of this Policy wording.

The Insured may have the option to reduce the Excess payable in the event of a claim by paying a higher Premium, or elect to pay a higher Excess in the event of a claim and pay a lower Premium. Please discuss these options with your Financial Service Provider.

### 11. Payment of Excess

In the event of a claim under Section 6 or 7, the Insured is required to pay the Excess to UAA within 14 days after being requested to do so.

### 12. Time limits in calculation of entitlements in Sections 2 and 4

Before there is any entitlement to indemnity for Hiring Charges in Section 2 (Hired-In Plant) and for Consequential Loss in Section 4 (Financial Protection) the period of days of continuous prevention of or interference with normal use of the Machine shown in the Schedule must elapse following the Damage or Breakdown Damage.

### 13. Safety Precautions and Procedures

(a) This Policy concerns machinery whose operation is hazardous. General Condition F.2 imposes obligations on the Insured, its Employees and agents, including an obligation to comply strictly with:

- (1) manufacturers' and distributors' recommendations and guidelines; and
- (2) systems and procedures imposed or recommended by law, international standards, Australian Standards and industry standards;

for servicing, maintaining, using and operating Machines.

(b) If Damage results from a failure to comply with the obligations referred to in 13(a) above, the Insurer may be entitled under General Condition F.2 and General Exclusion D.2 to refuse to pay the indemnity against that Damage or to significantly reduce the amount that the Insurer will pay.

(c) Some exclusions do not apply if the Insured satisfies the Insurer that the Insured has complied with the recommendations, guidelines, systems and procedures and taken steps to avoid Damage occurring.

### 14. Interests of Third Parties

The interests of third parties (e.g. financiers, lessors, etc.) in Machines are not covered by the Policy (except hirers, under Additional Benefits 7 and 15 in Section 3). However, if in the Proposal the Insured has identified third party interests to be covered and they are noted as such in the Schedule, they may have rights under Sections 1 to 5.

### 15. How Goods and Services Tax (GST) affects any payments made by the Insurer

The Insurer will reduce the GST amount payable by the amount of any Input Tax Credit to which the Insured is or would be entitled if a relevant acquisition is made. In these circumstances, the Input Tax Credit may be claimable through the Insured's Business Activity Statement (BAS).

The Insured must advise the Insurer of their correct Australian Business Number and Taxable Percentage.

### 16. How to make a claim

Please contact your Financial Services Provider to make a claim. The Insurer will only accept responsibility for repairs or payments to third parties under a claim where the Insured has told us about them beforehand and your claim has been accepted. Full details of what you must do for the Insurer to consider your claim are listed under General Conditions F.4 Claims procedure and F.5 Co-operation in claims of this Policy.

### 17. Privacy

UAA is committed to protecting the privacy of personal information in accordance with the Privacy Act 1988 (Cth). UAA's privacy principles, set out at [www.uaa.com.au](http://www.uaa.com.au), explain what personal information is collected from the Insured, why it is collected, how it will be used and to whom it can be disclosed.

See the full UAA Privacy Statement at [www.uaa.com.au](http://www.uaa.com.au) or the Insurer's Privacy Policy at [www.qbe.com](http://www.qbe.com).

### 18. General Insurance Code of Practice

The Insurer is a signatory to the General Insurance Code of Practice. The Code aims to:

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

### 19. Dispute resolution

The Insurer will do everything possible to provide a quality service to the Insured. However, we recognize that occasionally there may be some aspect of our service or a decision which we have made that an Insured may wish to query or draw to our attention.

The Insurer has a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to an Insured's complaint within 15 working days.

To make a complaint or access the Insurer's internal dispute resolution service, please contact UAA or the nearest QBE office and ask to speak to a dispute resolution specialist.

Where the Insured is a small business, and not happy with the Insurers answer, or it has taken more than 15 working days to respond, the Insured may have access to the Financial Ombudsman Service (FOS). FOS resolves certain insurance disputes between consumers and insurers and will provide an independent review at no cost to the Insured. The Insurer is bound by the determination of the FOS but the determination is not binding on you. The contact telephone number and address of FOS is available upon request.

## 20. Financial Claims Scheme

This Policy is a protected Policy under the Financial Claims Scheme (FCS), which protects certain Insured's and claimants in the event of an Insurer becoming insolvent. In the unlikely event of QBE becoming insolvent the Insured may be entitled to access the FCS, provided the Insured meets the eligibility criteria. More information may be obtained from APRA - [www.apra.gov.au](http://www.apra.gov.au) or 1300 13 10 60.

## 21. Cancelling the Policy

### How the Insured may cancel this Policy

- The Insured may cancel this Policy at any time by telling the Insurer in writing that you want to cancel it. You can do this by giving the notice to your Financial Services Provider.
- Where the Insured involves more than one person, the Policy will only be cancelled when a written agreement to cancel the Policy is received from all persons named as the Insured.

### How the Insurer may cancel this Policy

- The Insurer may cancel this Policy in any of the circumstances permitted by law by informing the Insured in writing.
- The Insurer will give the Insured this notice in person or send it to the address last known to us.

### The premium

The Insurer will refund to the Insured 80% of the proportion of the Premium for the remaining Period of Insurance. A refund will not be given where the unused portion of your Premium is \$10 or less.

## PART 2 – POLICY WORDING

### A. General Section

In consideration of the Insured's payment of the Premium to the Insurer, the Insurer agrees to indemnify the Insured in accordance with the terms of the Policy.

### B. General Definitions

**Advertising Injury** means:

1. defamation;
2. infringement of copyright, title or slogan;
3. infringement of trade mark or service mark;
4. unfair competition or misappropriation of advertising ideas or style of doing business; or
5. invasion of privacy;

in any public advertisement or arising out of advertising activities by or for the Insured for or in the course of the Business.

**Australian Dangerous Goods Code** means the edition of the Australian Code for the Transportation of Dangerous Goods by Road and Rail (or its equivalent) that is current at the time of an Occurrence causing Property Damage or Personal Injury.

**Breakdown Damage** means the sudden and unexpected breaking, distortion, seizing, failure or breakdown of a mechanical, electrical or electronic part of a Machine:

1. occurring while the Machine is in operation in the course of the Business;
2. caused directly and solely by a defect of the part; and
3. preventing normal use of the Machine.

**Business** means the business of the Insured as shown in the Schedule.

**Capacity** in relation to a Machine is determined by factors including:

1. recognised standards;
2. legislation and regulations;
3. manufacturers' recommendations;
4. load charts;
5. Configuration of the Machine.

**Company** means any legal entity other than a natural person.

**Configuration** of a Machine is determined by a combination of factors including:

1. the length and angle of any jib or boom;
2. the weight of the load;
3. the distance between the load and the Machine;
4. the nature and incline of the surface on which the Machine is standing or resting;
5. the placement and extension of outriggers;
6. the weather conditions;

7. the speed of lifting, lowering, luffing or slewing;
8. counterweighting.

**Damage** means:

1. sudden and unexpected physical loss, damage or destruction of a Machine, but excludes breaking, distortion, seizing, failure or breakdown of a part of a Machine caused by a defect of the part (whether Breakdown Damage or otherwise); or
2. permanent loss by theft.

**Dangerous Goods** means things classified as ‘dangerous goods’ or their equivalent in the Australian Dangerous Goods Code, but does not include goods classified as ‘goods too dangerous to be transported’.

**Defence Costs** means in Sections 6 and 7 the reasonable and properly incurred legal costs and expenses of defending against a claim against the Insured for Legal Liability.

**Dry Hire** means the hire of a Machine where the person or Company hiring out the Machine does not provide any person involved in the operation of the Machine.

**Employee** means a person who, during the Period of Insurance and in the ordinary course of the Business, is:

1. employed by an Insured under a contract of service;
2. apprenticed to an Insured;
3. labour hire personnel engaged by an Insured;
4. deemed to be an employee or worker of an Insured under workers’ compensation legislation; or
5. a director or partner of an Insured while performing employee duties.

**Endorsement** means any endorsement shown in the Schedule under the heading ‘Clauses’.

**Excess** means the amount stated in the Schedule for a Machine or a Section that:

1. the indemnity shall exceed before the Insurer shall be liable to pay the indemnity; and
2. shall:
  - (a) for Sections 1 to 5, be deducted from the indemnity payable by the Insurer;
  - (b) for Sections 6 and 7, be paid to the Insurer by the Insured.

**Insured** means those named in the Schedule as the Insured.

**Insurer** means QBE Insurance (Australia) Limited (ABN 78 003 191 035, AFS Licence No. 239545).

**Legal Costs** means in Section 2:

1. the Insured’s reasonable and properly incurred legal costs and expenses of defending against a claim of Liability to Owner; and
2. the legal costs and expenses of a claim for Liability to Owner against the Insured incurred by a person or Company other than:
  - (a) the Insured; or
  - (b) an Employee or a director or partner of the Insured; that the Insured is liable to pay.

**Legal Liability** means an Insured’s liability at law to pay compensation and legal costs to a person or Company other than an Insured.

**Limit Any One Loss** means the amount stated in the Schedule as ‘Limit Any One Loss’ for a Section.

**Machine** means an item of machinery identified in the Schedule for the purposes of one or more of Sections 1 to 5 only, including any attachment acquired by the Insured with or for the Machine that:

1. is identified in the Schedule;
2. is permanently attached to the Machine; or
3. has a Market Value at the commencement of the Period of Insurance (or at the date on which, during the Period of Insurance, the Machine was added to the Schedule) no greater than \$10,000 or 10% of the Sum Insured, whichever is the lesser.

**Market Value** means the market value in the Insured’s local area taking into account, among other things, depreciation and wear and tear, but excludes stamp duty on transfers, registration and dealer warranty costs and charges.

**Motor Vehicle** means:

1. a motor vehicle intended to be propelled on wheels or self-laid tracks by means other than human or animal power; and
2. a trailer or vehicle being towed or becoming detached while being towed by a motor vehicle;

but excludes rail and tram rolling stock.

[**Note:** a Machine can also be a Motor Vehicle.]

