



# Combined General & Products Liability Policy

Product Disclosure Statement



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# Combined General & Products Liability Policy

## LLOYD'S CERTIFICATE OF INSURANCE

effected through **AXIS UNDERWRITING SERVICES Pty Ltd (the "Coverholder")**

**This Certificate of Insurance** confirms that in return for payment of the Premium shown in the Schedule, certain Underwriters at Lloyd's have agreed to insure You, in accordance with the wording attached to the Certificate.

You or Your representative can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the underwriters at Lloyd's is liable by requesting them from the Coverholder shown above. In the event of loss, each Underwriter (and their Executors and Administrators) is only liable for their own share of the loss.

In accepting this insurance, the Underwriters have relied on the information and statements that you have provided on the Proposal Form (or Declaration). You should read this Certificate, Schedule and policy wording carefully and if it is not correct contact Your Broker or Axis Underwriting Services Pty Ltd. It is an important document and You should keep it in a safe place with all other papers relating to this insurance.

**Lloyd's Australia Limited**

Email: [ldraustalia@lloyds.com](mailto:ldraustalia@lloyds.com)

Post: Suite 1603, Level 16, 1 Macquarie Place, Sydney, NSW 2000

Telephone: (02) 8298 0783

## PRODUCT DISCLOSURE STATEMENT (PDS)

(This PDS was prepared on 01 August 2023.)

This Product Disclosure Statement (PDS) and Policy Wording has been prepared to assist You in understanding the Axis Business Insurance Policy so that You are able to make an informed decision whether it suits Your specific insurance needs.

### Important Information & Notices

This document is a Product Disclosure Statement (PDS) and is also our insurance Policy wording. Please note this document operates as a PDS under the *Corporations Act 2001 (Cth)*.

Other documents may also form part of our PDS and We will specifically tell You if this is the case in the relevant document.

It is important that You carefully read the contents of the PDS and Policy wording, including any other documents We may have issued that vary the standard terms of this document, before You decide to buy this product. If You purchase this product, You will need to keep this PDS and Your Schedule in a safe place.

Any advice in this document is of a general nature only and has not considered Your objectives, financial situation or needs. You should carefully consider the information provided having regard to Your personal circumstances when deciding if this insurance is right for You.

### About the Insurers

The Policy is underwritten by Certain Underwriters at Lloyd's. We have authorised the information contained in this PDS.

### About Axis Underwriting

Axis Underwriting Services Pty Ltd (ABN 51 090 508 142) (Axis Underwriting) is an insurance intermediary and holds an Australian Financial Services license (AFS License No: 236650) to issue and advise on general insurance products. Since 1999, Axis Underwriting has been assisting Australian insurance brokers to access cover for property, strata, business, hospitality and liability risks.

Axis Underwriting is a company within the Steadfast Underwriting Agencies division of Steadfast Group Limited (ABN 98 073 659 677)(SGL).

### Authority to act on our behalf

We have given Axis Underwriting a binding authority to market, underwrite, settle claims and administer this Policy on our behalf.

Any matters or enquiries you may have should be directed to Axis Underwriting. The contact details for Axis Underwriting are shown on the back cover of this document.

Under the terms of this binding authority Axis Underwriting acts as our agent, and not yours, but liability within the terms and conditions of the Policy remains at all times with Us.

You can contact Insurers through their appointed Coverholder Axis Underwriting Services Pty Ltd by:

- telephone on 03 8660 7000
- by facsimile on 03 8660 7020
- by e-mail at [info@axisunderwriting.com.au](mailto:info@axisunderwriting.com.au)
- by writing to Axis Underwriting at Level 5, 90 Collins St, Melbourne 3000
- or by contacting Lloyd's Australia on the contact numbers shown in the Certificate of Insurance on Page 4.

### What You should read

To understand the features, benefits and risks of this insurance and to determine if it is appropriate for You, it is important that You read:

- all of the Product Disclosure Statement - this information is designed to help You understand this insurance and Your rights and obligations under it;
- the Policy Wording part which commences on page 12. It tells You about:
- our Agreement (Your contract with Us which We call a Policy);

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- important definitions that set out what We mean by certain words;
- the cover We can provide (see **Section 2**);
- what Excesses You may have to pay (see 'Excesses' on page 8 and **Section 1.8** for guidance);
- when You are not insured (see General Exclusions and other exclusions under **Section 3**);
- what You and We need to do in relation to claims (see page 11 and **Section 4**);
- Your and Our cancellation rights (see 'Cancelling Your Policy' in **Section 5.5**).
- any Schedule (refer to the definition of 'the Schedule' in **Section 1.23**) when it is issued to You; and
- any other documents We may give You which vary our standard terms of cover set out in this document.

It is important that these documents are read together carefully and that they are kept in a safe place.

## Summary of Cover

The table below provides You with a summary of the Covers available under this Policy.

In addition to this, under some Sections of the Policy there are further optional covers or limits that You can select subject to Axis Underwriting agreeing to provide those covers. You should refer to the relevant Section for full details.

You should also read the relevant Section for a full description of the Section Cover together with any relevant limits, specific exclusions and conditions that apply as well as the general conditions and exclusions contained in this Policy-booklet.

