



# Miramar Industrial Special Risks Insurance Mark IV Policy Wording

1 January 2024



# Miramar Industrial Special Risks Insurance Mark IV Policy Wording

This Policy incorporates the Schedule, Sections, Definitions, Conditions, Exclusions, Endorsements, Memoranda and Warranties (if any) and any other terms contained in this Policy which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

WHERE the Insured named in the Schedule has paid or agreed to pay to the Insurer(s) specified below the Premium shown on the Schedule, now the Insurer(s) agree(s), subject to the terms Conditions, Exclusions, Memoranda, Warranties, limitations and other provisions contained or endorsed in the Policy, to indemnify the Insured as specified against loss arising from any insured events which occur during the Period of Insurance stated in the Schedule or any renewal.

PROVIDED THAT the total liability of the Insurer(s) at any one Situation shall not exceed the appropriate Limit or Sub-Limit(s) of Liability as stated in the Schedule or such amount(s) as may be substituted therefore by endorsement or memorandum and that each Insurer specified below shall only be liable to contribute to any loss covered by this Policy that proportion of the loss as is specified beside its name.

Signed on Behalf of the Insurer(s) at Sydney.

Insurer	Proportion %	Policy Number	Signature	Date
Certain underwriters at Lloyd's				

## ABOUT THIS BOOKLET

This booklet contains two separate parts: Important Information and Policy Terms and Conditions.

## IMPORTANT INFORMATION

This part of the booklet contains information You need to know before You take out an insurance Policy. Please read it carefully before taking out this insurance.

## POLICY TERMS AND CONDITIONS

The Policy part of this booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of Your legal contract with Us.

If We issue You with an insurance Policy, You will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule We send to You form Your legal contract with Us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your insurance broker.

# Miramar Industrial Special Risks Insurance Mark IV Policy Wording

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# IMPORTANT INFORMATION

For the purposes of the Important Information section all references to “You” or “Your” have the same meaning as “Insured” as named in the Schedule. “We”, “Us” or “Our” have the same meaning as “Insurer(s)” as named in the Policy.

## ABOUT LLOYD'S

Certain underwriters at Lloyd's are authorised 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 Miramar in the first instance in relation to this insurance.

## 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 CGC go to [www.insurancecode.org.au](http://www.insurancecode.org.au)

## ABOUT MIRAMAR

Miramar Underwriting Agency Pty Ltd (ABN 97 111 534 797, AFSL 314176) ('Miramar') 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, Miramar acts as an agent for the Insurer(s) and not for You. If You have any queries in relation to this Policy, contact Miramar in any of the following ways:

**Street Address:** Level 4, 97-99 Bathurst Street, Sydney NSW 2000

**Postal Address:** PO Box A2016, Sydney South NSW 1235

**Phone:** +61 2 9307 6600

## 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;
- 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. Please note, only those Sections shown as covered in Your Schedule are insured;
- any Endorsement;
- any other document We tell You forms part of the Policy which may vary or modify the above documents.

These documents should be read together as they jointly form the contract of insurance between You and Us.

## YOUR 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, 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 to the extent of any prejudice We may suffer as a result 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.

## PRIVACY STATEMENT

In this Privacy Statement the use of "We", "Us" and "Our" means the Insurer(s) and Miramar 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. See the Privacy Policies/Notices set out below for further information.

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 certain underwriters at Lloyd's Privacy Notice at <https://www.lloyds.com/help/privacy> and Miramar's Privacy Policy at [miramaruw.com.au](http://miramaruw.com.au)

## COMPLAINTS AND DISPUTE RESOLUTION PROCESS

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

Miramar Underwriting Agency

**Postal Address:** PO Box A2016, Sydney South NSW 1235

**Phone:** +61 2 9307 6653

**Email:** [servicefeedback@steadfastagencies.com.au](mailto:servicefeedback@steadfastagencies.com.au)

We will acknowledge receipt of Your complaint and do our utmost to resolve the complaint to Your satisfaction within ten (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

**Phone:** +61 2 8298 0783

**Email:** [idaustralia@lloyds.com](mailto:idaustralia@lloyds.com)

A final decision will be provided to You within thirty (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, if Your complaint is not resolved to Your satisfaction within thirty (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)

**Postal 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 two (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.

## CO-INSURANCE (AVERAGE) CLAUSE

This Policy is subject to a Co-insurance/average condition. The effect of this condition is that if at the time of loss the sum insured or Limit of Liability is less than the full value of the property or income insured, then You may not be covered for Your full loss. It is Your responsibility to ensure the adequacy of sum(s) insured or Limit(s) of Liability and You should re-assess these sum(s) insured or Limit(s) of Liability during the currency of the Policy and prior to renewal each year.

**Example:** When: The value of the property is \$5,000,000

The Co-insurance percentage is	85%
The sum insured or Limit of Liability for it is	\$2,125,000
The deductible is	\$1,000
The amount of loss is	\$1,000,000

Step (1):  $\$5,000,000 \times 85\% = \$4,250,000$

(the minimum amount of insurance to meet Your co-insurance requirements)

Step (2):  $\$2,125,000 \div \$4,250,000 = .50$

Step (3):  $\$1,000,000 \times .50 = \$500,000$

Step (4):  $\$500,000 - \$1,000 = \$499,000$

We will pay no more than \$499,000.

The remaining \$501,000 is not covered.

## POLICY INTERPRETATION

We have capitalised words with special meaning wherever they appear in the Policy, to show that those words have a particular defined meaning. These words are defined under 'Definitions' as applicable to each particular Section of the Policy. Where any word is defined every derivative of that word has a corresponding meaning.

References to the masculine include the feminine, the singular also includes the plural and vice versa.

