



# Commercial Legal Expenses Insurance

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POLICY WORDING

# Commercial Legal Expenses Insurance Policy Wording

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## IMPORTANT INFORMATION

The information set out in this Section is not intended to amend the terms and conditions of this Policy in any way. The intent of this Section is to highlight the important information you should know.

### 1. About The Insurer

This Policy is underwritten by certain underwriters at Lloyd's ('Underwriters'). The Underwriters are collectively referred to as 'We, Us, Our, the Insurer(s)' in this Policy.

Certain underwriters at Lloyd's are authorised and regulated by the Australian Prudential Regulation Authority ('APRA') under the provisions of the Insurance Act 1973 (Cth) to conduct insurance business in Australia.

Lloyd's is the world's specialist insurance and reinsurance market.

With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world - building resilience for businesses and local communities and strengthening economic growth around the world.

You should contact Coast Insurance in the first instance in relation to this insurance.

### 2. About Coast Insurance

Coast Insurance Pty Ltd (ABN 44 108 154 829, AFSL 268726) ('Coast') acts under a binding authority given to it by Us, to administer and issue policies, alterations and renewals. In all aspects of arranging the Policy, Coast acts as an agent for the Insurer(s) and not for You.

If You have any queries in relation to this Policy, contact Coast in any of the following ways:

**Street Address:** 1st Floor, 186 Scarborough Beach Road, Mt Hawthorn Western Australia 6016

**Postal Address:** PO Box 120, Mount Hawthorn WA 6915

**Phone:** +61 8 6374 7000

### 3. 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.

Lloyd's has 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)

### 4. Our Contract with You

This Policy is a contract of insurance between You and Us and contains all the details of the cover that We provide.

The Policy consists of:

- this Policy wording which tells You what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover (this document);
- the Proposal, which is the information You provide to Us when applying for insurance cover;
- Your most current Policy Schedule issued by Us. The Schedule is a separate document unique to You, which shows the insurance details relevant to You. It includes any changes, exclusions, terms and conditions made to suit Your individual circumstances and may

- amend the Policy;
- any Endorsement;
- any other document We tell You forms part of the Policy which may vary or modify the above documents.

Please note, only those cover sections shown as covered in Your Schedule are insured. These documents should be read together as they jointly form the contract of insurance between You and Us.

## 5. Duty of Disclosure

Before You enter into an insurance contract, You have a duty to tell Us anything that You know, or could reasonably be expected to know, that may affect Our decision to insure You and on what terms.

You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary or reinstate an insurance contract.

### **You do not need to tell Us anything that:**

- reduces the risk We insure You for; or
- is common knowledge; or
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

### **If You do not tell Us something**

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a claim, or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

## 6. Cooling off period

You have the right to cancel and return the insurance Policy or a section of the Policy by notifying us in writing within 30 days of the date it was issued to You ("cooling off period"), unless You wish to make or have made a claim under the Policy within the cooling off period.

If You cancel Your Policy during the cooling off period, We will return the amount You have paid and You will have no cover.

In addition, if You vary Your Policy (for example by adding a Cover Section, endorsement or increasing an insured amount, You have the right to cancel that variation within 30 days of the date it was added by notifying us in writing ("additional cooling off period") unless You wish to make or have made a claim under that variation within the additional cooling off period. If it is cancelled within this time, We will return the amount You have paid for that variation.

## 7. Privacy Statement

In this Privacy Statement the use of "We", "Us" and "Our" means the Insurer(s) and Coast unless specified otherwise.

We are committed to the safe and careful use of Your personal information in the manner required by the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles and the terms of this Policy.

We collect Your personal information in order to assess Your application for insurance and, if Your application is accepted, to administer and manage Your insurance policy and respond to any claim that You make. To do this, Your personal information may need to be disclosed to reinsurers and service providers and related entities who carry out activities on Our behalf, such as assessors and facilitators, some of whom may be located in overseas countries such as the United Kingdom and Europe.

Our contractual arrangements generally include an obligation for these reinsurers, service providers and related entities to comply with Australian privacy laws.

By providing Us with Your personal information, You consent to the disclosure of Your personal information to reinsurers, service providers and related entities in overseas countries to enable Us to assess Your application, to administer and manage Your insurance Policy and to respond to any claim that You make. If You consent to the disclosure of Your personal information to overseas recipients, and the overseas recipient handles Your personal information in a way other than in accordance with the Australian privacy laws, We may not be responsible for the handling of Your personal information by the overseas recipient.

If You choose not to provide Your personal information and/or choose not to consent and/or withdraw Your consent to the disclosure of Your personal information to overseas entities at any stage, We may not be able to assess Your application or administer and manage Your insurance policy and respond to any claim that You make.