Section	Cover Summary
<b>Section 2.1</b>  <b>Your Legal Liability for Personal Injury, Property Damage and / or Advertising Injury</b>	<p>In this section We agree (subject to the terms, Claims Conditions, General Conditions, Exclusions, Definitions and Limits of Liability ) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:</p> <ul style="list-style-type: none"> <li>• Personal Injury, and/or</li> <li>• Property Damage; and/or</li> <li>• Advertising Injury</li> </ul> <p>happening during the Period of Insurance within the Geographical Limits, in connection with the Business or Your Products and/or work performed by You or on Your behalf and caused by or arising out of an Occurrence.</p>
<b>Section 2.2</b>  <b>Defence Costs and Supplementary payments</b>	<p>In this section We agree (subject to indemnity provided under Section 3.1), We will Pay:</p> <ul style="list-style-type: none"> <li>• defence costs including charges, expenses and Legal costs</li> <li>• Interest awarded against you</li> <li>• Premiums on Bonds</li> <li>• Expenses necessarily incurred for First -Aid and Temporary Protection</li> <li>• Legal expenses incurred with our consent for Inquest, Inquiry and Enquiry</li> </ul> <p>Our liability for expenses relating to First -Aid, Temporary Protection and Inquest, Inquiry &amp; Enquiry is limited to \$250,000 in total.</p>
<b>Section 2.4</b>  <b>Additional Benefit Claim Preparation Costs</b>	<p>In this section, in addition to the amount of cover provided by this Policy, We will pay up to \$25,000 in respect of each claim or series of claims arising out of any one Occurrence for reasonable professional fees and other expenses incurred by You for the preparation of a claim under this Policy.</p>

## **Australia Terrorism and Cyclone Insurance Act 2003 Notice**

The Underwriters have treated this insurance (or part of it) as an Insurance to which the Australia Terrorism and Cyclone Insurance Act 2003 (ATACIA) applies.

ATACIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATACIA.

Any coverage established by ATACIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATACIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATACIA due to the application of a "reduction percentage" as defined in ATACIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

## **Cooling Off Period**

We will refund the entire premium paid for cover under this insurance Policy if You cancel the Policy within 21 days of its commencement. To do this, You must advise Us in writing and return the Schedule to Axis Underwriting Services Pty Ltd. You will not receive a refund if You have made a claim under the insurance Policy.

Even after this cooling off period ends You still have cancellation rights. Further details about these rights can be obtained in the 'Cancelling Your Policy' section.

## **Your Responsibilities**

It is up to you to choose the cover you need. Because we and our representatives do not advise you on whether the policy is Specifically appropriate for your objectives, financial situation or needs, you should carefully read this document before deciding. When entering into the policy or on renewal, variation, extension or reinstatement you must meet your Duty to take reasonable care not to make a misrepresentation obligations.

## **Not Meeting Your Responsibilities**

If you do not meet your responsibilities then to the extent permitted by law we may do either or both of the following:

- reduce or refuse your claim to the extent we are prejudiced by your failure; and
- cancel your policy.

If fraud is involved we can treat your policy as if it never existed.

The above rights are subject to any relevant law obligations

## **Your Duty to take reasonable care not to make a misrepresentation**

You must take reasonable care not to make a misrepresentation to us. This responsibility applies until we insure you with a policy for the first time or agree to renew, extend, vary/change, or reinstate your policy. You must answer our additional questions honestly, accurately and to the best of your knowledge.

A misrepresentation includes a statement that is false, partially false, or which does not fairly reflect the truth. It is not a misrepresentation if you do not answer a question or your answer is obviously not complete or is irrelevant to the question asked. The responsibility to take reasonable care not to make a misrepresentation applies to everyone who will be insured under the policy. If you are answering questions on behalf of anyone, we will treat your answers or representations as theirs. Whether or not you have taken reasonable care not to make a misrepresentation is to be determined having regard to all relevant circumstances, including the type of insurance, who it is intended to be sold to, whether you are represented by a broker, your particular characteristics and circumstances we are aware of.

If you do not meet the above duty, we may reject or not fully pay your claim and/or cancel your policy. If the misrepresentation was deliberate or reckless, this is an act of fraud, and we may treat your policy as if it never existed

## **Monetary Limits**

We insure You up to the amount of the sum insured or other specified limits for Your Liability. These amounts are specified in the relevant clauses in the PolicyWording or on the Schedule.

You need to make sure You are happy with all of the relevant sum(s) insured and limits. If You do not adequately insure Yourself You may have to bear the uninsured proportion of any loss Yourself.

If You are unsure whether Your Insured Property is insured for the correct amount, You should seek professional advice.

You should also advise Axis Underwriting of any material changes in the details of the information You have given us, Otherwise Your insurance may not be sufficient. Changes might include for example new products or services and / or significant increases in turnover.

Excesses may apply. See Excesses section below.

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## Excesses

Excesses may apply to any claim under this insurance.

An Excess is an amount You may have to pay each time You make a claim under this insurance Policy. The Excess applicable will be the Standard Excess shown on the Policy Schedule under the relevant Section, unless specifically shown otherwise on the Policy Schedule.

An Excess will be applied for each incident where a claim is made.

We will tell You the amount of any Excess when You apply for cover. The amount of Excess payable may vary according to a number of factors, such as Your turnover, type of occupation, the number and type of products and services provided and Your insurance loss history.

## Costs of this insurance

In order to calculate Your Premium, We take various factors into consideration, including:

- the cover options selected;
- the sum(s) insured selected;
- Your occupation including the number of products or services delivered;
- Your businesses turnover;
- Your claims insurance history.

The Premium also includes amounts payable for compulsory government charges including Stamp Duty, GST, any Emergency Services Levy (where applicable) and any applicable administration fee (as shown in Your Schedule).