## CHANGES OF LAW

If any statute, Act or legislation relevant to the construction of this Policy is amended or replaced, this Policy shall be read as though the amended or new statute, Act or legislation were incorporated in it. If this produces any ambiguity, this document shall be construed so as to give effect to the intentions of the parties at the time it was executed.

# POLICY TERMS AND CONDITIONS

## SECTION 1 - MATERIAL LOSS OR DAMAGE

### The Indemnity

In the event of any physical loss, destruction or damage (referred to in Section 1 as “damage” with “damaged” having a corresponding meaning) not otherwise excluded happening during the period of insurance at the Situation to the Property Insured described in Section 1 the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) liability, indemnify the Insured in accordance with the applicable Basis of Settlement at all times having regard to the interests of the Insured.

Subject to the liability of the Insurer(s) not being increased beyond the Limit(s) of Liability already stated, the Insurer(s) will also indemnify the Insured for:

- a. architects', surveyors', consulting engineers', legal and other fees and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon damage to property insured but not such costs, fees and salary for preparing any claim;
- b. any fee, contribution or other compulsory payment payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or compulsory payment is a condition precedent to the obtaining of consent to reinstate any building(s) insured; provided that the Insurer(s) shall not be liable for payment of any fines and/or penalties imposed upon the Insured by any such Authorities;
- c. costs and expenses necessarily and reasonably incurred for the purpose of extinguishing fire at or in the vicinity of property insured or threatening to involve such property or for the purpose of preventing or diminishing imminent damage to property insured by any other peril insured against by this Policy, including damage to gain access and the cost of replenishment of fire fighting appliances and charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines;
- d. costs and expenses necessarily and reasonably incurred for the temporary protection and safety of property insured pending repair or replacement consequent upon damage recoverable;
- e. cost of replacing locks and/or keys and/or combinations where if as a result of theft or any attempted theft, the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated; also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations;
- f. costs and expenses necessarily and reasonably incurred in respect of:
  - i. the removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to property insured by this Policy and occasioned by a peril insured against;
  - ii. the Insured's legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 8 in relation to premises, roadways, services, railway or waterways of others, consequent upon damage to the Property Insured by a peril insured against for such costs together with the cost of cleaning provided that such liability was not assumed by the Insured under an agreement entered into after the commencement of the Period of Insurance or any renewal unless liability would have attached in the absence of such agreement.

Provided that the insurance under this section does not extend to any liability that the Insured may incur as a consequence of pollution of any kind;

- iii. the demolition and removal of any property belonging to the Insured which is no longer useful for the purpose it was intended, providing such demolition and removal is necessary for the purpose of the reinstatement or replacement of Property Insured under this section and is consequent upon damage to the Property Insured by a peril insured against;
- g. damage to clothing and tools of trade belonging to directors and employees of the Insured whilst on the Premises.

Provided that the insurance under Clauses (b.) to (g.) inclusive shall not be subject to application of any Co-insurance clause or memorandum contained in this Policy.



## The Property Insured

All tangible property both real and personal of every kind and description (except as excluded) belonging to the Insured or for which the Insured is responsible, or has assumed responsibility to insure prior to the occurrence of any damage, including all such property in which the Insured may acquire an insurable interest during the Period of Insurance.

It is understood and agreed that the term "personal property" shall include Money (which shall mean current coin, bank notes, currency notes, cheques, credit card sales and/or discount house vouchers, postal orders, money orders, unused postage and revenue stamps and including the value of stamps contained in franking machines) whilst contained in the Situation and whilst in transit to and from the Situation anywhere in Australia, including whilst contained in the night safe of any bank or financial institution where the Insured transacts business, and in the personal custody of the Insured and/or persons authorised by the Insured whilst contained in their private residences.

## Basis of Settlement

For the purpose of ascertaining the classification under which any property is insured, the Insurer(s) agree(s) to accept the designation applied to such property by the Insured in its records, provided that such property is not specifically excluded by this Policy.

- a. On buildings, machinery, plant and all other property and contents (other than those specified below):  
The cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement and Replacement and Extra Cost of Reinstatement Memoranda as set out in this Policy.
- b. On raw materials, supplies and other merchandise not manufactured by the Insured:  
The replacement cost at the time and the place of replacement, provided that replacement shall have been carried out with reasonable despatch or, if such property is not replaced, the original cost to the Insured of such property or the indemnity value, whichever is the lesser. If such property is obsolete, the Basis of Settlement whether or not such property is replaced shall be the original cost to the Insured of such property or the indemnity value, whichever is the lesser.
- c. On material in process of manufacture:  
The replacement cost of the raw materials and the cost of labour and other manufacturing costs expended at the time and the place of the damage.
- d. On finished goods manufactured by the Insured:  
The replacement cost of the raw materials and the cost of labour and other manufacturing costs expended before any allowance for profit, calculated at the time and place of the damage or the cost of re-stocking such goods within a reasonable time, whichever is the lesser. If such goods are obsolete, the Basis of Settlement whether or not such goods are replaced shall be the original cost to the Insured of such goods or the indemnity value, whichever is the lesser.
- e. On computer systems records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description:  
The cost of repairing, replacing, reproducing or restoring same, including stored information, but excluding the value to the Insured of the said information or, if repair, replacement, reproduction or restoration is not carried out with reasonable despatch, the replacement cost of materials as blank stationary at the time and place of the damage.
- f. On patterns, models, moulds, jigs, templets, dies or lasts:  
The cost of repair or replacement (if repaired or replaced with reasonable despatch) otherwise the value of such property to the Insured calculated at the time and place of the damage, but not exceeding the cost of replacement.
- g. On glass:  
The cost incurred in repairing or replacing the broken glass including:
  - i. temporary shuttering and/or hiring of security service pending replacement of broken glass;
  - ii. signwriting or ornamentation on glass;
  - iii. replacement burglar alarm tapes on glass;

- iv. removing and re-fixing of window and show-case frames and fittings;
- v. heat reflecting material or process on glass.
- h. On directors' and employees' clothing and tools of trade:

The replacement cost at the time of replacement, subject to due allowance for wear and tear depreciation and betterment.
- i. On empty premises awaiting demolition:

The salvage value of the building materials and/or landlord's fixtures and fittings, net of demolition costs.