**North America** means:

1. the United States of America or Canada; and
2. any state or territory incorporated in or administered by or from the United States of America or Canada.

**Occurrence** means:

1. a single event;
2. a series of events attributable to the same single source or cause; or
3. continual or repeated exposure to substantially the same general conditions.

**Overloading** means:

1. in relation to a Machine being a crane or being engaged in a lifting operation:
  - (a) lifting, carrying, moving or lowering; or
  - (b) attempting to lift, carry, move or lower;a load that is or becomes greater than the Machine’s Capacity at any time during the lifting operation, having regard to the Machine’s Configuration;
2. in relation to all Machines:

placing on the Machine a load heavier or larger than allowed by law or the Machine’s specifications.

**Period of Insurance** means the period of cover of the contract of insurance as shown in the Schedule.

**Personal Injury** means:

1. bodily injury death, sickness, disease, illness, physical disablement, shock, fright, mental anguish or mental injury;
2. false arrest, false imprisonment, wrongful detention or malicious prosecution;
3. wrongful entry or wrongful eviction;
4. publication or utterance of a libel, slander or other defamatory or disparaging material; or
5. assault or battery not committed by or at the direction of an Insured, except if reasonably committed for the purpose of preventing or eliminating danger to persons or property;

in each case both unintended and unforeseen by the Insured.

**Policy** means:

1. the Schedule;
2. the parts of the General Section and other Sections of this document that the Schedule shows are included in the contract of insurance;
3. the Endorsements; and
4. the Important Notices in the Proposal.

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

**Premium** means the amount that the Insurer shall charge for insurance under this Policy including any amounts for GST.

**Products** means the following after they have left the possession and control of an Insured:

1. tangible goods sold, handled, distributed, supplied, grown, extracted, produced, made, manufactured, processed, treated, altered, serviced, repaired, installed, assembled, erected or constructed by the Insured in the course of the Business;
2. containers and packaging of such tangible goods (other than a vehicle or a Machine).

**Product Defect** means a defect in or harmful quality of a Product caused by an error or omission unintended by and not known to the Insured, including an error in or omission of advice concerning the use or storage of the Product.

**Property Damage** means:

1. physical damage, loss or destruction of tangible property, including resultant loss of use of that property; or
2. loss of use of tangible property that has not been physically damaged, lost or destroyed;

both unintended and unforeseen by the Insured.

**Proposal** means the proposal for this contract of insurance.

**Road Vehicle** means:

1. a Motor Vehicle that is both:
  - (a) registered for use as a motor vehicle as required by law; and
  - (b) identified in the Schedule; or

2. a trailer, that is both:

- (a) being towed or becomes detached while being towed by a Motor Vehicle registered for use as a motor vehicle and identified in the Schedule; and
- (b) itself registered for use as a vehicle as required by law.

**Schedule** means the schedule for this contract of insurance.

**Sum Insured** means the maximum amount payable for indemnity, being:

1. for Sections 1, 2, 3 and 5: the amount stated in the Schedule for a Machine;
2. for Section 4: the amount stated in the Schedule for a Cover Option;
3. for Sections 6 and 7: the amount stated in the Schedule for the Section;
4. for an Additional Benefit: the amount for the Additional Benefit stated in the Schedule or in the Additional Benefit itself.

**Territorial Limits** means Australia.

**Tool of Trade** means, in relation to the use or operation of a Road Vehicle or Motor Vehicle, any function for which it is designed other than road transport or use or operation primarily as a Road Vehicle or Motor Vehicle. (Such Tool of Trade functions include but are not limited to lifting, lowering, carrying other than road transport, grading, levelling, scraping, digging, shovelling, bulldozing, pumping, spraying, discharging, tipping, crushing, chipping, mulching and mixing other than mixing during road transport.)

**UAA** means the Insurer's agent: Underwriting Agencies of Australia Pty Limited (ABN 86 003 565 302, AFS Licence No. 238517).

**Watercraft** means a thing intended to float, submerge or move in, on or under water.

**Wet Hire** means the hire of a Machine where the person or Company hiring out the Machine provides a person to operate the Machine.

## C. General Exclusions for Sections 1 to 7

1. The Insurer shall not indemnify the Insured against any loss, damage or liability (including Legal Liability) caused directly or indirectly by, arising from or in connection with:
  - (a) sonic pressure waves in connection with aircraft and other aerial devices;
  - (b) radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component;
  - (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (such combustion including any self-sustaining process of nuclear fission and/or fusion);
  - (d) nuclear weapons material;
  - (e) war, invasion, acts of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;

- (f) expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or damage to property by or under the order of any government or public or local authority;
  - (g) looting, sacking or pillaging following any events stated in (e) or (f) above;
  - (h) any business activities other than the Business;
  - (i) any:
    - (1) act, including the use of force or violence (or threat of force or violence), by any person or group of people acting alone or on behalf of or in connection with any organisation or government that is done for political, religious, ideological or ethnic reasons with the intention to influence any government or put the public or any section of the public in fear; or
    - (2) any action in controlling, preventing, suppressing, retaliating against or responding to any act referred to in (1) above.
2. The Insurer shall not indemnify the Insured against anything in respect of which the Insured is entitled to indemnity under another contract of insurance that is required to be effected by or under a law in Australia.
  3. The Insurer shall not indemnify the Insured against damages, penalties or interest for delay or detention.

## D. General Exclusions for Sections 1 to 5

1. The Insurer shall not indemnify the Insured against:
  - (a) any loss, damage, liability or costs caused directly or indirectly by, arising from or in connection with:
    - (1) use of a Machine for an unlawful purpose, unless the Insured proves that the Insured was unaware and could not reasonably have been aware of such use;
    - (2) operation of a Machine by any person:
      - (A) not qualified, suitably licensed or experienced;
      - (B) not licensed, holding an improperly obtained licence or not complying with licence conditions; or
      - (C) suffering from a physical or mental impairment of ability;
 to operate the Machine, unless the Insured proves that the Insured:
      - (D) did not consent to the Machine being operated by that person; or
      - (E) did not breach General Condition F.2(d) and was unaware and could not reasonably have been aware of the matters in (A), (B) and (C) above;
    - (3) operation of a Machine by any person:
      - (A) under the influence of or affected by drugs or alcohol; or

- (B) with a level of drugs or alcohol in the breath, blood or urine in excess of that permitted by law to operate a Machine or drive a Motor Vehicle;

unless the Insured proves that the Insured:

- (C) did not consent to the Machine being operated by that person; or
  - (D) did not breach General Condition F.2(d) and was unaware and could not reasonably have been aware of the matters in (A) and (B) above;
- (4) deliberate or reckless Overloading of a Machine, whether or not with an Insured's knowledge;
  - (5) deliberately or recklessly incorrect loading of a Machine, whether or not with an Insured's knowledge;
  - (6) operation of a Machine while its load-measuring instruments or limiters are defective, inoperative or turned off, whether or not with an Insured's knowledge;
  - (7) failure of:
    - (A) an Insured;
    - (B) a director or partner of an Insured or an Employee; or
    - (C) a person engaged in the operation of the Machine;
 to service, maintain, use or operate the Machine strictly in compliance with systems and procedures imposed or recommended by law, International Standards, Australian Standards, industry standards and manufacturers' and distributors' recommendations or guidelines, whether or not with an Insured's knowledge;
  - (8) acts or omissions of:
    - (A) an Insured;
    - (B) a director or partner of an Insured or an Employee; or
    - (C) a person engaged in the operation of the Machine;
 with the intention of causing, or with reckless disregard of the risk of causing, injury or damage to person or property, whether or not with an Insured's knowledge;
  - (9) lack of, inadequate or incorrect lubricant, coolant, oil or other dry or liquid substance, unless caused by Damage to a Machine, whether or not with an Insured's knowledge;
  - (10) tests or experiments imposing abnormal operating conditions on a Machine, whether or not with an Insured's knowledge;
  - (11) defects in design;
  - (12) use of a Machine that:
    - (A) has not been commissioned as a commercially operating machine;

- (B) is a prototype or experimental machine; or  
 (C) is being developed or is still in the course of development;
- (b) physical damage or destruction of:
- (1) a safety or protective device caused by the operation of such safety or protective device;
  - (2) tyres caused by the application of brakes or bursting, puncturing, cutting or wearing;
  - (3) batteries caused by a defect in the batteries, unless the defect was caused by Damage to a Machine;
  - (4) foundations or masonry;
  - (5) tools, cutting edges, drill bits, moulds, patterns, non-metallic linings, pulverising, hammering or crushing surfaces, flexible pipes, trailing cables, driving belts or bands, and any parts requiring regular periodic replacement;
- (c) physical damage or destruction of, or any loss from or liability or costs for physical damage or destruction of, any part of a Machine caused by:
- (1) the application of a tool or process to the part during inspection, maintenance, servicing, modification or repair;
  - (2) scratching or chipping of painted or polished surfaces;
- (d) loss of a Machine or any part thereof caused by or arising from the exercise by another of a right or purported right to ownership or possession of the Machine or any part thereof;
- (e) any loss, damage, liability or costs in respect of which an Insured has released or waived any Insured's right to recovery, indemnity or contribution from another except to the extent that Additional Benefit 7 (Indemnity to hirer – Wet Hire) or Additional Benefit 15 (Hired-out plant – damage waivers) in Section 3 applies to such release or waiver;
- (f) any legal liability of whatsoever nature other than as provided in Section 2 and Additional Benefit 7 (Indemnity to hirer – Wet Hire) or Additional Benefit 15 (Hired-out plant – damage waivers) in Section 3.
2. In the event of physical damage or destruction of a part of a Machine caused by:
- (a) wear and tear, corrosion, rusting, erosion, fatigue or gradual deterioration of the part;
  - (b) breaking, distortion, seizing, burning, failure or breakdown of the part; or
  - (c) Breakdown Damage of the part;  
 the Insurer shall not indemnify the Insured against:
  - (d) the physical damage or destruction of the part;
  - (e) any loss, damage, liability or costs caused directly or indirectly by or arising from or in connection with physical damage or destruction caused by the physical damage or destruction of the part to any other part of the Machine, unless the Insured proves that:
    - (1) no Employee or person who was engaged in the operation, maintenance or servicing of the Machine nor any Insured was aware and could reasonably have been aware of such cause;
    - (2) the Insured took reasonable steps to avoid, prevent, detect and discover such cause;
    - (3) the Machine was being operated by a suitably licensed, qualified and experienced operator at the time when the damage or destruction occurred; and
    - (4) such cause was not reasonably capable of being discovered or revealed by or in the course of inspection, maintenance or servicing of the Machine that was carried out or should have been carried out according to:
      - (A) manufacturer's and distributor's recommendations or guidelines; and
      - (B) systems and procedures imposed or recommended by law, International Standards, Australian Standards and Industry Standards.
3. Other than as provided in Additional Benefits 1 (Damage to lifted goods), 6 (Employees' property damage), 7 (Indemnity to hirer – Wet Hire) and 15 (Hired-out plant – damage waivers) in Section 3:
- (a) the Insurer shall not indemnify any person or Company other than an Insured having an interest in a Machine unless the person or Company is named in the Schedule as an interested party; and
  - (b) as against any interested party making a claim, the Insurer, without limiting any other defence, shall be entitled to rely on any defence that the Insurer has against an Insured.