Our privacy policies contain information on how You may access personal information that each of us hold, or seek correction of Your personal information and information on how to make a complaint about the handling of Your personal information and how complaints are handled. If You require more information, You can access Coast's Privacy Policy at [www.coastins.com.au](http://www.coastins.com.au).

## 8. Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Coast in the first instance:

Complaints Officer  
Coast Insurance Pty Ltd  
**Email:** [info@coastins.com.au](mailto:info@coastins.com.au)  
**Phone:** +61 8 6374 7000  
**Address:** PO Box 120, Mount Hawthorn WA 6915

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

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:** [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)  
**Phone:** (02) 8298 0783  
**Address:** Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

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), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

**Phone:** 1800 931 678  
**Email:** [info@afca.org.au](mailto:info@afca.org.au)  
**Address:** 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, this Insurance 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 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 such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance immediate notice should be given to:

Coast Insurance Pty Ltd  
**Email:** [info@coastins.com.au](mailto:info@coastins.com.au)  
**Phone:** +61 8 6374 7000  
**Address:** PO Box 120, Mount Hawthorn WA 6915

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## 9. Legal Advice Service

You can contact the Legal Advice Service provider [legal.advice@sparke.com.au](mailto:legal.advice@sparke.com.au) for legal advice on any problem directly related to Your Core Business Activities. The advice available is limited to the law and practice in Australia and is only available to You if Your Core Business Activities are conducted within the Commonwealth of Australia.

## 10. Making a Claim

In order to make a Claim please contact the Claims Manager as follows:

Proclaim Management Solutions Pty Ltd Level 9, 271 Collins Street  
Melbourne VIC 3000  
Email: [legalexperiences@proclaim.com.au](mailto:legalexperiences@proclaim.com.au)

## 11. Welcome to the Lloyd's Market

Lloyd's is the world's specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent. It is often the first to insure emerging, unusual and complex risks.

Around 80 syndicates are underwriting insurance at Lloyd's, covering all classes of business. Together they interact with thousands of brokers daily to create insurance solutions for businesses in over 200 countries and territories around the world. Lloyd's insures the majority of FTSE 100 and Dow Jones industrial average companies.

Lloyd's enjoys strong financial security supported by excellent ratings. Visit [www.lloyds.com](http://www.lloyds.com) for more information.

# LEGAL EXPENSES INSURANCE POLICY

## 1. Definitions

For the purposes of this Policy, the following terms shall have the respective meanings set out below when they appear in bold in this Policy regardless of whether they appear before or after the place in this Policy where they are defined. Grammatical variations of such terms shall have corresponding meanings.

- 1.1. **Aggregate Claims Limit** means the amount specified in the Schedule to this Policy being the maximum amount We will pay to You for any and all Claims.
- 1.2. **Any One Claim** means all Claims arising from the same originating cause, event or circumstances which will be treated as a single Claim for the purposes of this Policy.
- 1.3. **Applicable Law** means, with respect to any Person, property, transaction, event or other matter, any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law (collectively the "Law") relating or applicable to such Person, property, transaction, event or matter and includes any interpretation, bulletins, circular letters, guidelines, instruments, provisions, and policy statements published or issued in respect of any such Law by any Person having jurisdiction over it, or charged with its administration or interpretation and also shall include any economic and trade sanctions, anti-bribery laws and personal data laws and regulations.
- 1.4. **Appointed Professional** means any legal advisor, financial advisor or other professional advisor or third-party Person appointed by the Claims Manager to act on Your behalf.
- 1.5. **ATO** means the Australian Taxation Office or appropriate government authority or state authority or agency authorised to conduct the relevant activity.
- 1.6. **Business Premises** means the premises from which You conduct and/or undertake Your Core Business Activities.
- 1.7. **Claim** means a claim under this Policy related to a Dispute which is made and communicated in accordance with clause 4 Claims Conditions during the Policy Period.
- 1.8. **Claim Amount** means the amount of indemnity being claimed by You from Us for a Claim.
- 1.9. **Claims Manager** means the Person named as 'Claims Manager' in the Schedule to this Policy.
- 1.10. **Communicable Disease** means any infectious, communicable or contagious disease; and/or any other disease, or any mutation or variation thereof, which:
  - 1.10.1 can be caused by any substance or agent including, but not limited to, a virus, bacterium, parasite, microorganism or any other pathogen (whether living or not); and
  - 1.10.2. can be transmitted from organism to organism regardless of the method of transmission including, but not limited to, by direct or indirect airborne transmission; bodily fluid transmission; transmission from or to any surface or object, solid, liquid or gas.

For the avoidance of doubt Communicable Disease includes (but is not limited to) coronavirus disease 2019 (COVID-19) and any mutation or variation thereof.
- 1.11. **Computer Virus** means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer Virus includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.
- 1.12. **Core Business Activities** means the principal areas or activities that You are founded

on or are focused on and from which You derive a majority of Your turnover.