Provided that if the Insured elects to claim the indemnity value of any damaged property, the Insurer(s) will pay to the Insured the value of such property at the time of the happening of the damage or at its/their option reinstate, replace or repair such property in whole or in part. In any event the Insurer(s) will pay costs incurred by the Insured in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.

## Memoranda

Except to the extent that this Policy is modified under the following Memoranda, the terms, Conditions and limitations of this Policy shall apply.

## Interests of other Parties

The insurable interest of only those lessors, financiers, trustees, mortgagees, owners and all other parties specifically noted in the records of the Insured shall be automatically included without notification or specification; the nature and extent of such interest to be disclosed in event of damage.

Where the insurance covers the interest of more than one party, any act or neglect of an individual party will not prejudice the rights of the remaining party/parties; provided the remaining party/parties shall, as soon as reasonably practicable on becoming aware of any act or neglect in which the risk of damage has increased, give notice in writing to the Insurer(s) and on demand pay such reasonable additional premium as the Insurer(s) may require.

Notwithstanding the former paragraph, it is understood that in the event that any of the parties (referred to above), are entitled to the benefits of any "Concessions Agreement", which it may have entered into with the insurer(s), the "Concessions Agreement" will take precedence over the former paragraph.

## Branded Goods

Any salvage of branded goods and/or merchandise, the Insured's own or held by the Insured in trust or on commission, and/or goods sold but not delivered, shall not be disposed of by sale without the consent of the Insured. If such salvage is not disposed of by sale then the value of the salvage shall be deemed to be the market value of the goods after brands, labels or names have been removed by or on behalf of the Insured.

## Declared Values

The Schedule of Declared Values at each Situation (in accordance with the applicable Basis of Settlement) shall not include any allowance for Extra Cost of Reinstatement nor any of the costs and expenses referred to under Clauses (b.) to (g.) of "The Indemnity".

## Reinstatement or Replacement

Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b.) to (i.) under Basis of Settlement.

The basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the damaged property insured at the time of its reinstatement, subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy.

For the purpose of the insurance under this memorandum, "reinstatement" shall mean:

- a. Where property is lost or destroyed:

In the case of a building, the rebuilding of or in the case of property other than a building, the replacement by similar property; in either case in a condition equal to, but not better or more extensive than, its condition when new.

b. Where property is damaged:

The repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new.

### Provisions

- i. The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Insured, but subject to the liability of the Insurer(s) not being increased), must be commenced and carried out with reasonable despatch, failing which the Insurer(s) shall not be liable to make any payment greater than the indemnity value of the damaged property at the time of the happening of the damage.
- ii. When any property insured to which this memorandum applies is damaged in part only, the liability of the Insurer(s) shall not exceed the sum representing the cost which the Insurer(s) could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- iii. Property insured under this memorandum is separately subject to the following Co-insurance clause:

In the event of damage to any property insured at any situation caused by any event insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount that the Insured's declaration of value of property insured at such situation on the day of the commencement of the Period of Insurance bears to the sum representing eightyfive per cent (85%) of the cost that would have been incurred in reinstatement if the whole of such property had been destroyed on that day, but not exceeding the Limit of Liability expressed in the Schedule.

Provided that if the sum actually incurred or expended in rebuilding or replacing the damaged property, within the meaning of sub-paragraph (a.) of the abovementioned definition of reinstatement, exceeds the amount that would have been payable under this Policy if this memorandum had not been incorporated, but is less than the cost of reinstatement as above defined, then the sum so actually incurred or expended shall, for all purposes of this memorandum, be deemed to be the cost of reinstatement of the property.

Provided further that the above clause shall not apply if the amount of the damage does not exceed five per cent (5%) of the amount of the Insured's declaration aforementioned.
- iv. No payment beyond the amount that would have been payable under this Policy if this memorandum had not been incorporated shall be made until a sum equal to the cost of reinstatement shall have been actually incurred.

Provided that where the Insured reinstates or replaces any lost or destroyed property at a cost that is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.
- v. All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of the Insured shall be on a similar reinstatement basis.

## Extra Cost of Reinstatement

Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b.) to (i.) under Basis of Settlement.

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limits of Liability of this Policy.

### Provisions

- i. The work of reinstatement (which may be carried out wholly or partially upon any other site(s), if the requirements of the aforesaid Act, Regulation or By-Law so necessitate, subject to the liability of the Insurer(s) not being increased), must be commenced and carried out with reasonable despatch, failing which the Insurer(s) shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated.
- ii. The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Insured had been required to comply prior to the happening of the damage.

- iii. Co-insurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for Co-insurance purposes in terms set out in any clause contained in this Policy.
- iv. All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of the Insured shall be on a similar basis.
- v. If the cost of reinstatement of damaged property insured is less than fifty per cent (50%) of that which would have been the cost of reinstatement if such property had been destroyed, the amount recoverable shall be limited to:
  - a. the extra cost necessarily incurred in reinstating only that portion damaged; or
  - b. whilst applying to such property insured, the Sub-Limit stated;whichever is the greater. In the event of a Sub-Limit not being stated in this Policy the Insurer(s) liability shall be limited to the amount as described in sub-paragraph (a.) of this provision.