## E. General Exclusions for Sections 6 and 7

(See also Exclusions in Sections 6 and 7.)

### 1. The Insurer shall not indemnify the Insured against Legal Liability:

#### (a) Employer's liability

arising from Personal Injury to an Employee:

- (1) arising from any relationship described in the General Definition of 'Employee';
- (2) imposed by workers' compensation legislation, an industrial award, an agreement or a determination;
- (3) for which legislation relating to workers' compensation requires the Insured to have insurance; or
- (4) for which the Insured has the benefit of a statutory indemnity or insurance policy under legislation relating to workers' compensation.

#### (b) Changes in compulsory insurance law

of a kind to which a statutory indemnity scheme or insurance that the Insured was required to have by law (including workers' compensation and motor

vehicle legislation) applied at the commencement of the Period of Insurance, even if before the Occurrence the scheme has ceased to apply or the requirement to have such insurance has ceased.

**(c) Contractual liability**

- (1) assumed by an Insured under a contract or agreement, except to the extent that:
  - (A) the liability would have been implied by law in the absence of such contract or agreement;
  - (B) the liability arises from a provision of a written contract for lease of real or personal property other than a provision that obliges the Insured to effect insurance or provide indemnity in respect of the subject-matter of the contract; or
  - (C) the liability is assumed by the Insured under a warranty of fitness or quality of the Insured's products;

or
- (2) for which an Insured has released or waived all or part of the Insured's right to recover indemnity, contribution or damages from another.

**(d) Admissions of liability**

which an Insured has incurred solely by reason of an express, implied or constructive admission of liability.

**(e) Property in an Insured's physical possession or legal control**

for damage to or loss of:

- (1) any property (not including premises) while being used or operated by an Insured;
- (2) any vehicle or trailer in a car park owned or operated by an Insured for reward;
- (3) any part of any property on which an Insured is working where the damage is directly caused by such work; or
- (4) any property in the physical possession or legal control of the driver of a vehicle unless the property is suspended from a Machine designed to lift that property.

**(f) Pollution**

- (1) for Personal Injury or Property Damage arising directly or indirectly out of or caused by, through or in connection with the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water, including any water course or body of water, unless such discharge, dispersal, release, seepage, migration or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place outside North America;
- (2) the cost of preventing, removing, nullifying or cleaning up any contamination or pollution as a consequence of the discharge, dispersal, release, seepage, migration or escape of any Pollutants, but

this exclusion does not apply to removal or nullifying or cleaning up costs which are consequent upon a sudden, identifiable, unexpected and unintended happening which takes place in its entirety at a specific time and place outside North America; or

- (3) Personal Injury or Property Damage arising directly or indirectly out of or caused by, through or in connection with the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others;

and the Insurer's aggregate liability under (1) and (2) above for all discharges, dispersals, releases, seepages, migration or escape of Pollutants during the Period of Insurance of this Policy shall not exceed the Sum Insured.

**(g) Asbestos**

caused directly or indirectly by, arising from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

**(h) Fines, penalties and exemplary, aggravated or punitive damages**

for:

- (1) fines or penalties;
- (2) exemplary, aggravated or punitive damages;
- (3) additional damages resulting from the multiplication of compensatory damages; or
- (4) liquidated damages.

**(i) Property owned by an Insured**

for damage to property owned by an Insured.

**2. Information technology and computer data, programmes and storage media**

- (a) The Insurer shall not indemnify the Insured against Legal Liability for Personal Injury and Property Damage arising directly or indirectly from or in connection with:

- (1) an Insured's Internet Operations;
- (2) the provision of computer or telecommunication services by or on behalf of an Insured;
- (3) the use of any computer equipment or programme, whether made or owned by an Insured or anyone else; or
- (4) any harmful computer programme including but not limited to a computer virus, worm, logic bomb or trojan horse;

but this Exclusion shall not apply to Personal Injury or Property Damage caused by or arising out of any documents prepared or published by anyone other than an Insured or an Employee in respect of use of or safety instructions or warnings for any computer equipment or programme.

- (b) **Internet Operations** means:
- (1) use of electronic mail or messaging systems by an Insured or an Employee, including part-time and temporary staff and others within an Insured's Business or others communicating with an Insured's Business by electronic mail or messaging;
  - (2) access through an Insured's network to the world wide web or a public internet site by an Insured or an Employee, including part-time and temporary staff, contractors and others within an Insured's Business;
  - (3) access to an Insured's intranet (internal company information and computing resources) which is made available through the world wide web for an Insured's customers or others outside an Insured's Business; and
  - (4) operation and maintenance of an Insured's web site.

### 3. Interested parties

Subject to the cover provided in Additional Benefits C.2 (Extended road risk cover for drivers and passengers), C.6 (Cover for principals) and C.8 (Hired-out Road Vehicles) in Section 6 and Additional Benefit C.3 (Cover for others) in Section 7, the Insurer shall not indemnify a person or Company not named as an Insured even if the person's or Company's interest is noted in the Schedule.

## F. General Conditions

### 1. Average

For Sections 1, 2 and 5, if the Sum Insured for a Machine is less than 90% of its Market Value immediately prior to the Damage or Breakdown Damage, except in the event of destruction or permanent loss by theft of the Machine the indemnity shall be reduced according to the formula:

$$\frac{(\text{Indemnity} \times \text{Sum Insured})}{90\% \text{ of Market Value}}$$

### 2. Compliance with recommendations, guidelines, standards and legislation

The Insured shall at all times:

- (a) service, maintain, use and operate the Machines and any vehicles strictly in accordance with:
  - (1) manufacturers' and distributors' recommendations and guidelines; and
  - (2) systems and procedures imposed or recommended by law, International Standards, Australian Standards and industry standards;
- (b) ensure that anyone servicing, maintaining, using, or engaging in the operation of the Machines and any vehicles complies strictly with:
  - (1) manufacturers' and distributors' recommendations and guidelines; and
  - (2) systems and procedures imposed or recommended by law, International Standards, Australian Standards and industry standards;

- (c) not permit unqualified or inadequately experienced persons to engage in the operation or use of the Machines and any vehicles;
- (d) ensure that anyone operating or using a Machine, Road Vehicle or Motor Vehicle is:
  - (1) qualified and adequately experienced to operate or use it;
  - (2) provided with suitable training in its operation or use before operating or using it; and
  - (3) not suffering from a physical or mental impairment of ability to operate or use it;

### 3. Reasonable Precaution

The Insured shall at all times take all reasonable precautions to prevent loss, damage, injury or liability.

### 4. Claims procedure

- (a) As soon as an Insured becomes aware of anything that gives rise to or could give rise to a claim under the Policy, the Insured shall:
  - (1) immediately notify UAA by telephone;
  - (2) take all precautions to prevent or reduce Damage, Breakdown Damage, Property Damage, Personal Injury, Consequential Loss, Liability to Owner or Legal Liability (including carrying out necessary minor repairs without first obtaining the approval of the Insurer);
  - (3) retain any damaged Machine or vehicle or parts thereof; and
  - (4) provide to UAA full details of the claim in writing within three days.
- (b) Any notice, process or summons to be served by the Insured on the Insurer may be served on UAA, which is authorised to enter an appearance on the Insurer's behalf.

### 5. Co-operation in claims

The Insured shall:

- (a) at its own expense provide to UAA and its agents (including assessors, investigators and legal representatives) all cooperation and assistance required by UAA, including but not limited to providing or making available:
  - (1) all information and documents:
    - (A) to establish title, ownership and right to possession of property, including but not limited to machines and motor vehicles;
    - (B) to establish the cause of the Damage, Breakdown Damage, Consequential Loss, Property Damage or Personal Injury;
    - (C) relating to the Insured's claim for or entitlement to indemnity, including but not limited to quantification of the indemnity;
    - (D) as to the servicing, maintenance and operation of any equipment, including but not limited to Machines and motor vehicles;

(E) constituting any contract or arrangement entered into by or on behalf of an Insured, including but not limited to contracts of hire;

(F) to defend against any claim of Liability to Owner or Legal Liability made against the Insured; and

(2) all relevant persons for interviews, statements, assistance and the provision of documents and information;

(b) at its own expense preserve and protect against damage or loss all property, documents and records relevant to a potential or actual claim under the Policy.

#### 6. Fraud / Utmost good faith

(a) The Insured shall at all times comply with the Insured's duty of utmost good faith and shall not provide false or misleading information to the Insurer or UAA.

(b) The Insured shall answer truthfully, honestly and with due diligence any requests for information by the Insurer or UAA.