- 1.13. **Court or Tribunal** means a court, tribunal or other statutory body of competent jurisdiction within the Commonwealth of Australia and its external territories and an Australian State or Territory as agreed to by the Claims Manager.
- 1.14. **Coverholder** means Coast Insurance Pty Ltd of 1<sup>st</sup> Floor 186 Scarborough Beach Road, Mt Hawthorn WA 6016.
- 1.15. **Debt Recovery Professional** means the Person named as 'Debt Recovery Professional' in the Schedule to this Policy.
- 1.16. **Dispute** means any civil legal proceeding or action in a Court or Tribunal either commenced by You or commenced against You by an Opponent which relates to Your Core Business Activities and which falls within one of the Heads of Cover.
- 1.17. **Electronic Data** means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.
- 1.18. **Excess** means the agreed amount specified in the Schedule to this Policy that You are required to pay towards a valid Claim in respect of each valid Claim before We are liable to pay to You the remaining amount of indemnity for such Claim, subject always to the limits set out in this Policy.
- 1.19. **GST** means goods and services tax.
- 1.20. **Heads of Cover** means the heads of cover listed in this Policy at clause 2 for which We will indemnify You for in accordance with the terms of this Policy.
- 1.21. **Income Tax Legislation** means any Commonwealth, State or Territory legislation which imposes obligations in relation to income tax or fringe benefits tax.
- 1.22. **Opponent** means any third-party Person who You are engaged in a Dispute with.
- 1.23. **Opponent's Costs** means the legal fees and disbursements of an Opponent arising from a Dispute which are either:
  - 1.23.1. ordered by a Court or Tribunal to be paid by You to an Opponent; or
  - 1.23.2. agreed by the Claims Manager in a negotiated settlement with an Opponent as payable by You to an Opponent.
- 1.24. **Person** means any individual, corporation, partnership, joint venture, trust, limited liability company, unincorporated organisation or other legal entity.
- 1.25. **Policy** means the insurance contract entered into between You and Us which consists of this policy wording and the Schedule.
- 1.26. **Policy Limits** means the maximum amounts We will pay under this Policy, as stated in the Schedule to this Policy, in respect of Any One Claim and Aggregate Claims Limit.
- 1.27. **Policy Period** means the period for which this Policy is in force as specified in the Schedule to this Policy.
- 1.28. **Relating To** means relating to; in connection with; arising under; arising out of; arising from; as a result of; resulting from; as a consequence of; attributable to; contributed to by; caused by; involving; and any other term commonly used and/or understood to reflect or describe a nexus and/or connection from one thing to another whether direct or indirect.
- 1.29. **Statutory Licence** means a licence granted to You by the government or a local authority which is utilised by You to conduct Your Core Business Activities.



- 1.30. **Us/We/Our** means Certain Underwriters at Lloyd's of London specified as 'Insurer' in the Schedule to this Policy.
- 1.31. **You/Your** means the commercial entity named as 'Insured' in the Schedule to this Policy.
- 1.32. **Your Costs** means the reasonable legal and/or professional fees and disbursements an Appointed Professional incurs on Your behalf in the course of pursuing or defending a Claim which are payable by You to the Appointed Professional.

## 2. Heads of Cover

We will indemnify You under the following Heads of Cover, subject always to the terms of this Policy including, but limited to, the applicable Policy Limits and Excess:

### 2.1. Head of Cover 1: Contractual Disputes

- 2.1.1. We will indemnify You for Your Costs and Your Opponent's Costs arising from a Dispute between You and Your Opponent in respect of an alleged breach, whether by You or by Your Opponent, of the terms of a written contract entered into by You and Your Opponent for the supply of goods and/or services.
- 2.1.2. Any Claim in relation to clause 2.1 shall be subject to the following conditions:
- 2.1.2.1. The Claim Amount must be greater than either:
- (a) \$5,000 (five thousand Australian dollars); or
  - (b) the applicable small claims threshold stipulated by the Court or Tribunal in which proceedings relating to the Dispute are to be commenced.
- 2.1.2.2. The Claim Amount must not exceed a maximum of 75% (seventy-five percent) of the total amount in Dispute.
- 2.1.2.3. Written notice of the Dispute must have been served by/on You no earlier than 90 (ninety) calendar days following the inception of this Policy, evidence of which You shall promptly provide to Us upon written request.
- 2.1.3. We will not indemnify You under this Head of Cover for:
- 2.1.3.1. A Dispute which relates to any contract other than for the supply of goods and/or services.
- 2.1.3.2. A Claim where the conditions in clause 2.1.1 have not been met or otherwise waived by Us in Our sole discretion.
- 2.1.3.3. A Dispute which relates to any contract entered into by You in respect of which coverage under any other Head of Cover in this Policy is applicable and therefore indemnity shall be provided in accordance with the terms of that Head of Cover, subject to the terms of that Head of Cover.
- 2.1.3.4. A Dispute which relates solely to non-payment where You or an Opponent has failed to pay in a timely manner in accordance with the terms of the relevant contract save for where You have completed the debt recovery process outlined in clause (c) (Head of Cover: Debt Recovery).
- 2.1.3.5. A Dispute arising from a contract relating to construction, building works or similar activities, save for where:
- (a) Your Core Business Activities are those of a builder or related industry; and
  - (b) the Dispute is with a supplier directly related to Your Core Business Activities.
- 2.1.3.6. A Dispute arising from a contract:
- (a) for employment;