## Floor Space Ratio Index (Plot Ratio)

Subject to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy, in the event of any building(s) being damaged so as to constitute total loss, as a result of the exercise of Statutory powers and/or authority by any Government Departments, Local Government or any other Statutory Authorities reinstatement of such building(s) as before is prohibited and reinstatement is only permissible subject to a reduced floor space ratio index; the Insurer(s) agree(s) to pay in addition to any amount payable on reinstatement of such building(s) the difference between:

- a. the actual cost of reinstatement incurred in accordance with the reduced floor space ratio index; and
- b. the cost of reinstatement which would have been incurred had a reduced floor space ratio index not been applicable.

In arriving at the amount payable under (a.) and (b.) above, any payments made by the Insurer(s) shall include the extra cost of reinstatement, including demolition or dismantling of the insured property, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made or any By-Law or Regulation of any Municipal or other Statutory Authority.

Any payment made for the difference between (a.) and (b.) above shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on behalf of the Insured in the reinstatement of the building(s).

## Acquired Companies

This Policy extends to include property located in Australia belonging to companies and other organisations, a controlling interest in which is acquired by the Insured during the currency of this Policy; subject to the Insured declaring details of such acquisition within a reasonable period following the date of acquisition. Provided the business of the new acquisition shall be similar to the Business as stated in the Schedule.

For the purpose of this memorandum, a controlling interest shall, in the case of a company, mean the acquisition of shares carrying more than fifty per cent (50%) of votes capable of being cast at a general meeting of ordinary shareholders in such company.

## Co-insurance

Unless otherwise stated to the contrary, this Policy is subject to the following Co-insurance memorandum:

In the event of damage to property insured at any situation caused by any peril insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount of the Insured's declaration of value of such property insured, at the situation where the damage occurred, on the day of the commencement of the Period of Insurance bears to the sum representing eighty-five per cent (85%) of the actual value of property insured at such situation on the day of commencement of the Period of Insurance but not exceeding the Limit of Liability expressed in the Schedule.

Provided that this clause shall not apply if the amount of the damage does not exceed five per cent (5%) of the amount of the Insured's declaration aforementioned. It is expressly understood and agreed that the provisions of this Co-insurance Memorandum shall not apply in respect of that part of any claim which is made under the provisions of the Reinstatement and Replacement Memorandum.

## SECTION 2 - CONSEQUENTIAL LOSS

### The Indemnity

In the event of any building or any other property in whole or in part used by the Insured at the Premises for the purpose of the Business is physically lost, destroyed or damaged (during the period of insurance) by any cause or event not excluded (loss, destruction or damage so caused being termed "Damage") and the Business carried on by the Insured is interrupted or interfered with, the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) liability, pay to the Insured the amount of loss resulting from such interruption or interference in accordance with the applicable Basis of Settlement and at all times having regard to the interests of the Insured.

Provided that the Insurer(s) will not be liable for any loss under this Section unless the Insured's property lost, destroyed or damaged is insured against such Damage (loss arising out of destruction or damage by explosion of Boilers and/or Economisers excepted) and the insurer or insurers by which such property is insured shall have paid for, or admitted liability in respect of such Damage unless no such payment shall have been made or liability admitted solely owing to the operation of a provision in such insurance excluding liability for loss below a specified amount.

### Basis of Settlement

#### Item No. 1 - Loss of Gross Profit

The insurance under this item is limited to actual loss of Gross Profit due to: '(a.) Reduction in Turnover', and '(b.) Increase in Cost of Working', and the amount payable as indemnity shall be:

a. In respect of Reduction in Turnover:

The sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Turnover.

b. In respect of Increase in Cost of Working:

The additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided.

Less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Provided that if the Declared Value of Gross Profit at the commencement of each Period of Insurance be less than the sum produced by applying the Rate of Gross Profit to the Annual Turnover (or its proportionately increased multiple, where the Indemnity Period exceeds 12 months), the amount payable hereunder shall be proportionately reduced.

#### Item No. 2 – Claim Preparation Fees

The insurance under this item is to cover such reasonable professional fees as may be payable by the Insured, and such other reasonable expenses necessarily incurred by the Insured and not otherwise recoverable, for preparation of claims under the Insured's Material Damage and Consequential Loss insurance policies and the Insurer(s) shall indemnify the Insured for such reasonable fees and expenses.

#### Item No. 3 – Pay-Roll

The insurance under this item is limited to loss in respect of Pay-Roll and the amount payable as indemnity shall be:

a. In respect of Reduction of Turnover:

i. During the portion of the Indemnity Period beginning with the occurrence of the Damage and ending not later than the number of weeks specified in the Schedule: The sum produced by applying the Rate of Pay-Roll to the Shortage in Turnover during the said portion of the Indemnity Period, less any saving during the said portion of the Indemnity Period, through reduction in consequence of the Damage in the amount of Pay-Roll paid.

- ii. During the remaining portion of the Indemnity Period: The sum produced by applying the Rate of Pay-Roll to the Shortage in Turnover during the said remaining portion of the Indemnity Period, less any saving during the said remaining portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Pay-Roll paid; but not exceeding the sum produced by applying the percentage of the Rate of Pay-Roll specified in the Schedule to the Shortage in Turnover during the said remaining portion of the Indemnity Period, increased by such amount as is deducted for savings under the terms of Clause (a.)(i.).

Note: At the option of the Insured, the number of weeks referred to in Clause (a.)(i.) above may be increased to the number of weeks specified in the Schedule under the heading "Consolidated Period" provided that the amount arrived at under the provisions of Clause (a.)(ii.) shall not exceed such amount as is deducted under Clause (a.)(i.) for savings effected during the said increased number of weeks.

- b. In respect of Increase in Cost of Working:

So much of the additional expenditure described in Clause (b.) of Item 1 as exceeds the amount payable, but not more than the additional amount which would have been payable in respect of Shortage in Turnover under the provisions of Clauses (a.)(i.) and (ii.) of this item had such expenditure not been incurred.