When You apply for this insurance, You will be advised of the Premium. If You choose to effect cover, the amount of the Premium will be set out on the Schedule.

## Applying for Cover

When You apply for cover under this Policy We may, based on the information You provide, be able to offer cover and terms specific to You. Once We have agreed to cover You, We will issue You with a Schedule confirming this, including the following information:

- the Sums Insured applicable and geographic scope of your cover;
- Excess(es) applicable;
- Premium including taxes and charges and any administration fee charged by Axis Underwriting.

## Privacy

Axis Underwriting are committed to complying with privacy laws and protecting Your personal information. By purchasing this product, You agree to:

- the collection, use and disclosure of Your personal information to evaluate, effect, manage and administer Your insurance Cover, financial service or product provided to You by Us, any related company, or in conjunction with Us. This applies to personal information provided previously, currently and in the future;
- the collection, use and disclosure of Your personal information to inform You of other products and services offered by Us, Our related entities or Your representative;
- the use and disclosure of Your personal information to test and improve upon the systems used to manage Your Policy;
- the collection from, and/or disclosure of, Your personal information to a third party which may include Your employer and Our service providers (including but not limited to other insurers, medical practitioners, lawyers, claims consultants, loss assessors and investigators), where this is relevant for the administration of Your Policy or a claim under this Policy;
- the disclosure of Your personal information to overseas recipients, where relevant, such as some of Our reinsurers; and
- the disclosure of Your personal information to a person, regulatory bodies or other entities if Axis Underwriting are required or permitted to do so by law. If You do not provide the requested personal information Axis Underwriting may not be able to evaluate, effect, manage or administer Your Policy and You may also be in breach of Your duty of disclosure.

Axis Underwriting will ensure that Your personal information is accurate, up to-date and complete. You may access personal information Axis Underwriting hold about You by contacting us.



## Complaints & Dispute Resolution

There are established procedures for dealing with complaints and disputes regarding your policy or claim. These services are free to all policyholders and may be of assistance, should the need arise.

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please contact us using the details below, and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure.

### Complaints Officer

Axis Underwriting Services Pty Ltd  
Email: [complaints@axisunderwriting.com.au](mailto:complaints@axisunderwriting.com.au)  
Telephone: (03) 8660 7000

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days. Where we are unable to do so, our final decision will be provided to you within 30 calendar days of the date on which you first made the complaint.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

### Lloyd's Australia Limited

Email: [ldraustalia@lloyds.com](mailto:ldraustalia@lloyds.com)  
Post: Suite 1603, Level 16, 1 Macquarie Place, Sydney, NSW 2000  
Telephone: (02) 8298 0783

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA) at any time, and if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint. AFCA's contact details are as follows:

### Australian Financial Complaints Authority

Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001 Website: [www.afca.org.au](http://www.afca.org.au)

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

- i. if a dispute arises under this insurance it will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent court in the Commonwealth of Australia;
- ii. any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters General Representative in Australia Suite 1603, Level 16, 1 Macquarie Place, Sydney, NSW 2000

who has authority to accept service and to appear on the Underwriters' behalf;

- iii. if a suit is instituted against any of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of a Court or any competent Appellate Court. In the event of a claim arising under this insurance, as soon as reasonably possible, notice should be given to:

Axis Underwriting Services Pty Ltd.

The Certificate is issued by the Coverholder in accordance with the authority granted to them by certain Underwriters at Lloyd's under the Agreement referred to in the Schedule.

# Combined General & Products Liability Policy

## General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

The Insurer(s) have adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to [www.insurancecode.org.au](http://www.insurancecode.org.au).

Axis Underwriting is a signatory of the General Insurance Code of Practice and both Axis Underwriting, Lloyd's, HDI Global Specialty SE – Australia and Lancashire Underwriting Australia Pty Ltd fully supports its purpose of raising the standards of practice and service in the general insurance industry.

Please contact Your broker if You would like further information about the Code of Practice. Alternatively, You can view the Code of Practice at [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

## GST

This Policy has a Goods and Services Tax (GST) provision in relation to Premiums and to payments We may make in respect of claims under this Policy.

### GST and Claim Payments to You

In the event of a claim under this Policy:

- if You are not registered for GST, We will reimburse You the GST component in addition to any other amount We pay You; or
- if You are registered for GST You will need to claim the GST component from the Australian Taxation Office. Where You cannot claim the GST component in full, We will reimburse You the unclaimed GST component in addition to the amount We pay You.

Your Policy contains claims conditions in respect of:

- GST and claim payments for acquisition of goods and services and other supply;
- GST and claim payments for compensation;
- GST and claim payments for legal and other costs; and
- Our limitation for GST payment.

You should read the claims conditions contained in this Policy booklet to make sure You understand both Our and Your obligations in respect of how GST will be treated in respect of the payment of claims under this Policy.

### How to make a claim

You should contact Your broker as soon as reasonably practicable to advise of any incident that could lead to a claim.

When You make a claim, You must:

- provide details of the incident and when requested complete the claim form We send You;
- allow Us to ask for further information, conduct inspections, undertake interviews and take possession of any items related to the claim;
- take reasonable steps to reduce the Loss or Damage and prevent further Loss or Damage;
- not dispose of any evidence or damaged items without first obtaining approval from Us, which will not be unreasonably withheld; and

These are only some of the things that You must do if making a claim. Please refer to "Claims procedures" in the Policy Wording part which sets out claims information and what You must do if making a claim.