- (b) for the provision of insurance, securities, credit or guarantees;
- (c) relating to a motor vehicle;
- (d) related to the occupation of property including leases, tenancy agreements or a licence to occupy;
- (e) relating to the sale or purchase of real property;

2.1.3.7. Disputes over franchise agreements.

## **2.2. Head of Cover 2: Tax Audit and Review**

2.2.1. We will indemnify You for Your Costs in responding to an audit or review by the ATO (including a risk review by the ATO) in respect of:

2.2.1.1. An investigation or inquiry into Your tax affairs by the ATO in accordance with Income Tax Legislation;

2.2.1.2. A claim from the ATO that:

- (a) additional GST is due from You;
- (b) additional income tax or fringe benefits tax is due from You in accordance with Income Tax Legislation.

2.2.2. Any Claim in relation to clause 2.2 shall be subject to the following conditions:

2.2.2.1. Written notice of an audit or review by the ATO must have been served on You no earlier than 90 (ninety) calendar days following the inception of this Policy, evidence of which You shall promptly provide to Us upon written request.

2.2.2.2. In relation to the returns which are the subject of the Dispute, You must have:

- (a) appointed a suitably qualified and licenced accountant or tax professional to file Your tax returns;
- (b) filed all returns and responded to all demands within the relevant statutory time limits;
- (c) made all payments for due taxes and provided all necessary documentation to the ATO within the relevant time limits.

2.2.2.3. You must notify the Claims Manager as soon as possible if You are in receipt of a notice of audit or review and in any event no later than the date on which the final notice from the ATO notifying You of the end of an audit or review is received by You from the ATO as, from that date, the Claim will be deemed finalised and Your Costs will no longer be covered by this Policy.

2.2.3. We will not indemnify You under this Head of Cover for:

2.2.3.1. routine responses to requests for information and other contacts with the ATO which do not amount to an audit or review in the above outlined circumstances, including but not limited to Business Activity Statement, Superannuation fund and payroll tax audit visits.

2.2.3.2. costs which are not directly incurred in relation to the audit which is the subject of the Claim. If Your Appointed Professional conducts additional work outside of the scope of the Claim, costs will be apportioned as appropriate to ensure that only those costs directly incurred in relation to the audit are indemnified.

2.2.3.3. costs incurred as a result of an audit or review arising from a change in Applicable Law (including but not limited to Income Tax Legislation) which has retrospective effect.

2.2.3.4. costs incurred in relation to action taken by the Prosecutions Division of the

ATO once an audit or investigation is transferred to that division.

2.2.3.5. costs in relation to tax avoidance schemes or other attempts to avoid due payment of tax or superannuation of any kind.

### **2.3. Head of Cover 3: Statutory Licence Protection**

2.3.1. We will indemnify You for Your Costs and Your Opponent's Costs incurred in seeking to protect Your rights under a Statutory Licence which is under threat of suspension, revocation or amendment, which, if not disputed, will have a material impact on Your ability to conduct Your Core Business Activities

2.3.2. Any Claim in relation to clause 2.3 shall be subject to the condition that the Statutory Licence which is the subject of the Claim must be utilised by You to generate at least 20% (twenty percent) of Your gross operating income.

2.3.3. We will not indemnify You under this Head of Cover for any Dispute relating to a Statutory Licence which is:

2.3.3.1. suspended, revoked or amended as a result of a general industry wide policy rather than for a reason particular to You;

2.3.3.2. a first application for or standard renewal of a Statutory Licence due to lapse of time;

2.3.3.3. due to a suspension, revocation or amendment arising from a change in Applicable Law.

### **2.4. Head of Cover 4: Landlord Disputes**

2.4.1. We will indemnify You for:

2.4.1.1. Your Costs and Your Opponent's Costs arising from a Dispute with Your commercial landlord arising out of an alleged breach of the lease, tenancy agreement or licence in place in respect of Your Business Premises;

2.4.1.2. Where Your Core Business Activities are those of a commercial landlord, Your Costs and Your Opponent's Costs arising from a Dispute with a tenant over an alleged breach of the lease, tenancy agreement or licence in place in respect of commercial premises leased to them by You,

provided that the consequences, as determined by Us, of not pursuing or defending the Dispute is that You will suffer significant financial loss.