Provided that if the Declared Value of Insured Pay-Roll at the commencement of each Period of Insurance be less than the sum produced by applying the Pay-Roll Limits to the sum produced by applying the Rate of Pay-Roll to the Annual Turnover (or its proportionately increased multiple, where the Indemnity Period exceeds twelve (12) months) the amount payable shall be proportionately reduced.

#### **Item No. 4 – (Additional) Increased Cost of Working**

The insurance under this item is limited to increase in cost of working (not otherwise recoverable under this Policy) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction in Turnover and/or resuming and/or maintaining normal business operations and/or services.

## **Definitions**

### **Annual Turnover**

The Turnover during the 12 months immediately before the date of the Damage.

### **Gross Profit**

The amount by which:

- a. the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed;
- b. the sum of the amount of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses as set out in the Schedule.

Note: The amounts of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with the Insured's normal accountancy methods; due provision being made for depreciation.

### **Indemnity Period**

The period beginning with the occurrence of the Damage and ending not later than the number of months specified in the Schedule during which the results of the Business shall be affected in consequence of the Damage.

### **Pay-Roll**

The remuneration paid to all employees of the Insured (including but not limited to holiday pay, sick pay, long service leave pay and bonus) plus payments for pay-roll tax, fringe benefits tax, superannuation and pension fund contributions, workers compensation insurance premiums, accident compensation levies and the like.

### **Rate of Gross Profit**

The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the Damage.

### **Rate of Pay-Roll**

The rate of Pay-Roll to Turnover during the financial year immediately before the date of the Damage.

Adjustments shall be made to the Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Pay-Roll as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which, but for the Damage, would have been obtained during the relative period after the Damage.

### **Shortage in Turnover**

The amount by which the Turnover during a period shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period.

### **Standard Turnover**

The Turnover during that period in the 12 months immediately before the date of the Damage which corresponds with the Indemnity Period.

### **Turnover**

The money (less discounts, if any allowed) paid or payable to the Insured for goods sold and delivered and for services rendered in course of the Business at the Premises.

## **Memoranda to Section 2**

Except to the extent this Policy is modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

### **Turnover Elsewhere After Damage**

If during the Indemnity Period goods shall be sold or services shall be rendered elsewhere than at the Premises for the benefit of the Business either by the Insured or by others on the Insured's behalf, the money paid or payable in respect of such sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

### **Departmental Clause**

If the Business be conducted in departments of which the independent trading results are ascertainable, the provisions of Clauses (a.) and (b.) of Items No. 1 and 3 shall apply separately to each department affected by the Damage.

### **New Business**

In the event of Damage occurring at the Premises before the completion of the first year's trading of the Business the terms "Rate of Gross Profit", "Annual Turnover", "Standard Turnover" and "Rate of Pay-Roll" shall bear the following meanings and not as within stated:

#### **Rate of Gross Profit**

The rate of Gross Profit earned on the Turnover during the period between the date of the commencement of the Business and the date of the Damage.

#### **Annual Turnover**

The proportional equivalent, for a period of 12 months, of the Turnover realised during the period between the commencement of the Business and the date of the Damage.

#### **Standard Turnover**

The proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the commencement of the Business and the date of the Damage.

### **Rate of Pay-Roll**

The rate of Pay-Roll to Turnover during the period between the date of the commencement of the Business and the date of the Damage.

Adjustments shall be made to the Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Pay-Roll as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which, but for the Damage, would have been obtained during the relative period after the Damage.

### **Accumulated Stocks**

In adjusting any loss, account shall be taken and equitable allowance made if any Shortage in Turnover due to the Damage is postponed by reason of the Turnover being temporarily maintained from accumulated stocks of finished goods.

### **Books of Account**

Any particulars or details contained in the Insured's books of account or other business books or documents which may be required by the Insurer(s) for the purpose of investigating or verifying any claim may be produced and certified by the Insured's auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates.

The words and expressions used shall have the meanings usually attached to them in the books and accounts of the Insured unless otherwise defined in this Policy.

### **Public Utilities Extensions**

Any loss resulting from interruption of or interference with the Business in consequence of damage to property, caused by a peril damage as a result of which is insured, at any electricity station or; sub-station, gas works or water works of a public supply undertaking which is situated on or immediately adjacent to the Premises shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

### **Turnover/Output Alternative**

If the Insurer and the Insured agree, the term "Output" may be substituted for the term "Turnover" and, for the purpose of this Policy, "Output" shall mean the sale and/or invoice value of goods manufactured and/or processed by the Insured in course of the Business at the Premises. Provided that only one such meaning shall be operative in connection with any one event involving Damage.

If the meaning set out above be used, the memorandum "Turnover Elsewhere After Damage" shall be altered to read as follows:

"If during the Indemnity Period goods shall be manufactured and/or processed other than at the Premises for the benefit of the Business either by the Insured or by others on the Insured's behalf the sale and/or invoice value of the goods so manufactured and/or processed shall be brought into account in arriving at the Output during the Indemnity Period".

and the definition of Gross Profit shall be altered to read:

"The difference between the sale value of production and the amount of the Uninsured Working Expenses".

### **Computer**

This Policy extends to include loss (not otherwise recoverable) resulting from interruption of or interference with the Business occasioned by Damage to computer installations, including ancillary equipment and data processing media utilised by the Insured anywhere in Australia.



## **Salvage Sale**

If, following Damage giving rise to a claim under this Policy, the Insured shall hold a salvage sale during the Indemnity Period:

a. Clause (a.) of Item 1 of this Section shall, for the purpose of such claim, read as follows:

a. "In respect of Reduction in Turnover:

The sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale."

b. The definition of Shortage in Turnover shall, for the purpose of such claim, read as follows:

"SHORTAGE IN TURNOVER SHALL MEAN

The amount by which the Turnover during a period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which shall be deducted the Pay-Roll paid out of the proceeds of the salvage sale."