#### 7. Defence of claims against the Insured

(a) If a claim for Liability to Owner under Section 2 or Legal Liability under Sections 6 or 7 is made against the Insured, the Insurer shall have the right but not the obligation to:

- (1) investigate the claim;
- (2) instruct lawyers to advise on the claim;
- (3) instruct lawyers to represent the Insured;
- (4) instruct lawyers to conduct the Insured's defence;
- (5) negotiate settlement of the claim; and
- (6) direct settlement of the claim.

(b) An Insured shall not make any offer, payment, admission or settlement, resolve, assume any obligation, consent to any order, or incur any costs or expenses in relation to a claim against an Insured without the Insurer's prior written consent.

#### 8. Basis of the Sum Insured

(See also General Conditions F.1 (Average) and F.9 (Premium Adjustment).)

The Sum Insured for Sections 1, 2 and 5 shall be the Market Value at the commencement of the Period of Insurance, which the Insured shall declare to the Insurer at that time.

#### 9. Premium adjustment

(a) If Section 2 applies, the Premium for Section 2 is calculated at the commencement of the Period of Insurance as a minimum deposit premium, based on the Insured's estimate of total hiring charges for Machines to be hired in by the Insured during the Period of Insurance.

(b) If the total hiring charges paid by the Insured during the Period of Insurance for Machines hired in by the Insured is different from the estimate provided at the commencement of the Period of Insurance, the

Premium shall be adjusted and the Insured shall pay or receive the difference between the adjusted Premium and the minimum deposit premium.

#### 10. Right of inspection

(a) The Insurer shall have the right but not the obligation to inspect or examine any property or records relating to the Insured's business, including but not limited to Machines, at any time during the Period of Insurance.

(b) The Insured shall at its own expense assist in inspections or examinations of the Machines.

#### 11. Notification of changes materially affecting the insurance

(a) The Insured shall notify the Insurer in writing as soon as possible of any change materially varying any facts or circumstances existing at the commencement of the Period of Insurance, including but not limited to, changes in the information contained in the Proposal.

(b) The Insurer shall not indemnify against the risks arising from the material changes unless, before Damage, Breakdown Damage, Property Damage or Personal Injury in connection with those risks occurs, the Insurer has agreed in writing to extend the Policy.

(c) Following the Insured's notification to the Insurer of such material changes the Insurer shall have the right to vary the Sums Insured, Excess, Premiums or the terms of the Policy.

#### 12. Use of Machines underground

For the purposes of Sections 1 to 5:

(a) the Insured shall not use or operate a Machine underground unless, prior to such use or operation:

- (1) the Insured has notified the Insurer in writing that such use or operation is intended; and
- (2) the Insurer has agreed in writing to extend the Policy to cover such use or operation;

(b) the Policy shall not cover Damage to or Breakdown Damage in a Machine while used or operated underground unless the Insurer has agreed in writing to extend the Policy to cover such use or operation.

#### 13. Use of Machines in connection with drilling or wells

For the purposes of Sections 1 to 5:

(a) the Insured shall not use or operate a Machine for or in connection with oil, gas or geothermal drilling or wells unless, prior to doing so:

- (1) the Insured has notified the Insurer; and
- (2) the Insurer has agreed in writing to extend the Policy to cover such use or operation;

(b) the Policy shall not cover Damage to or Breakdown Damage in a Machine occurring while being used or operated in connection with oil, gas or geothermal drilling or wells unless, prior to such use or operation the Insurer has agreed in writing to extend the Policy to cover such use or operation.

**14. Placement of Machines on Watercraft**

For the purposes of Sections 1 to 5:

- (a) the Insured shall not place a Machine on a Watercraft unless, prior to doing so:
  - (1) the Insured has notified the Insurer; and
  - (2) the Insurer has agreed in writing to extend the Policy to cover the Machine while on the Watercraft;
- (b) the Policy shall not cover Damage to or Breakdown Damage in a Machine while on a Watercraft unless, prior to such placement, the Insurer has agreed in writing to extend the Policy to cover such placement.

**15. Subrogation**

Upon an event giving rise to a claim under the Policy:

- (a) the Insurer shall be entitled immediately to pursue;
- (b) the Insured shall consent to the Insurer's pursuing; and
- (c) the Insured shall at its own expense co-operate with and assist the Insurer in pursuing;

the Insured's legal rights to recover from others.

**16. Salvage**

In the event of the destruction of a Machine or part of a Machine against which the Insurer has agreed to indemnify the Insured, the ownership of the Machine or part shall pass immediately to the Insurer, unless the Insurer notifies the Insured in writing otherwise.

**17. Jurisdiction**

The Policy shall be interpreted by the courts of and according to the laws of the Australian State or Territory in which the Policy was issued.

**18. Cancellation of the Policy**

- (a) The Insured may cancel the whole or any Section of the Policy at any time by providing three days' notice in writing to UAA.
- (b) If the Insured cancels, the Insurer shall refund to the Insured 80% of the Premium relating to the cancelled part of the Policy for the unexpired part of the Period of Insurance on a pro rata basis.
- (c) The Insurer may cancel the whole or any Section of the Policy in accordance with the Insurance Contracts Act, 1984.
- (d) If the Insurer cancels, the Insurer shall refund to the Insured the Premium relating to the cancelled part of the Policy for the unexpired part of the Period of Insurance.

**19. Discovery of Products Defects**

In the event that an Insured becomes aware of a Product Defect, the Insured shall locate and recall all relevant Products at its own expense, regardless whether or not Personal Injury or Property Damage has already occurred.

**20. Two or more named as the Insured (cross-liability)**

If the Schedule names two or more Insureds:

- (a) for Sections 1 to 5:
  - (1) each one is both individually and collectively responsible for the Insured's compliance with the conditions of the Policy; and
  - (2) as against each Insured the Insurer shall be entitled to rely on any defence available against any other Insured;
- (b) for Sections 6 and 7, each Insured shall be treated as if a separate policy had been issued to that Insured, but this Condition shall not operate to increase the Insurer's liability beyond:
  - (1) the limits of liability in the Policy; and
  - (2) the liability of the Insurer had this Condition not been included in the Policy.

**21. Indemnity for those not named as Insured**

If the terms of the Policy entitle a person or Company not named as an Insured in the Schedule to be indemnified under the Policy:

- (a) the person's or Company's entitlement is subject to that person or Company complying with the terms of the Policy as if the person or Company were an Insured; and
- (b) as against such person or Company the Insurer shall be entitled to rely on any defence available against an Insured as if the person or Company were an Insured.

**22. Payment of Excess**

The Insurer shall not be liable to indemnify an Insured under Sections 6 or 7 if the Insured does not pay the Excess within 14 days after being requested to do so.

**23. Non-aggregation of Excess**

If one event or Occurrence gives rise to loss, damage or liability against which the Insurer is liable to indemnify an Insured under more than one Section, the single highest Excess applicable shall apply once in respect of the indemnity payable under all of those Sections.

**24. Goods and Services Tax (GST)**

- (a) The Insured's GST status shall affect the amount of any indemnity payable by the Insurer under the Policy.
- (b) The Insured shall inform the Insurer of the Insured's:
  - (1) Australian Business Number; and
  - (2) Taxable Percentage, being the Insured's entitlement to an Input Tax Credit on the Premium as a percentage of the total GST on that Premium.
- (c) If the Insured:
  - (1) is not registered for GST, the Sum Insured and any limit of indemnity shall be inclusive of GST

- (2) is registered for GST, the Sum Insured and any limit of indemnity shall be exclusive of GST and the Insurer shall also pay any GST that the Insured is liable to pay in respect of any acquisition included in the indemnity;

but the Insurer shall not pay any GST to the extent that the Insured is entitled, or would if making the relevant acquisition be entitled, to an Input Tax Credit.

- (d) The Insured shall refund to the Insurer or pay any amount of GST payable as a result of the Insured's incorrect advice.
- (e) The Insurer shall pay only the amount of GST (less the Insured's entitlement to an Input Tax Credit) based on the amount that the Insurer pays under the Policy and any relevant acquisition included in the indemnity.
- (f) For the purpose of this General Condition and whenever used elsewhere in the Policy, the expressions "GST", "Input Tax Credit" and "acquisition" shall have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 and related legislation.

#### 25. Other insurance

In the event of a claim under the Policy, the Insured shall notify the Insurer of and provide the Insurer with a copy of any other insurance policy concerning the same subject-matter.

#### 26. Interpretation

Nothing in an Exclusion shall be construed to extend the liability of the Insurer beyond its liability in the absence of the Exclusion.

## SECTION 1 – DAMAGE

### A. The Cover

The Insurer shall indemnify the Insured against Damage to a Machine that occurs:

1. within the Territorial Limits; and
2. during the Period of Insurance.

### B. The Indemnity

1. The indemnity under this Section against Damage to a Machine shall not exceed the least of:
  - (a) in the case of physical damage, the reasonable cost of:
    - (1) repairing the Machine; and
    - (2) re-commissioning, re-erecting and re-installing the Machine;

to restore it to a condition equal to its condition immediately prior to the Damage;
  - (b) the Market Value of the Machine immediately prior to the Damage;
  - (c) an amount that indemnifies the Insured against the Damage to the Machine;

- (d) the Sum Insured.

2. The indemnity under B.1 above shall not include any costs of the kind referred to in Additional Benefit 5 in Section 3.
3. The aggregate of all indemnity payable under this Section and any Additional Benefit under Section 3 applying to this Section in connection with Damage to two or more Machines caused by the one event shall not exceed the aggregate of the Limits Any One Loss shown in the Schedule for this Section and Section 3.
4. The Insurer shall, at its option, indemnify the Insured in accordance with B.1 by:
  - (a) repairing the Machine to a condition equal to its condition immediately prior to the Damage; or
  - (b) paying the indemnity to the Insured.
5. The Excess shall apply to each Machine for each event of Damage, but if one event causes Damage to two or more Machines simultaneously, the highest Excess applicable to any of those Machines shall apply once in respect of all those Machines under this Section.