2.4.2. Any Claim in relation to clause 2.4.1.1 shall be subject to You having correctly served any and all required statutory and/or contractual notices prior to bringing a Claim.

2.4.3. We will not indemnify You under this Head of Cover for any Dispute arising:

(a) from the first negotiation of a lease, tenancy agreement or licence;

(b) from the renewal, renegotiation or review of a lease, tenancy agreement or licence at normal expiry;

(c) solely from a failure to pay rent or other amounts due under the terms of a lease, tenancy agreement or licence;

(d) from the refusal of a party to meet obligations under the terms of a lease, tenancy agreement or licence when there is no Dispute that such obligations are owed;

(e) from a contract or agreement which is not a lease, tenancy agreement or licence.

### **2.5. Head of Cover 5: Restrictive Covenants**

2.5.1. We will indemnify You for Your Costs and Your Opponent's Costs arising from a Dispute with a former employee in relation to an alleged breach of a restrictive covenant, either by You or the former employee, contained within a written employment contract

between You and the former employee.

- 2.5.2. Any Claim in relation to clause 2.5 shall be subject to, as determined in Our reasonable opinion:
- 2.5.2.1. the restrictive covenant being reasonable as to both scope and duration; and
  - 2.5.2.2. the alleged breach by the former employee being capable of having a material detrimental effect on Your business' revenue generation and/or there being a financial benefit for You.
- 2.5.3. We will not indemnify You under this Head of Cover for any restrictive covenant exceeding 12 (twelve) months in duration.

#### **Head of Cover 6: Third Party Damage to Good or Premises**

- 2.6.1. We will indemnify You for Your Costs and Your Opponent's Costs of pursuing a third party who has by their own act or omission caused You uninsured losses by causing physical damage to Your Business Premises, or goods, machinery or other property located at Your Business Premises.
- 2.6.2. We will not indemnify You under this Head of Cover for any damage:
- (a) caused by You or Your own employees;
  - (b) to goods not at Your Business Premises, unless under Your direct care and control;
  - (c) to a motor vehicle, except where stationary and located at Your Business Premises.

#### **2.7. Head of Cover 7: Debt Recovery**

- 2.7.1. We will indemnify You for Your Costs arising from a Dispute with an Opponent where You are owed payment under an invoice which has not been settled despite the payment terms having expired
- 2.7.2. Any Claim in relation to clause 2.7.1 shall be subject to the following process:
- Stage 1:**
- 2.7.2.1. You must issue a final notice letter to the debtor. A template letter will be provided by Coast Insurance – please send an email request to the following address: [info@coastins.com.au](mailto:info@coastins.com.au).
- 2.7.2.2. If on expiry of the additional fourteen (14) calendar days allowed to pay as specified in the template letter You have not received payment, You can move to stage 2.
- Stage 2:**
- 2.7.2.3. You must provide full details of the amount due and all accompanying documents (including the template letter sent in Stage 1 above) to the Debt Recovery Professional via the following email address: [legalexpenses@proclaim.com.au](mailto:legalexpenses@proclaim.com.au).
- 2.7.2.4. The Debt Recovery Professional will then communicate a letter on Your behalf advising the debtor that if they do not pay in seven (7) calendar days court proceedings will be issued.
- 2.7.2.5. If payment is still not forthcoming, the recovery will become a Claim under clause 2.1 (Head of Cover 1: Contractual Disputes), and the Debt Recovery Professional will issue court proceedings on Your behalf to seek recovery of the amount due.
- 2.7.3. We will not indemnify You under this Head of Cover for any debt sum of less than \$2,500 (thousand five hundred Australian dollars) for the initial pre-court proceedings stage (clause 2.7.2.2 and clause 2.7.2.3 above) and such amount shall rise to any debt sum of less than \$5,000 (five thousand Australian dollars) for the court proceedings issued in accordance with clause 2.7.2.4.