## **Premises in the Vicinity (Prevention of Access)**

Loss as insured by this Policy resulting from interruption of or interference with the Business due to damage to property in the vicinity of the Premises caused by a peril, damage as a result of which is insured hereunder, which shall prevent or hinder the use of or access to the property, whether the Premises or property of the Insured shall be damaged or not, shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

Loss as insured by this Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of and forming part of or contained in the complex of which the Premises forms part caused by a peril, damage as a result of which is insured hereunder, which results in a cessation or diminution of trade due to temporary falling away of potential custom whether the Premises or property of the Insured shall be damaged or not shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

## **Registered Vehicles and/or Trailers**

Notwithstanding the provisions of Property Exclusion 5., this Policy extends to include loss resulting from interruption of or interference with the Business occasioned by Damage to registered vehicles and/or trailers whilst such vehicles or trailers are at the Premises owned or occupied by the Insured; provided always that this Policy does not cover loss resulting from physical loss, destruction of or damage to such vehicles and/or trailers whilst they are being used on any public highway or thoroughfare.

# EXCLUSIONS

## Property Exclusions

This Policy does not cover physical loss, destruction of, or damage to the following property or loss under Section 2 resulting from:

1. Property (except Money) whilst in transit other than during the incidental movement of such property within situations occupied by the Insured. This exclusion shall not apply during temporary removal of property (other than stock and/or merchandise) and unregistered motor vehicles to any situation in the Commonwealth of Australia but, whilst such property is in transit, cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest.
2. Money:
  - a. whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured excepting the excess amount over and above such more specific insurance which excess is held to be covered.

Provided that where in the ordinary course of business the Insured enters into an agreement with such carriers and such agreement provides that the Insured shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result of any event insured against, this insurance shall operate as if this Property Exclusion 2.(a.) had been deleted.
  - b. stolen from an unlocked and unattended vehicle;
  - c. stolen from a safe or strongroom opened by a key or by use of details of a combination, either of which has been left at the Situation outside business hours, unless such key or combination details have been properly secured;
  - d. where the loss is not discovered within five (5) working days of the event;
  - e. where the loss arises out of:
    - i. kidnapping;
    - ii. bomb threat;
    - iii. hoax;
    - iv. extortion;or any attempt thereat.
3. Jewellery, furs, bullion, precious metals or precious stones other than as stock and/or merchandise of the Business.
4.
  - a. Any locomotive or rolling stock or watercraft other than as stock or merchandise of the Business; provided always that no cover shall apply whilst any watercraft is on water.
  - b. Any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the Business; provided always that no cover shall apply during taxiing, take-off, flight or landing.
5. Vehicles or trailers registered or licensed to travel on a public road, provided that this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by the Insured.
6. Livestock, animals, birds or fish.
7. Standing timber, growing crops and pastures.
8. Land, unmined or unrecovered oil, gas and mineral deposits, provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy.

9.
  - a. Bridges, canals, roadways and tunnels, dams and reservoirs (other than tanks) and their contents;
  - b. Railway tracks (other than on the premises occupied or used by the Insured for the purpose of its business).
10. Docks, wharves and piers not forming part of any building.
11. Mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy.
12. Property during the course of, and as a result of, its processing.
13.
  - a. Gates, fences, retaining walls, textile awnings and blinds;
  - b. property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof;
 

caused by wind, rainwater or hail.
14.
  - a. Property included in a project of construction, erection, alteration or addition, including the partial dismantlement of existing structures, where the total contract value of all work to be carried out at any one situation during such activity exceeds 10% of the Limit of Liability or \$500,000, whichever is the lesser. Provided that this Exclusion 14.(a.) shall apply only to the works comprising such construction, erection, alteration or addition and not to any original or existing structures.
  - b. Empty premises upon which demolition work has commenced.
15. Oil and gas drilling and/or production rigs whilst offshore.
16. All Machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electromechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or nonoperation of whatsoever kind.
 

Provided that Property Exclusion 16. shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded which results from any of the events referred to in this exclusion.

For the purpose of Property Exclusion 16., "Machinery" means: any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.
17. Any boiler (other than a boiler used for domestic purposes), economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof; provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such loss or destruction or damage. This exclusion shall not apply to Section 2.

## Perils Exclusions

The Insurer(s) shall not be liable under Sections 1 and/or 2 in respect of:

1. Physical loss, destruction of or damage to the Property Insured:
  - a. directly or indirectly occasioned by or happening through or connected with war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;
  - b. resulting from confiscation, nationalisation, requisition or damage to property by or under the order of any Government or Public or Local Authority.

Notwithstanding the provisions of Perils Exclusion 1.(b.) the Insurer(s) shall be liable for loss, destruction of or damage to, or the cost of removal of, sound property at the Premises for the purpose of preventing or diminishing imminent damage by, or inhibiting the spread of, fire or any other peril insured against under this Policy.

2.

- a. Physical loss, destruction of or damage to the Property Insured;
- b. any legal liability of whatsoever nature;

directly or indirectly caused by or contributed to, by or arising from:

- i. ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;

Note: For the purpose of this exclusion only, "combustion" shall include any self-sustaining process of nuclear fission;

- ii. nuclear weapons materials.

3. Physical loss, destruction or damage occasioned by or happening through:

- a. flood, which shall mean the inundation of normally dry land by water escaping or released from the normal confines of any natural watercourse or lake (whether or not altered or modified), reservoir, canal or dam;
- b. water from or action by the sea, tidal wave or high water.

Provided that Perils Exclusions 3.(a.) and 3.(b.) shall not apply if loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance.

4. Physical loss, destruction or damage occasioned by or happening through:

- a. moths, termites or other insects, vermin, rust or oxidation, mildew, mould, contamination or pollution, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defects, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting from them);
- b. wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good;
- c. error or omission in design, plan or specification or failure of design;
- d. normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration;
- e. faulty materials or faulty workmanship.