## C. Additional Benefit

### Substitute Machines

1. The Insurer shall indemnify the Insured in accordance with the terms of this Section against Damage to a Substitute Machine as if the Substitute Machine were identified in the Schedule for this Section.
2. **Substitute Machine** means, for the purpose of this Additional Benefit only a machine:
  - (a) being used by an Insured as a temporary replacement for a Machine while the Machine is undergoing repair, maintenance or servicing;
  - (b) equivalent in size, function and market value to the Machine for which it is a substitute; and
  - (c) only until the Machine is returned to the Insured following repair, maintenance or servicing.

## SECTION 2 – HIRED-IN PLANT (LIABILITY TO OWNER)

### A. The Cover

1. The Insurer shall indemnify the Insured against Liability to Owner arising from Damage to a Machine hired in by the Insured that occurs:
  - (a) within the Territorial Limits;
  - (b) during the Period of Insurance;
  - (c) during the period of hire; and
  - (d) while the Machine is in the physical possession and control of the Insured.

## B. The Indemnity

1. The indemnity under this Section against Liability to Owner for the cost of repair or replacement of a Machine shall not exceed the least of:
  - (a) in the case of physical damage, the reasonable cost of:
    - (1) repairing the Machine; and
    - (2) re-commissioning, re-erecting and re-installing the Machine;

to restore it to a condition equal to the condition immediately prior to the Damage;
  - (b) the Market Value of the Machine immediately prior to the Damage;
  - (c) an amount that indemnifies the person or Company from whom the Insured hired the Machine against the Damage to the Machine;
  - (d) the Insured's liability for repair or replacement of the Machine under the hire contract.
2. The indemnity under B.1 above shall not include any costs of the kind referred to in Additional Benefit 5 in Section 3.
3. The indemnity against Liability to Owner for hiring charges for the Machine shall be the lesser of:
  - (a) the amount shown for 'Hiring Charges' in the Schedule less the aggregate of all amounts already paid by the Insurer under this Section during the Period of Insurance for hiring charges in respect of the Machine;
  - (b) the amount of hiring charges for the Machine payable by the Insured under the hire contract for the duration of the Indemnity Period.

**[Note:** The Insured's obligation to mitigate its loss under General Condition F.4(a)(2) includes exercising any right under the hire contract to minimise the Insured's liability to the owner.]
4. The aggregate of all indemnity payable under this Section and any Additional Benefit under Section 3 applying to this Section in connection with Damage to two or more Machines arising from the one event shall not exceed the aggregate of the Limits Any One Loss shown in the Schedule for this Section and Section 3.
5. The Excess shall apply to each Machine for each event of Damage, but if one event causes Damage to two or more Machines simultaneously, the highest Excess applicable to any of those Machines shall apply once in respect of all those Machines under this Section.

## C. Additional Benefit

1. **On-Hire on Dry Hire terms (optional Additional Benefit)**
  - (a) If the Schedule shows both that this Additional Benefit applies and that the Business includes the hire of machines to others, A.1(d) of this Section shall not apply and the Insurer shall indemnify the Insured against Liability to Owner arising from Damage to a Machine hired in by the Insured on Dry Hire terms if the Damage occurs:
    - (1) during the Period of Insurance;
    - (2) during the period of hire; and
    - (3) while the Machine is on-hired to another person or Company on Dry Hire terms.
  - (b) The Sum Insured for this Additional Benefit shall be the amount shown in the Schedule for this Additional Benefit.

## 2. Legal Costs

- (a) If a claim for Liability to Owner is made against an Insured, the Insurer shall also pay:
  - (1) the Legal Costs in relation to that claim to which the Insurer has agreed in writing before the Legal Costs are incurred; and
  - (2) the legal costs and expenses of a claim for Liability to Owner against the Insured incurred by a person or Company other than an Insured or a director or partner of an Insured that the Insured is liable to pay.
- (b) The indemnity for Legal Costs shall not exceed the balance of \$50,000 after deducting the aggregate of all amounts for Legal Costs and costs under (a) above already paid by the Insurer under this Section during the Period of Insurance.

## D. Definitions for Section 2

**Indemnity Period** means the period of continuous Interruption:

1. commencing at the end of the Initial Period; and
2. ending at the earlier of:
  - (a) repair or replacement of the Machine;
  - (b) the end of the number of weeks of the 'Indemnity Period' shown in the Schedule.

**Initial Period** means the period ending 14 days after the Insured gives notice of the Interruption to the Insurer.

**Interruption** means prevention of or interference with the normal use or operation of the Machine to perform the functions for which it was designed in the course of the Business caused by and commencing upon its Damage.

**Liability to Owner** means the Insured's liability under the express or implied terms of the hire contract for a Machine to pay, in the event of Damage to the Machine:

- (a) the cost of repair or replacement of the Machine; and
- (b) hiring charges for the Machine while it is unable to be used in consequence of the Damage;

but does not include liability for demurrage or any other direct or consequential loss of the person or Company from whom the Insured hired the Machine.

## SECTION 3 – ADDITIONAL BENEFITS

### Additional Benefits applying to Sections 1 and 2 automatically

#### 1. Damage to lifted goods

- (a) The Insurer shall indemnify:
- (1) the Insured; or
  - (2) an owner of goods who is not an Insured as if such owner was an Insured;
- against sudden and unexpected physical damage or destruction of the goods occurring while the goods are both:
- (3) in the possession and control of the Insured; and
  - (4) suspended from a Machine designed to lift them.
- (b) There shall be no indemnity under this Additional Benefit against:
- (1) damage or destruction of the goods caused directly or indirectly by or arising from a defect in or the fragility of the goods or their container; or
  - (2) any legal liability of whatsoever nature.
- (c) The Sum Insured and Excess for this Additional Benefit shall be the amounts shown in the Schedule for 'Damage to Lifted Goods' and the limits of indemnity under B. in the relevant Section shall otherwise apply as if the goods were a Machine.

#### 2. Multiple Crane Operation

- (a) The Insurer shall indemnify the Insured against Damage to a Machine occurring while it is being used in a Multiple Crane Operation during the Period of Insurance.
- (b) **Multiple Crane Operation** means the use of two or more lifting machines together, as described in the edition of Australian Standard AS2550.1 or its equivalent current at the time of the Operation.
- (c) If the Insured or any person or Company engaged in the Multiple Crane Operation did not adopt and comply with the procedures and requirements set out in the edition of Australian Standard AS2550.1 or its equivalent current at the time of the Operation, there shall be no indemnity under this Additional Benefit.

#### 3. Expediting Costs

- (a) If the Insurer is liable to indemnify the Insured under the relevant Section against Damage to a Machine, the Insurer shall also indemnify the Insured against the Expediting Costs.
- (b) **Expediting Costs** means the reasonable additional costs necessary to effect immediate temporary repairs or to expedite permanent repairs to the Machine.
- (c) The Sum Insured for this Additional Benefit shall be the lesser of \$10,000 or 20% of the indemnity payable against the Damage to the Machine under the relevant Section.

- (d) If the Insured has not obtained the consent of the Insurer prior to incurring the Expediting Costs, there shall be no indemnity under this Additional Benefit.

#### 4. Recovery costs – no Damage

- (a) If a Machine becomes immobilised or inaccessible and unable to be used without physical damage or destruction and as a result of a sudden and unexpected event occurring during the Period of Insurance, the Insurer shall indemnify the Insured against the reasonable and necessary costs incurred with the Insurer's prior written consent of recovering or attempting to recover the Machine.
- (b) The indemnity under this Additional Benefit shall not exceed \$50,000 or, if an amount is stated in the Schedule for 'Recovery Costs', that amount.
- (c) The Excess shall apply to each event.

#### 5. Recovery costs – Damage

- (a) If the Insurer is liable to indemnify the Insured under the relevant Section against Damage being physical damage or destruction of a Machine, the Insurer shall also indemnify the Insured against the reasonable and necessary costs, incurred with the Insurer's prior written consent, of:
- (1) if the Machine is destroyed, disposing of the Machine;
  - (2) dismantling, recovering and transporting the Machine for the purpose of repairing the Damage;
  - (3) returning the Machine to where it is usually kept following the completion of the repair;
  - (4) protecting the Machine from further Damage pending repair;
  - (5) removing debris and fluids that have escaped from the Machine as a result of the Damage.
- (b) The indemnity under this Additional Benefit shall not exceed \$250,000 or, if an amount is stated in the Schedule for 'Recovery and Transport Costs', that amount.
- (c) The Excess shall apply to each Machine for each event of Damage.

#### 6. Employees' property damage

- (a) The Insurer shall indemnify an Employee against damage, destruction or loss by theft of the Employee's personal property caused by or arising from Damage to a Machine against which the Insurer is liable to indemnify the Insured.
- (b) The indemnity under this Additional Benefit shall not exceed the least of:
- (1) the reasonable cost of repair of the property;
  - (2) the Market Value of the property immediately prior to the Damage;
  - (3) an amount that indemnifies the Employee against the damage, destruction or loss of the property;
  - (4) \$5,000.

**7. Indemnity to hirer – Wet Hire**

- (a) Where:
- (1) the Insured has hired out a Machine to a hirer on Wet Hire terms; and
  - (2) the hire agreement provides that:
    - (A) the Insured shall arrange insurance against Damage to the Machine for the hirer; or
    - (B) the Insured shall release the hirer from liability for Damage to the Machine;

the Insurer shall indemnify the hirer according to the terms of the relevant Section against Damage to the Machine occurring while on hire to the hirer.

- (b) The indemnity under this Additional Benefit shall not exceed the lesser of:
- (1) the insurance or release that the hire agreement requires the Insured to provide to the hirer;
  - (2) the Sum Insured.

**8. Appreciation in value**

If:

- (a) Damage to a Machine occurs;
- (b) its Market Value was equal to or less than its Sum Insured at the commencement of the Period of Insurance or the date during the Period of Insurance when it was added to the Schedule; and
- (c) its Market Value immediately prior to the Damage exceeded the Sum Insured;

for the purpose of indemnity against the Damage the Sum Insured shall increase by the amount of the increase of the Market Value but by no more than 25% of the Sum Insured.