### 3. General Exclusions Applicable to All Heads of Cover

#### 3.1. Cover is excluded under this Policy in respect of any Claim:

- 3.1.1. arising from outside of the territory of the Commonwealth of Australia; and/or New Zealand;
- 3.1.2. arising from an appeal, unless otherwise agreed by the Claims Manager;
- 3.1.3. arising from a dispute between You, Us, the Coverholder and/or Claims Manager;
- 3.1.4. arising from a Dispute between You and any parent, subsidiary or otherwise related entity (including franchisor/franchisees) or any trust operated by You;
- 3.1.5. where You have in place other insurance which indemnifies You for the same Claim, or where You are required by Applicable Law to have such a policy, whether one is in place or not;
- 3.1.6. where We have suffered prejudice due to Your deliberate, intentional or reckless failure to take all reasonable steps to avoid a Claim arising;
- 3.1.7. where You have acted with any criminal intent or have otherwise recklessly or through omission committed criminal act(s);
- 3.1.8. where You have breached a term of this Policy in relation to that Claim;
- 3.1.9. arising from one of the following:
  - 3.1.9.1. building work or construction;
  - 3.1.9.2. franchise agreements;
  - 3.1.9.3. planning laws or regulations;
  - 3.1.9.4. intellectual property of any kind, including but not limited to patents, copyrights, trademarks, passing off, registered designs and similar (unless directly related to a Claim under clause 2.5 (Restrictive Covenants));
  - 3.1.9.5. a warranty or guarantee;
  - 3.1.9.6. subsidence, land heave, land slip, mining or quarrying;
  - 3.1.9.7. allegations of defamation of any kind or malicious falsehood;
  - 3.1.9.8. judicial review;
  - 3.1.9.9. Worker's Compensation.
- 3.2. Notwithstanding any other provision, clause or term of this Policy and/or any endorsement thereof to the contrary, this Policy excludes and does not insure any Claim, loss, liability, damage, cost, fine, penalty, expense or other sum of any kind whatsoever Relating To, whether directly or indirectly and/or regardless of any other cause or event contributing concurrently or in any other sequence thereto, a Communicable Disease and/or any fear or threat (whether actual or perceived) thereof.
- 3.3. This Policy excludes any fines, damages, compensation, taxes, penalties or interest which You are ordered to or agree to pay.

## 4. Claims Conditions

### 4.1. In the event of:

- 4.1.1. a Claim arising under this Policy; or
- 4.1.2. the receipt by You of notice from any party of a specified and definite intention to make a Claim against You; or
- 4.1.3. any cause, event, Dispute or circumstance which may give rise to a Claim,  
  
You must, as soon as practicable, give written notice to the Claims Manager to the following address: [legalexperiences@proclaim.com.au](mailto:legalexperiences@proclaim.com.au) with a courtesy email to [claims@coastins.com.au](mailto:claims@coastins.com.au). Any delay in reporting the above by You may prejudice Your position under this Policy.

It is a condition to indemnity being provided under this Policy that You receive formal written confirmation from the Claims Manager that Your Claim is covered before You start incurring Your Costs or Opponent's Costs. Any costs incurred by You before the Claim has formally been accepted by the Claims Manager are not covered under this Policy.

### 4.2. Claims Made and Notified

- 4.2.1. This is a "claims made" Policy, which means that You shall only be indemnified for Claims where:
  - 4.2.1.1. You first become aware of cause, event, Dispute or circumstance giving rise to the Claim during the Policy Period; and
  - 4.2.1.2. You first notify the Claim to the Claims Manager during the Policy Period.
- 4.3. Upon accepting the Claim, the Claims Manager will engage an Appointed Professional on Your behalf and will appoint any further professionals (for example legal counsel) as necessary and appropriate in its opinion throughout the course of the Claim.
- 4.4. You must authorise and instruct the Appointed Professional to comply fully with the Claims Manager at all times throughout the duration of the Claim.
- 4.5. You must comply promptly with all requests for information or other forms of assistance made by either the Claims Manager or Appointed Professional which is in Your power to provide in connection with the investigation, defence or settlement of any Claim or investigation of any circumstances which may give rise to a Claim in respect of which indemnity is sought under this Policy including attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration or other proceedings.
- 4.6. You must where possible take all reasonable and necessary steps to recover any costs paid by Us and recoverable by You and have these costs paid directly to Us.
- 4.7. You must advise the Claims Manager in writing as soon as reasonably practicable if You receive an offer to settle or compromise a Claim and must not admit liability for, settle or make or promise any payment in respect of any Claim, circumstance or event which is likely to be the subject of indemnity under this Policy without the prior written approval of the Claims Manager. The Claims Manager will not withhold consent unreasonably.
- 4.8. We can, at any time during the course of a Claim, pay to You an amount equal to the Claims Manager's reasonable view of the value of the Claim in full and final settlement of the Claim. In forming this view of the value of the Claim the Claims Manager will have regard to Your interests and act reasonably.
- 4.9. If You fail to accept the advice of the Appointed Professional to settle a Claim, We shall be permitted to refuse to indemnify You under this Policy from the date on which you refuse such advice.
- 4.10. We will not make any payment under this Policy until such time as You have paid and

exhausted the Excess

- 4.11. We shall be entitled, if We so desire, to take over and conduct in Your defence or settlement of any Claim, or to prosecute in Your name for Our benefit and at Our expense, any Claim whilst at all times having regard to Your interests and acting reasonably.