Provided that these Exclusions 4.(a.) to (e.) shall not apply to subsequent loss, destruction of or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

5. Physical loss, destruction or damage occasioned by or happening through:

- a. incorrect siting of building consequent upon:
  - i. error in architectural design or specification;
  - ii. faulty workmanship; or
  - iii. non-compliance by the Insured (or anyone acting on behalf of the Insured) with the necessary permits issued by Government, Public or Local Authorities;
- b. demolitions ordered by Government or Public or Local Authorities due to failure on the part of the Insured or their agents to obtain the necessary permits required.

6. Physical loss, destruction or damage occasioned by or happening through:

- a. theft of property (other than Money in transit) in the open air;
- b. unexplained or inventory shortage, disappearance resulting from clerical or accounting errors, shortage in the supply or delivery of materials to or from the Insured;

c.

- i. spontaneous combustion;
- ii. spontaneous fermentation or heating or any process involving the direct application of heat.

Provided that Perils Exclusions 6.(c).(i.) and 6.(c).(ii.) shall be limited to the item or items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation or heating or process involving the direct application of heat.

7. Physical loss, destruction or damage occasioned by or happening through:

a.

- i. fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting, data corruption, unauthorised amendment of data and erasure by electronic or non-electronic, means involving the Property Insured by the Insured or any employee(s) of the Insured acting alone or in collusion with any other person(s);
- ii. access by any person(s) other than the Insured or the Insured's employee(s) to the Insured's computer system via data communication media that terminate in the Insured's computer system.

Provided that this exclusion shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of the Insured;

b.

- i. the cessation of work whether total or partial;
  - ii. the cessation, interruption or retarding of any process or operation;
- as a result of strikes, labour disturbances or locked out workers.

Provided that Perils Exclusions 7.(b).(i.) and 7.(b).(ii.) shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons;

c. erosion, subsidence, earth movement or collapse resulting therefrom;

d. kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat;

Provided that Exclusions 7.(a.) to (d.) shall not apply to subsequent loss, destruction or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion;

8. Any legal liability of whatsoever nature other than as provided;

9. Consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as provided in Section 2.

# MEMORANDA

Except to the extent that this Policy is modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

## **Amount of Policy not Reduced by Loss**

The insurance under each section and/or item of this Policy and the Indemnity Period shall be automatically reinstated in the event of any loss in consideration of the payment by the Insured of a pro-rata additional premium calculated on the amount of the loss settlement at the rate(s) agreed for the Period of Insurance.

## **Event**

Only for the purpose of the application of any deductible: all loss, destruction or damage resulting from earthquake, occurring during each period of 72 consecutive hours shall be considered as one event whether such earthquake is continuous or sporadic in its sweep and/or scope and the loss, destruction or damage was due to the same seismological conditions. Each event shall be deemed to have commenced on the first happening of any such loss, destruction or damage not within the period of any previous event.

## **Subrogation Waiver**

The Insurer(s) agree(s) to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:

- a. any corporation or organisation (including its directors, officers, employees or servants) owned or controlled by any named Insured or subsidiary to any named Insured or any co-owner of the property insured;
- b. any Insured named or described by this Policy (including its directors, officers, employees or servants).

## **Adjustment of Premium**

- a. The Premium shown is provisional and is calculated on the Declared Values of:
  - i. Property Insured;
  - ii. Gross Profit and Insured Pay-Roll;on the day of commencement of each Period of Insurance.
- b. The Insured undertakes to declare to the Insurer(s) within a reasonable time after the day of expiry of the Period of Insurance:
  - i. the value of the Property Insured on the day of expiry of the Period of Insurance. For the purpose of this declaration, stock in trade and/or merchandise shall be taken at its average value during the Period of Insurance;
  - ii. the amount of the Gross Profit earned and Pay-Roll paid, in accordance with the cover afforded in the respective items of Section 2, in the course of the Business during the accounting period of 12 months most nearly concurrent with the Period of Insurance;
- c. The provisional premium shall be adjusted by payment to the Insurer(s) of an additional premium or by allowance to the Insured of a return premium, as the case may be, calculated at the agreed rate on:
  - i. fifty per cent (50%) of the difference between property declared in accordance with Clauses (a.)(i.) and (b.)(i.);
  - ii. the full agreed rate on the difference between the amounts declared under Clauses (a.)(ii.) and (b.)(ii.).
- d. It is agreed to make allowance for any abnormal fluctuation in values and to charge a premium commensurate with the risk; such premium to be agreed between the parties to this agreement.
- e. The Declaration of Values at the expiry of the Period of Insurance declared in accordance with this memorandum shall not be reduced as the result of loss, destruction or damage in respect of which a claim has been paid or is payable under this Policy.

# CONDITIONS

## 1. Misrepresentation and Non-Disclosure

If the Insured:

- a. failed to disclose any matter which the Insured was under a duty to disclose to the Insurer(s); or
- b. made a misrepresentation to the Insurer(s) before this Policy was entered into;

and if the Insurer(s) would not have entered into this Policy for the same premium and on the same terms and Conditions expressed in this Policy but for the failure to disclose or the misrepresentation, then:

- c. the liability of the Insurer(s) in respect of any claim will be reduced to an amount to place the Insurer(s) in the same position in which the Insurer(s) would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
- d. if the non-disclosure or misrepresentation was fraudulent, the Insurer(s) may avoid this Policy.