**9. Extra costs of reinstatement**

If repair of a Machine would cause the Machine to be in a condition better than immediately prior to the Damage because either:

- (a) of a requirement to comply with legislation:
  - (1) with which the Insured is required to comply as a result of the Damage and to allow the Insured to recommence normal use of the Machine; and
  - (2) which was not a requirement with which the Insured would have been required to comply regardless whether or not the Damage had occurred;

or

- (b) repair requires a part that is no longer available;
 

the Insurer shall pay for the repair, but the amount payable for such repair under this Additional Benefit in addition to the indemnity as limited under clause B. of the relevant Section shall not exceed the lesser of:
- (c) 10% of the Sum Insured;
- (d) \$50,000 or, if an amount is stated in the Schedule for 'Extra Costs of Reinstatement', that amount.

**Additional Benefit applying to Section 1 automatically and to Section 2 only if shown in the Schedule****10. Additions/deletions of machines**

- (a) The Insurer shall indemnify the Insured in accordance with the terms of the relevant Section if Damage to an Additional Machine occurs within 60 days after its acquisition by the Insured.
- (b) **Additional Machine** means, for the purpose of this Additional Benefit only, a machine:
  - (1) not identified in the Schedule;
  - (2) acquired by the Insured by purchase, lease or hire-purchase after the commencement of the Period of Insurance;
  - (3) having a Market Value at the time of its acquisition by the Insured no greater than the amount shown in the Schedule for 'Additional Machines'; and
  - (4) of a type similar to the Machines identified in the Schedule.
- (c) The Sum Insured for an Additional Machine under this Additional Benefit shall be the amount shown in the Schedule for 'Additional Machines'.
- (d) There shall be no indemnity under this Additional Benefit against Damage to an Additional Machine occurring more than 60 days after its acquisition by the Insured unless the Insured has:
  - (1) provided to the Insurer a written declaration disclosing the acquisition of the Additional Machine and all matters relevant to its insurance under the Policy; and
  - (2) paid the additional Premium for insuring the Additional Machine.
- (e) If the Insured requests the Insurer in writing to delete a Machine from the Schedule as from a specified date, the Insurer shall refund to the Insured the Premium for the deleted Machine for the unexpired part of the Period of Insurance and General Condition F.18(b) shall not apply.

**Additional Benefits applying to Section 1 or 2 only if shown in the Schedule****11. Agreed value**

- (a) If the Schedule describes the Sum Insured for a Machine under the relevant Section as 'Agreed Value', the indemnity under the relevant Section shall not be limited by the Market Value of the Machine, but shall be the lesser of:
  - (1) in the case of physical damage, the reasonable cost of:
    - (A) repairing the Machine; and
    - (B) re-commissioning, re-erecting and re-installing the Machine;

to restore it to a condition equal to its condition immediately prior to the Damage;

(2) the Sum Insured.

(b) There shall be no indemnity under this Additional Benefit unless, before the commencement of the Period of Insurance:

(1) the Insured provided to the Insurer; and

(2) the Insurer agreed with;

a licensed valuer's written assessment of the Market Value of the Machine.

## 12. Market Value Plus

(a) If the Schedule describes the Sum Insured for a Machine under Section 1 as 'Market Value Plus', the indemnity against Damage being total physical loss or destruction of the Machine shall be:

(1) the Sum Insured; or

(2) if the Market Value of the Machine immediately preceding such Damage is less than 85% of the Sum Insured, that Market Value plus 15%.

(b) Under this Additional Benefit, the Insured is not obliged to provide a valuation certificate prior to the commencement of the Period of Insurance.

## 13. Owner's protection – excluding Dry Hire

(a) Exclusions D.1(a)(2) to D.1(a)(7) and General Condition F.2(a) in the General Section shall not apply to the relevant Section if the Exclusion or General Condition would apply owing to conduct of an Employee.

(b) There shall be no indemnity under this Additional Benefit if, at the time of the Damage:

(1) the Employee was:

(A) an owner of the Machine;

(B) an Insured;

(C) a director or partner of an Insured; or

(D) acting with the knowledge of, or was influenced by, an owner of the Machine, an Insured, or a director or partner of an Insured;

or

(2) the Machine was hired out by the Insured on Dry Hire terms.

## 14. Owner's protection plus – including Dry Hire and Wet Hire

(a) This Additional Benefit applies to Machines operated by the Insured or hired out by the Insured on Dry Hire or Wet Hire terms.

(b) Exclusions D.1(a)(2) to D.1(a)(7) and General Condition F.2(a) in the General Section shall not apply to the relevant Section if the Exclusion or General Condition would apply owing to conduct of an Employee, the hirer, or any person engaged in the operation of the Machine.

(c) There shall be no indemnity under this Additional Benefit if, at the time of the Damage, the Employee, the hirer, or the person engaged in the operation of the Machine was:

(1) an owner of the Machine;

(2) an Insured;

(3) a director or partner of an Insured; or

(4) acting with the knowledge of, or was influenced by, an owner of the Machine, an Insured, or a director or partner of an Insured.

(d) Nothing in this Additional Benefit shall affect the Insurer's rights of subrogation, including against the hirer.

[**Note:** Additional Benefits 13 and 14 are available only as alternatives to each other and the applicable one shall be shown as applying in the Schedule.]

## 15. Hired-out plant – damage waivers

(a) Where:

(1) the Insured has hired out a Machine to a hirer on Dry Hire terms; and

(2) the hire agreement between the Insured and the hirer provides that:

(A) the Insured shall arrange for the hirer to be insured against Damage to the Machine; or

(B) the Insured shall release the hirer from liability for Damage to the Machine;

the Insurer shall indemnify the Insured or the hirer according to the terms of the relevant Section against Damage to the Machine occurring while it is on hire to the hirer.

(b) The indemnity under this Additional Benefit shall not exceed the insurance or release that the hire agreement requires the Insured to provide to the hirer.

(c) There shall be no indemnity under this Additional Benefit if, at the time of the Damage, any person engaged in the operation of the Machine:

(1) was an Insured; or

(2) was a director or partner of an Insured.

## SECTION 4 – FINANCIAL PROTECTION

### A. The Cover

1. The Insurer shall indemnify the Insured against Consequential Loss that occurs during the Indemnity Period if Damage to or Breakdown Damage in a Machine occurs:

(a) within the Territorial Limits; and

(b) during the Period of Insurance;

and causes Interruption.

2. There shall be no indemnity under this Section unless:

(a) the Machine is insured against:

(1) Damage under Section 1 or other insurance equivalent to Section 1; or

- (2) Breakdown Damage under Section 5 or other insurance equivalent to Section 5;

and

- (b) the Insurer or other insurers have agreed to indemnify the Insured against the Damage or Breakdown Damage that caused the Interruption.
3. If A.2(a)(2) of this Section applies, General Exclusion D.2(e) shall not apply to this Section.
4. The Insured shall take all reasonable steps to reduce Consequential Loss, including using or hiring a Substitute Machine during the Indemnity Period.
5. The Insurer shall have the right but not the obligation to arrange the hire by the Insured of a Substitute Machine during the Indemnity Period.
6. There shall be no indemnity against any Consequential Loss that the Insured could have avoided by taking all reasonable steps to reduce Consequential Loss, including using or hiring a Substitute Machine during the Indemnity Period.

## B. The Indemnity

1. The aggregate of all indemnity payable under this Section arising from the one event shall not exceed the aggregate of the Limit Any One Loss shown in the Schedule for this Section.
2. The Insurer shall indemnify the Insured against Consequential Loss in accordance with whichever of the following Cover Options the Schedule shows apply to this Section:

### Cover Option 1 – Loss of Revenue and Increased Cost of Working

The Insured's financial loss resulting from the Interruption calculated as follows:

$$[(A - B) + C] - D$$

### Cover Option 2 – Loss of Revenue

The Insured's financial loss resulting from the Interruption calculated as follows:

$$(A - B) - D$$

### Cover Option 3 – Increased Cost of Working

The Insured's financial loss resulting from the Interruption calculated as follows:

$$C - D$$

### Cover Option 4 – Lease Payments Protection

Each Lease Payment for the Machine that first becomes due and payable by the Insured during the Indemnity Period under a lease or hire-purchase agreement, calculated as 90% of:

- (a) the amount of the Lease Payment equivalent to the payment for one full month, if the Indemnity Period is less than one month; or
- (b) the amount of the Lease Payments calculated on a daily pro-rata basis, if the Indemnity Period exceeds one month.

### Cover Option 5 – Lease Value Protection

The Lease Value for the Machine if, by reason of the Damage or Breakdown Damage:

- (a) the Machine is destroyed or permanently lost or, in the opinion of the Insurer, the Machine is uneconomic to repair; and
- (b) the Lease Value becomes due and payable by the Insured under the lease or hire-purchase agreement;

calculated as the amount by which the Lease Value exceeds the amount of the indemnity for the Damage or Breakdown Damage under Section 1 or 5 or the other equivalent insurance referred to in A.2 of this Section, but not exceeding 20% of the amount of that indemnity.

3. In Cover Options 1, 2 and 3:

A = the average weekly revenue directly to the Insured directly from use of the Machine in the course of the Business for the whole period of the Insured's possession or ownership of the Machine during the 12 months immediately preceding the Damage or Breakdown Damage, multiplied by the number of weeks of the Indemnity Period;

B = the revenue from use of the Machine or a Substitute Machine in the course of the Business during the Indemnity Period;

C = the increase in the cost of normal use of the Machine in the course of the Business reasonably and necessarily incurred by the Insured during the Indemnity Period to reduce loss of revenue, together with the cost of hire of a Substitute Machine during the Indemnity Period;

D = all savings during the Indemnity Period in the cost of use of the Machine resulting from the Damage or Breakdown Damage.