### Financial Claims Scheme

This Policy may be a protected policy under the Federal Government's Financial Claims Scheme (FCS), which protects certain insureds and claimants in the unlikely event of an insurer becoming insolvent. If the FCS applies, a person who is entitled to make a claim under this Policy may be entitled to a payment under the FCS, which is administered by APRA. Access to the FCS is subject to eligibility criteria. You may obtain more information about the FCS from [www.fcs.gov.au](http://www.fcs.gov.au) and the Australian Prudential Regulation Authority (APRA) hotline on 1300 55 88 49.

**Interpretation**

The singular includes the plural and vice versa, unless the context otherwise requires. Headings are for convenience only and do not affect interpretation. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

**The law that applies to this policy**

Any disputes arising from this policy will be determined by the Courts, and in accordance with the laws, of the State or Territory where this policy is issued.

**Updating the PDS**

The information in this PDS was current at the date of preparation. We may from time-to-time update some of the information in the PDS. If, due to any material changes it becomes necessary, We will issue a Supplementary PDS (SPDS) or replacement PDS.

You can obtain a copy of any updated information by contacting Your insurance broker.

# Axis Combined General & Products Liability Policy

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## 1. Definitions – words with special meaning:

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For the purposes of determining the cover provided by this Policy:

1.1 **“Act of Terrorism”** means:

an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.

1.2 **“Advertising Injury”** means:

Injury arising out of:

1.2.1 defamation, or

1.2.2 any breach of Schedule 2 to the Competition and Consumer Act 2010 (Cth) or Fair Trading Acts or similar legislation of any country, state or territory; or

1.2.3 any infringement of copyright or passing off of title or slogan; or

1.2.4 unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or

1.2.5 invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

1.3 **“Aircraft”** means:

any craft or object designed to travel through air or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

1.4 **“Business”** means:

the business as described in the Schedule and/or as further described in any more specific underwriting information provided to Us, at the time when this insurance was proposed to Us or at the time of any renewal of this Policy, and shall also include:

1.4.1 any prior operations or activities which have ceased or have been disposed of but for which You may retain a legal liability.

1.4.2 the ownership of premises and/or the tenancy by You.

1.4.3 participation in any exhibition by You or on Your behalf.

1.4.4 the hire or loan of plant and/or equipment to other parties.

1.4.5 conducted tours of Your premises.

1.4.6 the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting services by You or on Your behalf.

- 1.4.7 private work undertaken by Your employees for any of Your directors, partners, proprietors, officers or executives.
- 1.4.8 the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your employees.
- 1.5 **“Compensation”** means:  
monies paid or agreed to be paid by judgment, award or settlement in respect of Personal Injury and/or Property Damage and/or Advertising Injury.  
  
Provided that Compensation is only payable in respect of an Occurrence to which this insurance applies.
- 1.6 **“Electronic Data”** means:  
facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instruction for equipment.
- 1.7 **“Employment Practices”** means:  
any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your employees.
- 1.8 **“Excess”** means:  
the amount of each claim or series of claims arising out of any one Occurrence for which You will need to pay as a contribution to your claim. If We settle Your claim by cash settlement with You We will deduct the excess from the amount We pay You. In other circumstances, You may need to pay the excess as a contribution to the resolution of the claim by the third party.  
  
The Excess applicable to this insurance appears in the Schedule.  
  
The Excess applies to all amounts for which We will be liable, including the indemnity provided by Insuring Clause 2.2 (Defence Costs and Supplementary Payments).
- 1.9 **“General Liability”** means:  
Your legal liability in respect of Personal Injury and/or Property Damage and/or Advertising Injury caused by or arising out of an Occurrence happening in connection with the Business other than Products Liability.
- 1.10 **“Geographical Limits”** means:
- 1.10.1 anywhere in the World except North America, the Democratic People's Republic of Korea (North Korea), the Islamic Republic of Iran (Iran), the Republic of Cuba (Cuba);
- 1.10.2 North America, but only with respect to:
- 1.10.2.1 overseas business visits by any of Your directors, partners, officers, executives or employees, who are non-resident in North America, but not where they perform manual work in North America.
- 1.10.2.2 Products exported to North America without Your knowledge.
- 1.11 **“Hovercraft”** means:  
any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.

1.12 **“Incidental Contracts”** means:

- 1.12.1 any written rental and/or lease and/or hiring agreement of real and/or personal property, other than with respect to any term or condition contained in rental, lease and/or hiring agreement that requires You to insure property.
- 1.12.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for authorities or entities.
- 1.12.3 any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings.
- 1.12.4 those contracts designated in the Schedule.

1.13 **“Medical Persons”** includes but is not limited to:

medical practitioners, medical nurses, dentists and first aid attendants.

1.14 **“Named Insured”** means:

- 1.14.1 the person(s), corporations and/or other organisations specified in the Schedule,
- 1.14.2 all existing subsidiary and/or controlled corporations (including subsidiaries ) of the Named Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Named Insured;
- 1.14.3 all subsidiary and/or controlled corporations (including subsidiaries ) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Named Insured during the Period of Insurance.
- 1.14.4 every subsidiary and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against a divested subsidiary or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the date of divestment.

1.15 **“North America”** means:

- 1.15.1 the United States of America and the Dominion of Canada,
- 1.15.2 any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- 1.15.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.

1.16 **“Occurrence”** means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in clause 1.18.6) from Your standpoint.