## 5. Requirement for Reasonable Prospects of Success

### 5.1. All Claims under this Policy, however arising, are subject to the following:

- 5.1.1. the action taken by You in pursuing or defending the Claim must be reasonable and proportionate with regard to the costs to be expended, and there must not be a more appropriate manner in which to protect Your interests; and
- 5.1.2. the Dispute must have a reasonable prospect of success by You. This means that in the opinion of the Claims Manager (considering the advice of the Appointed Professional if appointed) You have a better than 50% (fifty percent) chance of achieving a positive outcome in the Dispute.
- 5.2. For the purposes of 5.1.1 above, a "positive outcome" means it is found that Your version of events are determined to be more likely to be true than those of Your Opponent and therefore the decision will go in Your favour.
- 5.3. Having reasonable prospects of success is an ongoing requirement and if prospects fail to meet the above threshold at any point during the course of a Claim, indemnity under this Policy will be withdrawn. If You choose to continue the defence or pursuit if a case in those circumstances it will be at Your own cost, but should You ultimately achieve a positive outcome (as defined at 5.1 above) We will reimburse You for any costs or disbursements you fail to recover from Your Opponent.
- 5.4. The Claims Manager will provide You with written reasons if it decides that the Claim does not meet the reasonable prospects of success requirement. If You disagree with the Claims Manager over whether a Claim has prospects or not, You can either:
  - 5.4.1. at Your own expense seek an opinion from independent legal counsel. If this opinion changes the Claims Manager's view (in its sole discretion), We will reimburse You for the cost of the opinion (subject to Policy Limits) and Your Claim shall be covered from that point subject to the terms and conditions of this Policy; or
  - 5.4.2. access Our Complaints process outlined above.

## 6. Misrepresentation and Non-disclosure

### 6.1. If You:

- 6.1.1. fail to disclose any matter which You are under a duty to disclose by Applicable Law to Us; or
- 6.1.2. make a misrepresentation to Us prior to the inception date of this Policy, to the extent such actions or inactions are:
  - 6.1.3. fraudulent, without prejudice to the other rights We may have, however arising, under this Policy, We shall have the right to avoid this Policy;
  - 6.1.4. non-fraudulent, if We would have entered into this Policy on different terms (including, but not limited to, the premium payable) having been aware of such actions or inactions, Our liability in respect of any Claim shall be reduced to what it would have been had the concealment, misrepresentation or non-disclosure not taken place.

## 7. Fraud and Dishonest Conduct

If any Claim is in any respect fraudulent or if any fraudulent means or devices is used by You or anyone acting on Your behalf to obtain any benefit under this Policy, or if any destruction or damage is occasioned by Your wilful act or with Your connivance, We, without prejudice to any other right(s) We might have under this Policy, shall, subject to the provisions of the Insurance Contracts Act 1984, be entitled to refuse to pay such Claim.

## 8. Cancellation Rights

- 8.1. You shall have the right to cancel this Policy:
  - 8.1.1. by the surrender of this Policy to Us; or
  - 8.1.2. by giving at least ten (10) calendar days' advance written notice to Us, stating when thereafter such cancellation will be effective; or
  - 8.1.3. in the event that We:
    - 8.1.3.1. cease underwriting or formally announce its intention to do so whether entirely or in a class of business which includes this Policy; or
    - 8.1.3.2. are the subject of an order or resolution for winding up, enter into a run-off arrangement, are subject to a scheme of arrangement, appointment of administrators, provisional liquidators or announce an intention to take any of the foregoing actions; or
    - 8.1.3.3. have authority to carry on insurance business withdrawn, by providing written notice of Your intent to cancel this Policy.
- 8.2. We shall have the right to cancel this Policy by giving You at least seven (7) days' notice in writing of the date from which this Policy will be cancelled, where such notification may be delivered personally or posted to You at the address last notified to Us, in the following circumstances:
  - 8.2.1. in accordance with Applicable Law including, but not limited to the Insurance Contracts Act 1984 (Cth); or
  - 8.2.2. if You failed to comply with Your duty of disclosure in accordance with Applicable Law; or
  - 8.2.3. where You have made a misrepresentation to Us during negotiations prior to the issue of this Policy; or
  - 8.2.4. where You have failed to comply with a provision of this Policy, including the term relating to payment of premium; or
  - 8.2.5. where You have made a fraudulent Claim under this Policy or under some other contract of insurance that provides cover during the same period of time that this Policy covers You;
  - 8.2.6. where an act or omission by You has the effect of altering the state or condition of the subject-matter of the contract or of allowing the state or condition of that subject-matter to alter.
- 8.3. If You or We cancel this Policy We may deduct a proportion of the premium for time on risk, reasonable administrative costs related to the acquisition and termination of this Policy We incur and any government taxes or duties We cannot recover.



## 9. Insolvency

If at any point during the Policy Period or duration of a Claim You file for bankruptcy; file a winding up petition; go into liquidation; enter any arrangement with creditors; or have a receiver or administrator appointed, We will immediately refuse any further indemnity under this Policy.