4. Under Cover Option 4, the Insurer shall not indemnify the Insured against any balloon payment or residual value payment for the Machine.
5. Under Cover Options 4 and 5, the Insurer shall not indemnify the Insured against:
- (a) any payment that first became due for payment before the occurrence of the Damage or Breakdown Damage; and
- (b) any interest on such payment.
6. The aggregate of indemnity against all Consequential Loss under a Cover Option during the Period of Insurance shall not exceed the Sum Insured for that Cover Option.
7. The indemnity for Consequential Loss arising from each event of Damage or Breakdown Damage shall not exceed the balance of the Sum Insured for the relevant Cover Option, after deducting the aggregate of all amounts already paid by the Insurer under the Cover Option during the Period of Insurance.

## C. Definitions for Section 4

**Consequential Loss** means the financial loss of the Insured described in whichever Cover Option is shown in the Schedule to apply to this Section.

**Indemnity Period** means the period of continuous Interruption:

1. commencing at the end of the Initial Period; and
2. ending at the earlier of:
  - (a) repair or replacement of the Machine;
  - (b) the end of the number of weeks of the 'Indemnity Period' shown in the Schedule.

**Initial Period** means the period ending 14 days after the Insured gives notice of the Interruption to the Insurer.

**Interruption** means prevention of or interference with the normal use or operation of a Machine to perform the functions for which it was designed in the course of the Business caused by and commencing upon its Damage or Breakdown Damage.

**Lease Payment** means a periodic payment for the Machine under a lease or hire-purchase agreement relating to the Machine.

**Lease Value** means the total amount remaining to be paid and not already due and payable for the Machine under the terms of the lease or hire-purchase agreement relating to the Machine immediately preceding the Damage or Breakdown Damage.

**Substitute Machine** means one or more machines used, or hired and used, by the Insured as a substitute for or alternative to the Machine by reason of the Interruption.

## SECTION 5 – BREAKDOWN

### A. The Cover

1. The Insurer shall indemnify the Insured against Breakdown Damage that occurs in a Machine:
  - (a) within the Territorial Limits; and
  - (b) during the Period of Insurance.
2. General Exclusion D.2(d) shall not apply to this Section.

### B. The Indemnity

1. The aggregate of all indemnity payable under this Section arising from the one event shall not exceed the aggregate of the Limit Any One Loss shown in the Schedule for this Section.
2. The indemnity against Breakdown Damage occurring in a Machine under this Section shall not exceed the least of:
  - (a) the reasonable cost of:
    - (1) dismantling and transporting the Machine if necessary for the purpose of repairing the part;
    - (2) repairing (including, if necessary, replacing) the part to a condition equal to its condition immediately prior to the Breakdown Damage; and
    - (3) re-commissioning, re-erecting and re-installing the Machine following the repair;

- (b) the Market Value of the Machine immediately prior to the Breakdown Damage;
- (c) an amount that indemnifies the Insured against the Breakdown Damage;
- (d) the Sum Insured.

3. The indemnity for the replacement of a part that is no longer available shall not exceed the manufacturer's or supplier's last published price for that part.
4. The Excess shall apply to each Machine for each event of Breakdown Damage.

## SECTION 6 – ROAD RISK

### A. The Cover

The Insurer shall indemnify the Insured against Legal Liability for Personal Injury or Property Damage:

1. first occurring during the Period of Insurance; and
2. caused by an Occurrence within the Territorial Limits arising from using, operating or towing a Road Vehicle primarily as a vehicle in connection with the Business.

### B. Limits of Indemnity

1. The indemnity for Legal Liability arising from the one Occurrence shall not exceed the Sum Insured and shall be further limited as follows:
  - (a) for Legal Liability arising from or in connection with Dangerous Goods, the balance of the sum of \$500,000 after deducting the aggregate of all amounts already paid under this Section during the Period of Insurance by the Insurer for Legal Liability of such kind.
2. If the Insured is more than one person or Company, the Sum Insured (including as limited in B.1(a) above) shall apply to the aggregate of all Legal Liability of all such persons and Companies arising directly or indirectly from the one Occurrence.
3. The Excess shall apply per Occurrence to all indemnity under this Section, inclusive of any indemnity under an Additional Benefit.

### C. Additional Benefits

#### 1. Defence Costs

- (a) The Insurer shall:
  - (1) have the right but not the obligation to conduct the defence against a claim against the Insured under this Section; and
  - (2) indemnify the Insured against the Defence Costs incurred by the Insured with the prior written consent of the Insurer in relation to a claim against the Insured for Legal Liability against which the Insurer is liable to indemnify the Insured under this Section.

- (b) The total amount payable by the Insurer for Defence Costs under C.1(a) above shall not be limited by the Sum Insured for this Section, but if the Legal Liability exceeds the indemnity as limited under B. above, the indemnity for the Defence Costs shall be reduced to that proportion of the Defence Costs as the indemnity as limited under B. above bears to the Legal Liability.

[Note: General Condition F.7(a) gives the Insurer the right to investigate, instruct lawyers to represent the Insured and conduct the Insured's defence, and negotiate and direct the settlement of a claim.]

## 2. Extended Road Risk cover for drivers and passengers

'Insured' shall include, in this Section only:

(a) a person:

- (1) using, operating or towing a Road Vehicle with the Insured's permission;
- (2) holding a valid Australian driver's licence; and
- (3) neither ineligible for nor previously refused motor vehicle insurance of any description;

or

(b) a passenger in, on, boarding or alighting from the Road Vehicle with the Insured's permission.

## 3. Extended Road Risk cover for substitute vehicles

'Road Vehicle' shall include a Motor Vehicle registered for use as a Motor Vehicle as required by law that is not owned by an Insured but is in an Insured's possession in substitution for a Road Vehicle while the Road Vehicle is undergoing repairs or servicing.

## 4. Extended Road Risk cover for vehicle additions and deletions

(a) The Insurer shall indemnify the Insured against Legal Liability for Personal Injury or Property Damage first occurring during the Period of Insurance and caused by an Occurrence caused by or arising from using, operating or towing a Road Vehicle primarily as a Motor Vehicle in connection with the Business that:

- (1) is not identified in the Schedule; and
- (2) was first acquired by the Insured by purchase, lease or hire-purchase:
  - (A) after the commencement of the Period of Insurance; and
  - (B) no more than 60 days before the Occurrence.

(b) There shall be no indemnity under this Additional Benefit in connection with an Occurrence more than 60 days after acquisition of the Motor Vehicle by the Insured unless the Insured has:

- (1) provided to the Insurer a written declaration disclosing the acquisition of the Motor Vehicle and all matters relevant to its insurance under this Section; and
- (2) paid the Premium charged by the Insurer for insuring the Motor Vehicle.

- (c) If the Insured requests the Insurer in writing to delete a Road Vehicle from the Schedule as from a specified date, the Insurer shall refund to the Insured the Premium for the deleted Road Vehicle for the unexpired part of the Period of Insurance and General Condition F.18(b) shall not apply.

## 5. Extended Road Risk cover for conditionally or temporarily registered vehicles

The definition of 'Road Vehicle' shall include a Motor Vehicle identified in the Schedule that is not registered as at the commencement of the Period of Insurance, but is fully or conditionally registered or is operating under a temporary road permit at the time of the Occurrence.

## 6. Cover for principals

The Insurer shall indemnify the principal in any contract with an Insured as if the principal were an Insured under this Section, but only against the principal's vicarious Legal Liability for Property Damage caused by or arising from the Insured using, operating or towing a Road Vehicle primarily as a Motor Vehicle for the principal under the contract with the principal in the course of the Business.

## 7. Cover as principal

In respect of a Motor Vehicle not owned or supplied by or hired to an Insured, the Insurer shall indemnify the Insured against Legal Liability for Property Damage caused by or arising from a person other than an Insured using, operating or towing the Motor Vehicle:

- (a) for or on behalf of the Insured;
- (b) with the authority of the Insured;
- (c) in connection with the Business; and
- (d) during the Period of Insurance.

## 8. Hired out Road Vehicles – damage waivers

(a) Where:

- (1) the Insured has hired out a Road Vehicle to a hirer on Dry-Hire terms; and
- (2) the hire agreement between the Insured and the hirer provides:
  - (A) that the Insured shall arrange insurance for the hirer against legal liability of the kind provided by this Section; or
  - (B) that the Insured shall release the hirer from liability for legal liability incurred by the Insured arising from the hirer using, operating or towing the Road Vehicle;

the Insurer shall indemnify the hirer according to the terms of this Section as if the hirer were an Insured.

## D. Exclusions

In addition to the Exclusions in the General Section:

1. The Insurer shall not indemnify the Insured against Legal Liability caused directly or indirectly by, arising from or in connection with:
  - (a) using, operating or towing a Road Vehicle:
    - (1) in a race, speed trial or reliability trial;
    - (2) while in an unsafe or unroadworthy condition;
    - (3) to carry a larger number of passengers than allowed by law or by its specifications;
    - (4) to carry or tow a load heavier or larger than allowed by law or by its specifications;
    - (5) to carry, or otherwise in connection with, a substance classified as 'goods too dangerous to transport' or their equivalent in the Australian Dangerous Goods Code;
    - (6) for an unlawful purpose, unless the Insured proves that the Insured was unaware and could not reasonably have become aware of such use;
    - (7) by a person:
      - (A) not properly qualified or suitably experienced to use, operate or tow the Road Vehicle;
      - (B) not licensed, or holding an improperly obtained licence, or not complying with licence conditions to use, operate or tow the Road Vehicle; or
      - (C) suffering from a physical or mental impairment of ability to use, operate or tow the Road Vehicle;
      - (D) under the influence of or affected by drugs or alcohol; or
      - (E) with a level of drugs or alcohol in the breath, blood or urine in excess of that permitted by law to drive the Road Vehicle;

in each case in (A) to (E) above unless the Insured proves that it:

      - (F) did not consent to the Road Vehicle being operated or driven by that person; and
      - (G) was unaware and could not reasonably have become aware of the matters in (A) to (E) above;
    - (8) primarily designed for lifting, lowering, loading or unloading when performing one or more of such functions;
  - (b) using or operating:
    - (1) a Road Vehicle; or
    - (2) any machine, tool or apparatus attached to or forming part of a Road Vehicle;

as a Tool of Trade; or
  - (c) delivering or collecting a load to and from a Road Vehicle, but not the operation of loading or unloading a Road Vehicle.