With respect to Personal Injury and/or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

1.17 **“Period of Insurance”** means:

the Period of Insurance specified in the Schedule and any extension which may be agreed in writing between You and Us.

1.18 **“Personal Injury”** means:

- 1.18.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services ;
- 1.18.2 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- 1.18.3 wrongful entry or wrongful eviction
- 1.18.4 defamation or invasion of privacy, unless arising out of Advertising Injury;
- 1.18.5 discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance is prohibited by law) not committed by You or at Your direction, but only with respect to liability other than fines and penalties imposed by law;
- 1.18.6 assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

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

1.19 **“Pollutants”** means:

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

1.20 **“Products”** means:

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

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

- 1.20.1 food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit ,
- 1.20.2 any vending machine or any other property rented to or located for use of others but not sold by You;

and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence shall be regarded as General Liability claims .

1.21 **“Products Liability”** means:

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

1.22 **“Property Damage”** means:

1.22.1 physical loss, destruction of or damage to tangible property, including the loss of use at any time ; and/or

1.22.2 loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that loss of use is caused by or arises out of an Occurrence.

1.23 **“the Schedule”** means:

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

1.24 **“Tool of Trade”** means:

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

1.25 **“Vehicle”** means:

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

1.26 **“Watercraft”** means:

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

1.27 **“We, Us, Our, Ourselves”** means:

certain Underwriters at Lloyd’s

1.28 **“Worksite”**

any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding premises or site and/or all areas in between the premises or site that You shall use in connection with work.

1.29 **“You, Your, Insured”**

Each of the following is an Insured to the extent specified below:-

1.29.1 the Named Insured.

1.29.2 every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the Named Insured (including the spouse or any family member of any person while accompanying the person on any commercial trip or function in connection with the Business) while the persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in their capacities.



- 1.29.3 any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any employee superannuation fund or pension scheme which is not administered by corporate fund managers.
- 1.29.4 every principal in respect of the principal's liability arising out of:
  - 1.29.4.1 the performance by or on behalf of the Named Insured of any contract or agreement for the performance of work for a principal, but only to the extent required by a contract or agreement and in any event only for coverage and Limits of Liability as are provided by this Policy.
  - 1.29.4.2 any Products sold or supplied by the Named Insured, but only in respect of the Named Insured's own acts or omissions in connection with products and in any event only for coverage and Limits of Liability as are provided by this Policy.
- 1.29.5 every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of any law, agreement or permit (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by law, agreement or permit and in any event only for the coverage and Limits of Liability as are provided by this Policy.
- 1.29.6 every officer, member, employee or voluntary helper of the Named Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities .
- 1.29.7 any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured's employees for the person and any employee whilst actually undertaking work.
- 1.29.8 the estates, legal representatives, heirs or assigns of:
  - 1.29.8.1 any deceased or insolvent persons, or
  - 1.29.8.2 persons who are unable to manage their own affairs by reason of mental disorder or incapacity,who would otherwise be indemnified by this Policy, but only in respect of liability incurred by the persons as described in clauses 1.29.8.1 and 1.29.8.2 above.
- 1.29.9 every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by the contract or agreement and in any event only for the coverage and Limits of Liability as are provided by this Policy.

## 2. Insuring Clauses

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### 2.1 What We Cover

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

2.1.1 Personal Injury, and/or

2.1.2 Property Damage; and/or

2.1.3 Advertising Injury

happening during the Period of Insurance within the Geographical Limits, in connection with the Business or Your Products and/or work performed by You or on Your behalf and caused by or arising out of an Occurrence.

### 2.2 Defence Costs and Supplementary Payments

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

2.2.1 defend, in Your name and on Your behalf, any claim or suit against You alleging Personal Injury and/or Property Damage and/or Advertising Injury and seeking damages even if any of the allegations of s claim or suit is groundless, false or fraudulent. We will have regard to Your interests and act reasonably.

2.2.2 pay all charges, expenses and legal costs incurred by Us and/or by You at Our written request or with Our written consent (which consent shall not be unreasonably withheld):

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

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

2.2.3 pay:

2.2.3.1 all charges, expenses and legal costs recoverable from or awarded against You in any claim or suit, and

2.2.3.2 pre-judgment interest awarded against You on that part of the judgment payable by Us; and

2.2.3.3 all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of the judgment which does not exceed the limit of Our liability .

2.2.4 pay premiums on:

2.2.4.1 bonds to release attachments for amounts not exceeding the applicable Limit of Liability of this Policy but We shall have no obligation to apply for or furnish any bond.

2.2.4.2 appeal bonds and/or security for costs required in any suit but We shall have no obligation to apply for or furnish any bonds and/or security for costs.

- 2.2.5 pay expenses incurred by You for:
  - 2.2.5.1 rendering first aid and/or surgical and/or medical and/or therapeutic relief to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law).
  - 2.2.5.2 temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinningf.
  - 2.2.5.3 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.
- 2.2.6 pay all legal costs incurred by You with Our consent for representation of You at:
  - 2.2.6.1 any Coronial Inquest or Inquiry
  - 2.2.6.2 any proceedings in any court or tribunal in connection with liability insured against by this Policy.
  - 2.2.6.3 any Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry into circumstances relating to any Occurrence, claim or potential claim which would be the subject of indemnity under this insurance.
  - 2.2.6.4 any enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like.

Provided that Our liability under clauses 2.2.6.3 and 2.2.6.4 shall not exceed **AUD\$250,000** in respect of any one claim or series of claims arising out of any one Occurrence.