## 10. Terrorism / War / Contamination Exclusion

- 10.1. This Policy excludes cover for losses as a result of terrorism.
- 10.2. In the event that damage to property occurs and the cause of the damage is declared a terrorist incident by the responsible Minister, then You may be afforded protection within the limits of indemnity of this Policy by virtue of the Terrorism Insurance Act 2003. The operation of this Act may also serve to reduce the settlement of your loss to a percentage of the otherwise recoverable loss. In the event that the settlement is reduced then this will be at the direction of the Minister.
- 10.3. A more detailed explanation of the operation of the Terrorism Insurance Act 2003 can be obtained at [www.arpc.gov.au](http://www.arpc.gov.au).
- 10.4. This Policy excludes loss, destruction, damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in other sequence to the loss:
  - 10.4.1. war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, conspiracy, rebellion, revolution, insurrection, mutiny, military or usurped power; or
  - 10.4.2. confiscation or nationalisation, or requisition or destruction of or damage to property by or under the order of any government (whether lawfully constituted or otherwise) or public or local authority.
- 10.5. Furthermore any loss, destruction or damage, 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 clause 10.4.1 or clause 10.4.2 is also excluded from this Policy.

## 11. Australia Terrorism Insurance Act 2003 Notice

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

ATIA 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 ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. 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 such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

27/01/2004

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## 12. Electronic Data Exclusion

12.1. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, it is understood and agreed that this Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any sequence to the loss.

## 13. Strikes, Riots or Civil Commotion

Notwithstanding anything contained herein to the contrary, this Policy excludes any loss, damage, liability, expense, fines or penalties or any other amount directly or indirectly caused by or arising from riot, civil commotion, strikers, locked out workers, or persons in labour disturbances.

## 14. Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause – 10/11/03

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

- 14.1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
- 14.1.1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
  - 14.1.2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - 14.1.3. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 14.1.4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
  - 14.1.5. any chemical, biological, bio-chemical, or electromagnetic weapon.

CL 370 10<sup>th</sup> November 2003

## 15. Cyber Risks Exclusion

This Policy does not cover legal costs and expenses for, incurred as a result of, or arising out of a Cyber Act or Cyber Incident.

### Definitions

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.

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.

Cyber Incident means:

- i) 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
- ii) 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.

LMA5484  
13 November 2020

## 16. General Conditions

### 15.1. Confidentiality

You will not, without Our prior written consent, disclose the existence of this Policy to any person or party outside Your organisation except insofar as is required in order to comply with the terms of this Policy or by Applicable Law.

### 15.2. Subrogation

In the event of any payment under this Policy, We will be subrogated to the extent of such payment to all Your rights of recovery. In such case You will execute all documents required and will do everything necessary to secure and preserve such rights including the executions of such documents necessary to enable Us effectively to bring suit in Your name.

### 15.3. How Goods and Services Tax (GST) Affects Claim Payments

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

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

### 15.4. Sanction Limitation and Exclusion

We shall not be deemed to provide cover and We shall not 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 Us 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, Australia or United States of America.

### 15.5. Amendments

Any amendment of a clause, condition, term or provision of this Policy must be set out in writing and signed by You and Us.

### 15.6. Third Party Beneficiary Rights

We and You do not intend to create in any other person the status of a third-party beneficiary, and this Policy will not be construed so as to create such status.

### 15.7. Assignment

The provisions of this Policy shall inure to the benefit of and be binding upon You and neither this Policy nor any right, authority or obligation arising under it may be assigned, transferred or otherwise disposed of, in whole or in part, by You without Our prior written consent.

### 15.8. Notices

Any notice, including notice of termination or breach of this Policy or any statutory

notice or any notice relating to Applicable Law required or permitted to be given to Us shall be in writing and shall be delivered personally or sent by first class post pre-paid recorded delivery (and air-mail if overseas) with a courtesy copy by email and addressed as follows:

**To:** Coast Insurance Pty Ltd

**Street Address:** 1st Floor, 186 Scarborough Beach Road, Mt Hawthorn Western Australia 6016

**Postal Address:** PO Box 120, Mount Hawthorn WA 6915

**Phone:** +61 8 6374 7000

**Email:** info@coastins.com.au

15.9. **Waiver**

No provision of this Policy shall be deemed waived by a course of conduct. Any waiver must be in writing signed by Us and You and stating specifically that it was intended to modify this Policy. No waiver of any provision of this Policy shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided.

15.10. **Severability**

If any provision of this Policy is, for any reason, held to be invalid, prohibited, or otherwise unenforceable by legal authority of competent jurisdiction, the other provisions of this Policy shall remain enforceable and the invalid or unenforceable provision shall be deemed modified so that it is valid and enforceable to the maximum extent permitted by Applicable Law.

15.11. **Governing Law and Jurisdiction**

15.11.1. This Policy and the Schedule will be interpreted in accordance with the law of the Commonwealth of Australia. This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

15.11.2. In the event of a dispute arising under this Policy, We, at the request of You, will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.