2. The Insurer shall not indemnify the Insured against Legal Liability for Personal Injury where, at the time and place of the Occurrence, the Road Vehicle was under a statutory scheme for, or was required by law to be insured against, liability for personal injury (whether limited or not), except to the extent that the scheme or insurance does not, by reason other than an Insured's breach of law, wholly or partially indemnify the Insured against that Legal Liability.

## SECTION 7 – BROADFORM LIABILITY

### A. The Cover

The Insurer shall indemnify the Insured against Legal Liability for Personal Injury, Property Damage or Advertising Injury:

1. first occurring during the Period of Insurance; and
2. caused by an Occurrence in connection with the Business.

### B. Limits of Indemnity

1. The indemnity for Legal Liability arising from the one Occurrence shall not exceed the Sum Insured and shall be further limited as follows:

- (a) for Legal Liability arising from Products, the balance of the Sum Insured after deducting the aggregate of all amounts already paid by the Insurer under this Section during the Period of Insurance for Legal Liability in connection with Products;
- (b) for Legal Liability for such part of Property Damage being physical damage or destruction of, but not resultant loss of use of, tangible property in the physical possession or legal control of:
  - (1) an Insured, a director or partner of an Insured, or an Employee, other than:
    - (A) property excluded by Exclusion E.1(e) in the General Section;
    - (B) premises leased, rented or hired to the Insured;
  - (2) the driver of a vehicle while such property is suspended from a Machine designed to lift that property (see Exclusion E.1(e)(4) in the General Section);

the balance of the sum of \$250,000 after deducting the aggregate of all amounts already paid by the Insurer under this Section during the Period of Insurance for Legal Liability for Property Damage of such kind;

- (c) for Legal Liability for Property Damage caused by, arising from or in connection with:
  - (1) vibration;
  - (2) removal or weakening of or interference with support for land or buildings;

the balance of the sum of \$500,000 after deducting the aggregate of all amounts already paid by the Insurer under this Section during the Period of Insurance for Legal Liability for Property Damage of such kind.

2. If the Insured is more than one person or Company, the Sum Insured (including as limited in B.1(a) to B.1(c) above) shall apply to the aggregate of all Legal Liability of all such persons and Companies arising directly or indirectly from the one Occurrence.
3. The Excess shall apply per Occurrence to all indemnity under this Section.

## C. Additional Benefits

### 1. Defence Costs

- (a) The Insurer shall:
  - (1) have the right but not the obligation to conduct the defence against a claim against the Insured under this Section; and
  - (2) indemnify the Insured against the Defence Costs incurred by the Insured with the prior written consent of the Insurer in relation to a claim against the Insured for Legal Liability against which the Insurer is liable to indemnify the Insured under this Section.
- (b) The total amount payable by the Insurer for Defence Costs under C.1(a) above shall not be limited by the Sum Insured for this Section, but if the Legal Liability exceeds the indemnity as limited under B. above, the indemnity for the Defence Costs shall be reduced to that proportion of the Defence Costs as the indemnity as limited under B. above bears to the Legal Liability.

**[Note:** General Condition F.7(a) gives the Insurer the right to investigate, instruct lawyers to represent the Insured and conduct the Insured's defence, and negotiate and direct settlement of a claim.]

### 2. Additional payments

The Insurer shall indemnify the Insured against cost incurred by the Insured:

- (a) in supplying first aid in connection with the Personal Injury; or
- (b) for temporary repairs, shoring up or protection of physical property necessitated by the Property Damage;

but the indemnity for such cost shall not exceed the balance of the Sum Insured after deducting the aggregate of all amounts already paid by the Insurer under this Section during the Period of Insurance for Legal Liability and Additional Payments;

### 3. Cover for others

The Insurer shall indemnify, as if they were an Insured under this Section:

- (a) a subsidiary company of the Insured if incorporated within Australia;
- (b) an Employee, executive officer, director, partner or shareholder of the Insured or a subsidiary company in C.3(a) above, but in each case only when that Legal Liability arises from their acting within the scope of their duties for the Insured;

- (c) a senior executive Employee, director or partner of the Insured or a subsidiary company in C.3(a) above, but in each case only when that Legal Liability arises from work carried out for them by Employees;

- (d) an office-bearer or member of any:

- (1) canteen or social, sporting, welfare or child-care organisation; or
- (2) first aid, fire or ambulance service;

formed by the Insured or with the Insured's consent, but only when that Legal Liability arises from their acting within the scope of their duties for the Insured, organisation or service;

- (e) the principal in any contract with an Insured, but only against the principal's vicarious Legal Liability for Personal Injury or Property Damage caused by or arising from the Insured performing work for the principal under the contract with the principal in the course of the Business.

## D. Exclusions

In addition to the Exclusions in the General Section, the Insurer shall not indemnify the Insured against Legal Liability caused directly or indirectly by, arising from or in connection with:

### 1. Motor Vehicles

the ownership, possession, operation, use or towing by or on behalf of an Insured of a Motor Vehicle that, at the time and place of the Occurrence:

- (a) was under a statutory indemnity scheme for, or was required by law to be insured against, liability for personal injury or property damage (whether limited or not); or
- (b) was required by law to be registered for use as a vehicle but was unregistered; or
- (c) was registered for use as a vehicle;

but this Exclusion shall not apply to Legal Liability for:

- (d) Personal Injury to the extent that the statutory indemnity scheme or insurance, by reason other than an Insured's breach of law, does not indemnify the Insured against that Legal Liability;
- (e) Property Damage occurring during:
  - (1) use or operation of the Motor Vehicle as a Tool of Trade;
  - (2) use or operation of any machine, tool or apparatus attached to or forming part of the Motor Vehicle as a Tool of Trade;
  - (3) use or operation of a Motor Vehicle primarily designed for lifting, lowering, loading or unloading to perform one or more of such functions;
  - (4) the operation of loading or unloading the Motor Vehicle;
  - (5) use or operation of the Motor Vehicle in the temporary possession or custody of the Insured for the purpose of parking it; and

- (6) driving the Motor Vehicle on a public footpath or public pedestrian walkway for the purpose of the Motor Vehicle's access between its conveyance and the place of either performing work or undergoing servicing, maintenance or repair.

## 2. Professional risks

the provision of, failure to provide, or error or omission in provision of a professional service or advice (other than first-aid or any medical or non-medical emergency services to the person) by an Insured or another person or Company, but this Exclusion shall not apply when the service or advice was provided by an Insured for no charge or fee.

## 3. Designs, plans, specifications, patterns and formulas

any design, plan, specification, pattern or formula provided by an Insured or another person or Company, but this Exclusion shall not apply when such things were provided by an Insured for no charge or fee.

## 4. Faulty workmanship

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

## 5. Products defect

- (a) a defect in or harmful quality of any Product that was known or suspected to exist by an Insured before the Product left the possession and control of the Insured;
- (b) an Insured's breach of General Condition F.19 or an Insured's failure, after becoming aware of a Product Defect, to locate and recall the Product;
- (c) Property Damage to Products caused directly or indirectly by or arising from any defect, harmful nature or unsuitability of the Products.

## 6. Aircraft, hovercraft and Watercraft

the ownership, maintenance, operation or use of:

- (a) aircraft;
- (b) hovercraft;
- (c) Watercraft greater than 10 metres in length, unless:
- (1) the Watercraft is being operated by an independent contractor; or
- (2) the Watercraft is not owned or being operated by an Insured but is being used for entertainment for the purpose of the Business.

## 7. Aircraft products

any Product that is, or that an Insured could reasonably be expected to know is, installed in or used in an aircraft.

## 8. Loss of Use

loss of use of tangible property that has not been physically damaged, lost or destroyed caused directly or indirectly by or arising from:

- (a) delay or lack of performance of an agreement by or on behalf of an Insured; or

- (b) failure of Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by an Insured, but this Exclusion shall not apply to loss of use of tangible property resulting from sudden and accidental physical damage, loss or destruction of Products after they are put to use by persons or Companies other than an Insured.

## 9. Battery and assault

battery or assault committed by or at the direction of an Insured except for the purpose of preventing or removing danger to persons or property.

## 10. Discrimination, harassment and unfair dismissal

discrimination, harassment or unfair dismissal.

## 11. Advertising

- (a) Advertising Injury arising out of:
- (1) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) the wrong description of the price of an Insured's product; or
- (3) the failure of an Insured's product to conform with advertised performance or quality;
- or
- (b) Advertising Injury incurred by an Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

## 12. Defamation

the publication or utterance of any defamatory or disparaging material:

- (a) prior to the commencement of the Period of Insurance;
- (b) by an Insured or at an Insured's direction with knowledge of its falsity; or
- (c) if the Insured's business is advertising, broadcasting or telecasting.

## 13. Vibration and removal of support

- (a) vibration; or
- (b) removal or weakening of or interference with support for land or buildings;
- except as provided in B.1(c) of this Section.

## 14. Tobacco

the inhalation or ingestion of, or exposure to:

- (a) tobacco, tobacco products or derivatives of tobacco;
- (b) tobacco smoke;
- (c) any ingredient or additive present in any articles, items or goods that also contain or include tobacco.

**15. North America**

Personal Injury and Property Damage:

- (a) occurring in North America;
- (b) the subject of a claim or proceedings in North America;  
or
- (c) subject to the law of North America;

but this Exclusion shall not apply if the Legal Liability arises from or in connection with the presence outside the Territorial Limits of any person referred to in Additional Benefit C.3(b) of this Section who is:

- (d) normally resident within the Territorial Limits; and
- (e) not undertaking or performing manual work or supervision of work of any kind in North America;

in which event the total amount payable for the Legal Liability and Defence Costs shall not exceed the limit of indemnity under B. of this Section.

**16. Products Recall**

loss, costs or expense incurred by the Insured for loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of Products or any tangible property of which they form part if the Products are withdrawn from the market or from use because of a known or suspected defect, deficiency, inadequacy or dangerous condition of the Products.

## Contact:

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