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

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

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

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

### 2.3 Limits of Liability and Excess

Subject to clause 2.2 above and clauses 2.4 and 3.16.5 below:

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

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

#### 2.4 Additional Benefit - Claims Preparation Costs

In addition to the amount of cover provided by this Policy, We will pay up to **AUD\$25,000** in respect of each claim or series of claims arising out of any one Occurrence for reasonable professional fees and other expenses incurred by You for the preparation of a claim under this Policy.

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

### 3. What We Exclude

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We do not cover any liability:

#### 3.1 Advertising Injury

for Advertising Injury:

- 3.1.1 resulting from statements made at Your direction with knowledge that the statements are false.
- 3.1.2 resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.
- 3.1.3 resulting from any incorrect description of Products or services.
- 3.1.4 resulting from any mistake in advertised price of Products or services.
- 3.1.5 failure of Your Products or services to conform with advertised performance, quality, fitness or durability.
- 3.1.6 incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

#### 3.2 Aircraft, Hovercraft or Watercraft

for Personal Injury and/or Property Damage arising from:

- 3.2.1 the ownership, maintenance, operation or use by You of any Aircraft.
- 3.2.2 the ownership, operation or use by You of any Watercraft or Hovercraft exceeding ten (10) metres in length, whilst the Watercraft or Hovercraft is on, in or under water.

Provided that Exclusion 3.2.2 shall not apply with regard to claims arising out of:

- 3.2.2.1 Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable.
- 3.2.2.2 Hovercraft owned and operated by others and used by You for business entertainment.
- 3.2.2.3 Watercraft owned by others and used by You for business entertainment.
- 3.2.2.4 hand propelled or sailing craft exceeding ten (10) metres in length, whilst the craft is in territorial waters.

#### 3.3 Aircraft Products

arising out of Your Products that are Aircraft or Aircraft component parts used for maintaining an Aircraft in flight or moving upon the ground or used in the construction of an Aircraft hull or machinery which to Your knowledge are incorporated in an Aircraft.

#### 3.4 Asbestos

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

### 3.5 **Breach of Professional Duty**

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, however, this exclusion shall not apply to claims in respect of Personal Injury and/or Property Damage arising out of:

- 3.5.1 the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.
- 3.5.2 advice or service which is not given for a fee.
- 3.5.3 advice given in respect of the use or storage of Your Products.

### 3.6 **Contractual Liability**

which has been assumed by You under any contract or agreement that requires You to:

- 3.6.1 effect insurance over property, either real or personal.
- 3.6.2 assume liability for, Personal Injury and/or Property Damage regardless of fault; provided that this exclusion shall not apply with regard to:
  - 3.6.2.1 liabilities which would have been implied by law in the absence of the contract or agreement; or
  - 3.6.2.2 liabilities assumed under Incidental Contracts; or
  - 3.6.2.3 terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
  - 3.6.2.4 liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

### 3.7 **Damage to Products**

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

### 3.8 **Defamation**

for defamation:

- 3.8.1 resulting from statements made prior to the commencement of the Period of Insurance.
- 3.8.2 resulting from statements made at Your direction with knowledge that the statements are false.
- 3.8.3 incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

### 3.9 **Electronic Data**

arising out of:

- 3.9.1 the communication, display, distribution or publication of Electronic Data; provided that this Exclusion 3.9.1 does not apply to Personal Injury and/or Advertising Injury ;

- 3.9.2 the total or partial destruction, distortion, erasure, corruption, alteration, misrepresentation or misappropriation of Electronic Data;
- 3.9.3 error in creating, amending, entering, deleting or using Electronic Data;
- 3.9.4 the total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;  
  
from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

### 3.10 **Employers Liability**

- 3.10.1 for Bodily Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self-insurance pursuant to or required by any legislation relating to Workers' Compensation of Accident Compensation whether or not the policy, fund, scheme or self-insurance has been effected.

Provided that this Policy will respond to the extent that Your liability would not be covered under any the policy, fund, scheme or self-insurance arrangement had You complied with Your obligations pursuant to law.

- 3.10.2 imposed by:
  - 3.10.2.1 the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where the liability would not have been imposed in the absence of the industrial award or agreement or determination or contract of employment or workplace agreement.
  - 3.10.2.2 any law relating to Employment Practices.

Notwithstanding Exclusion clause 3.6 - Contractual Liability, Exclusions 3.10.1 and 3.10.2 shall not apply with respect to liability of others assumed by the Named Insured under a written contract or agreement.

For the purpose of Exclusions 3.10.1 and 3.10.2:

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

### 3.11 **Faulty Workmanship**

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

### 3.12 **Fines, Penalties, Punitive, Exemplary or Aggravated Damages**

for any fines, penalties, punitive, exemplary or aggravated damages.

### 3.13 **Liquidated Damages**

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

### 3.14 **Loss of Use**

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

- 3.14.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- 3.14.2 failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 3.14.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after the products or work have been put to use by any person or organisation other than You.

### 3.15 **Pollution**

- 3.15.1 for Personal Injury and/or Property Damage directly or indirectly caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere or any water course or body of water.
- 3.15.2 for any costs and expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or, testing and monitoring for, containing, removing, nullifying, or cleaning up of, Pollutants.

Provided that, with respect to any liability which may be incurred anywhere other than North America, Exclusions 3.15.1 and 3.15.2 shall not apply where discharge, dispersal, release, seepage, migration or escape is caused by a sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

### 3.16 **Property in Your Care, Custody or Control**

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

- 3.16.1 the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors.
- 3.16.2 premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of the Business, but no cover is provided by this Policy if You have assumed the responsibility to insure the premises.
- 3.16.3
  - 3.16.3.1 premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business, or
  - 3.16.3.2 any other property temporarily in Your possession for the purpose of being worked upon;

but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of the work.

- 3.16.4 any Vehicle (including its contents, spare parts and accessories while they are in or on the Vehicle) not belonging to or used by You, whilst the Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your business.



3.16.5 notwithstanding Exclusion clause 3.6 “Contractual Liability”, any property (except property that You own) not mentioned in clauses 3.16.1 to 3.16.4 above whilst in Your physical or legal care, custody or control whether or not You have accepted or assumed legal liability for the property. Provided that Our liability under this clause 3.16.5 shall not exceed the amount specified in the Schedule against Property in Your Care, Custody or Control in respect of any one claim or series of claims arising out of any one Occurrence.

**3.17 Property Owned by You**

for Property Damage to property owned by You.

**3.18 Product Guarantee**

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

**3.19 Product Recall**

for damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of Your Products or of any property of which the Products form a part, if the Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency .

**3.20 Radioactivity**

directly or indirectly caused by, contributing to by or arising from radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

**3.21 Terrorism**

for loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any Act of Terrorism, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

Provided that, Exclusion 3.21 also excludes loss, damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

**3.22 Vehicles**

for Personal Injury and/or Property Damage arising out of the ownership, possession or use by You of any Vehicle:

3.22.1 which is registered or which is required under any legislation to be registered, or

3.22.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected);

but Exclusions 3.22.1 and 3.22.2 shall not apply to:

3.22.3 Personal Injury where:

3.22.3.1 that compulsory liability insurance or statutory indemnity does not provide indemnity, and

3.22.3.2 the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles

- 3.22.4 any Vehicle (including any tool, implement, machinery or plant forming part of or attached to or used in connection with the vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Worksite.
- 3.22.5 the delivery or collection of goods to or from any Vehicle.
- 3.22.6 the loading or unloading of any Vehicle.
- 3.22.7 any Vehicle temporarily in Your custody or control for the purpose of parking.
- 3.22.8 Property Damage caused by or arising out of the movement of any Vehicle (which is required to be Conditionally Registered in accordance with the law of any State or Territory in Australia) in the event of Your inadvertent and unintentional failure to effect Conditional Registration.

### 3.23 **War**

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

## 4. Claims Conditions

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### 4.1 NOTIFICATION OF OCCURRENCE, CLAIM OR SUIT

You shall give:

- 4.1.1 written notice to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this Policy.
- 4.1.2 all additional information that We may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all relevant documents relating to the claim or Occurrence shall be forwarded to Us as soon as practicable after they are received by You.

### 4.2 YOUR DUTIES IN THE EVENT OF AN OCCURRENCE, CLAIM OR SUIT

- 4.2.1 You shall not, without Our written consent (which consent shall not be unreasonably withheld), make any admission, offer, promise or payment in connection with any Occurrence or claim. If You do, We may reduce or refuse Your claim to the extent We are prejudiced.
- 4.2.2 You shall use the best endeavours to preserve all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We have had an opportunity of reasonable inspection.
- 4.2.3 You shall, when so requested, provide Us with details of any other insurances current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury and covering any of the liability insured by this Policy.

### 4.3 OUR RIGHTS REGARDING CLAIMS

- 4.3.1 Following the happening of any Occurrence in respect of which a claim is, or may be, made under this Policy, We shall have full discretion in the conduct of any proceedings in connection with any claim. We will act reasonably having regard to Your interests, and will keep You informed if You ask Us to. You shall give information and assistance that We may reasonably require in the prosecution, defence or settlement of any claim. You must take reasonable steps to co-operate by giving Us any statements, documents or assistance We reasonably require. This may include giving evidence in any legal proceedings.
- 4.3.2 We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
  - 4.3.2.1 the amount of the Limit of Liability or other amount specified (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability); or
  - 4.3.2.2 any lesser sum for which the claim(s) can be settled.
- 4.3.3 Upon making payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, the claim(s) except for Defence Costs and Supplementary Payments:
  - 4.3.3.1 recoverable from You in respect of the period prior to the date of payment (whether or not pursuant to an order made subsequently); or
  - 4.3.3.2 incurred by Us, or by You with Our written consent (which consent shall not be unreasonably withheld), prior to the date of payment.

#### 4.4. GOODS AND SERVICES TAX

You must inform Us of the extent to which You are entitled to an input tax credit for the premium each time that You make a claim under this Policy. No payment will be made to You for any GST liability that arises on the settlement of a claim under this Policy when You have not informed Us of Your entitlement or correct entitlement to an input tax credit.

Notwithstanding anything contained in this Policy (including the Schedule and any endorsements attached) to the contrary, Our liability will be calculated after taking into account:

4.4.1 any input tax credit to which You, or any claimant against You, is entitled for any acquisition relevant to a claim paid under this Policy; and

4.4.2 any input tax credit to which You, or any claimant against You, would have been entitled were You or the claimant to have made a relevant acquisition; and

4.4.3 the GST exclusive amount of any supply made by You which is relevant to Your claim.

If the applicable Limit of Liability is not sufficient to cover Your claim, We will only pay GST (less any relevant input tax credit) that relates to Our proportion of Your claim.

The terms '**GST**', '**input tax credit**', '**acquisition**' and '**supply**' have the meanings ascribed to them in the A New Tax System (Goods and Services Tax) Act 1999.

Nothing contained shall be held to vary, alter, waive or extend any of the terms, Claims Conditions, General Conditions, Exclusions or Definitions of this Policy other than as stated above.

## 5. General Conditions

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### 5.1 ADJUSTMENT OF PREMIUM

If the first premium or any renewal premium for this Policy shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars and shall at all reasonable times and frequency and allow Us to inspect the record.

You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may reasonably require as soon as reasonably practicable. The premium for the Period shall be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy. We will adjust the premium payable for that period based on the amount of premium We would have charged had You provided the information contained in the records at the commencement of that period.

### 5.2 ALTERATION OF RISK

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

### 5.3 BANKRUPTCY OR INSOLVENCY

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

### 5.4 BREACH OF CONDITION OR WARRANTY

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

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

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

### 5.5 CANCELLATION OF THIS POLICY

#### By You

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

#### By Us

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

Cancellation shall take effect at the earlier of the following times:

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

In the event of cancellation of this Policy by either party, You shall be entitled to a pro rata refund of premium subject to any minimum and deposit premium that may apply, unless a claim or circumstance (that could give rise to a claim) has been notified to us during the period of insurance in which case no premium will be refunded.

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

## 5.6 CROSS LIABILITIES

This insurance extends to indemnify:

5.6.1 each of the parties comprising the Named Insured, and

5.6.2 each of the Insureds ,

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

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

Provided always that:

5.6.3 each of the parties shall be separately subject to the terms, Claims Conditions, General Conditions, Exclusions and Definitions of this Policy in the same manner and to a like extent as though separate policies had been issued, and

5.6.4 in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

## 5.7 INSPECTION AND AUDIT

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

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

## 5.8 JURISDICTION

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

## 5.9 PREMIUM FUNDERS

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

## 5.10 REASONABLE PRECAUTIONS

You must:

- 5.10.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.
- 5.10.2 take reasonable precautions:
  - 5.10.2.1 to prevent Personal Injury and/or Property Damage and/or Advertising Injury.
  - 5.10.2.2 to prevent the manufacture, sale or supply of defective Products.
  - 5.10.2.3 to comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.
- 5.10.3 at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or have reason to suspect.

## 5.11 RELEASE

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

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

## 5.12 NON-IMPUTATION

Where this insurance is arranged in the joint names of more than one Insured, as described in clause 1.14.1, it is agreed that:

- 5.12.1 each Insured shall be covered as if it made its own proposal for this insurance.
- 5.12.2 any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured.
- 5.12.3 any knowledge possessed by any Insured shall not be imputed to the other Insured(s).

### 5.13 FOREIGN CURRENCY

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

If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of the award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date on which We pay to You) or some other person or party as directed by You) the indemnity in respect of the award or settlement; subject always to the applicable Limit of Liability.

### 5.14 SUBROGATION AND ALLOCATION OF THE PROCEEDS OF RECOVERIES

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

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

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

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

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

### 5.15. SUBROGATION WAIVER

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

5.15.1 each of the parties described under clause 1.29.

5.15.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy. Where the corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of the other policy.

### 5.16 INTERPRETATION

This Policy incorporates the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and any other terms contained or endorsed, which are to be read together. Where any word or expression has been given specific meaning in any part of this Policy, the word or expression shall bear this meaning wherever it may appear unless the meaning is inapplicable to the context in which the word or expression appears.

Words importing the singular gender shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender.

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to the headings.



## 6. ENDORSEMENTS

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### LLOYD'S AUSTRALIAN ALTERNATIVE DISPUTES RESOLUTION CLAUSE

In the event that a dispute arises between Underwriters and the Insured/Reinsured out of or otherwise in relation to this agreement, then:

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

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

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

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

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

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

Lloyd's Underwriters' General Representative in Australia  
Suite 1603, Level 16, 1 Macquarie Place  
Sydney NSW 2000

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

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

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

LMA 5547

17 May 2021

#### **LLOYD'S CYBER AND DATA TOTAL EXCLUSION**

1. Notwithstanding any provision to the contrary within this Policy or any endorsement this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:
  - 1.1 Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident; or
  - 1.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any Data, including any amount pertaining to the value of the Data;regardless of any other cause or event contributing concurrently or in any other sequence .
2. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
3. This endorsement supersedes any other wording in the Policy or any endorsement having a bearing on a Cyber Act, Cyber Incident or Data, and, if in conflict with the wording, replaces it.
4. If the Underwriters allege that by reason of this endorsement that loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

#### **Definitions**

5. Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.
6. Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.
7. Cyber Incident means:
  - 7.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
  - 7.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.
8. Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

LMA 5468

4 November 2020

## **SANCTION LIMITATION and EXCLUSION CLAUSE**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA 3100

## **SEVERAL LIABILITY NOTICE**

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

LSW 1001 (Insurance)

## **COMMUNICABLE DISEASE EXCLUSION**

1. Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
2. For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 3.3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

LMA 5396

## **BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION**

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

06/02/03  
NMA2962





## **Axis Underwriting Services Pty Ltd**

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AFSL 236650

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**[www.axisunderwriting.com.au](http://www.axisunderwriting.com.au)**

**Axisliabpol SCL23 v1.2023**