## 2. Alteration

The Insurer(s) shall not be liable for loss, destruction of or damage to any property insured caused or contributed to by any alteration after the commencement of this Policy:

- a. by removal of such Property from the Premises other than as provided under the terms of Property Exclusion 1;
- b. in the trade or processes of manufacture carried on at the Premises or when the nature of the occupation or other circumstances affecting the Premises and/or the Insured's property shall be changed in such a way as to increase the risk of loss, destruction or damage;
- c. where any premises containing any property insured shall become unoccupied, and so remain for a period of more than thirty (30) days; or
- d. where the Insured's interest ceases except by will or the operation of law.

Provided that any such alteration, upon coming to the knowledge of the Insured's officer responsible for insurance, shall be notified as soon as reasonably practicable to the Insurer(s) and, if agreed to by the Insurer(s) in writing, an appropriate additional premium paid if required.

## 3. Sprinkler Installations

Applicable to owned premises or installations for which the Insured is responsible.

The Insured warrants that in such of the Premises as are protected or as are required by law to be protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the Premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

The Insured further warrants that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS1851 (Part 3 – Automatic Sprinkler Installation) by the installing engineers or firm or, failing this, by a person or organisation who must be approved by the Insurer(s) to carry out such maintenance.

Notice of all alterations and additions to the automatic sprinkler installation shall be given by the Insured to the Insurer(s) as soon as reasonably practicable.

## 4. Other Insurance

The Insured shall give written notice as soon as practicable to the Insurer(s) of any other insurance or insurances effected covering the Property Insured.

## 5. Cancellation

- a. This Policy may be cancelled at any time at the request of the Insured, in which case the Insurer(s) will retain the customary short-period rate for the time this Policy has been in force.
- b. The Insurer(s) may also cancel this Policy by giving the Insured written notice to that effect where:
  - i. the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
  - ii. the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
  - iii. the person who was the Insured at the time when this Policy was entered into made a misrepresentation to the Insurer(s) during the negotiations for this Policy but before it was entered into;
  - iv. the Insured or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the Premium;
  - v. the Insured has made a fraudulent claim under this Policy or any other policy of insurance (whether with the Insurer(s) or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
  - vi. the Insured failed to notify the Insurer(s) of any specific act or omission where such notification is required under the terms of this Policy; or
  - vii. the Insured acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the Insurer(s) to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
- c. The Insurer(s) notice of cancellation takes effect at the earlier of the following times:
  - i. The time when another policy of insurance between the Insured and the Insurer(s) or some other insurer, being a policy that is intended by the Insured to replace this Policy, is entered into; or
  - ii. 4:00pm on the thirtieth business day after the day on which notice was given to the Insure.

In the event that the Insurer(s) cancel(s) this Policy, the Insurer(s) will repay to the Insured a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

## 6. Notification of Claims

On the discovery of any loss, destruction or damage giving rise to a claim, the Insured shall as soon as reasonably practicable give notice to the Insurer(s) and shall as soon as reasonably practicable deliver to the Insurer(s) a claim in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged having regard to their value at the time of the damage, loss or destruction, together with details of any other insurances on any property insured under this Policy.

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business or to avoid or diminish the loss and shall also deliver to the Insurer(s) a statement in writing of any claim certified by the Insured's auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected with the claim.

Subject to the provisions of the *Insurance Contracts Act 1984* (Cth), no claim under this Policy shall be payable unless the Insured has complied with the terms of this condition.

## 7. Fraud

If any claim be in any respect fraudulent or if any fraudulent means be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the wilful act or with the connivance of the Insured, the Insurer(s), without prejudice to any other right(s) the Insurer(s) might have under this Policy, may be entitled to refuse to pay such claim.



## **8. Reinstatement**

If the Insurer(s) elect(s) or become(s) bound to reinstate or replace any property, the Insured shall at the Insured's own expense, produce and deliver to the Insurer(s) all such plans, documents and information as the Insurer(s) may reasonably require. The Insurer(s) shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend more than the applicable Limit of Liability.

## **9. Insurer(s) Rights**

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Policy the Insurer(s) and every person authorised by the Insurer(s) may, without incurring any liability, and without diminishing the right of the Insurer(s) to rely upon any Conditions of this Policy, enter, take or keep possession of any building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to the Insurer(s) any of the property insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

This condition shall be evidence of the leave and licence of the Insured to the Insurer(s) so to do. If the Insured or anyone acting on the Insured's behalf shall not comply with the requirements of the Insurer(s) or shall hinder or obstruct the Insurer(s) in doing any of the abovementioned acts, then all benefits under this Policy shall be forfeited. The Insured shall not in any case be entitled to abandon any property to the Insurer(s) whether taken possession of by the Insurer(s) or not.

## **10. Subrogation**

- a. Any person claiming under this Policy shall, at the request and at the expense of the Insurer(s), do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Insurer(s) for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the Insurer(s) shall be or would become entitled or subrogated upon the Insurer(s) paying for or making good any destruction or damage under this Policy or paying any moneys under Section 2 of this Policy.
- b. If the Insurer(s) make(s) any recovery as a result of such action, the Insured may only recover from the Insurer(s) any amount by which the amount recovered by the Insurer(s) exceeded the amount paid to the Insured by the Insurer(s) in relation to the loss.

## **11. Precautions to Prevent Loss**

The Insured shall take all reasonable precautions to prevent loss, destruction or damage to the property insured by this Policy.

## **12. Insured's Action after Theft or Damage**

The Insured shall, upon becoming aware of any loss by theft or of any wilful or malicious damage which may give rise to a claim under this Policy, take all reasonably practicable steps to trace and recover any missing property and to discover by whom the property was stolen or damaged, including reporting the matter to the police and any other responsible authority.

## **13. Termination of Cover under Section 2**

Notwithstanding anything stated to the contrary, if during any period in respect of which this Policy is in force:

- a. the Insured ceases to carry on the Business or any part of the Business is disposed of, permanently discontinued or the Insured's interest in the Business (in part or in whole) ceases otherwise than by death; or
- b. the Insured (being a corporation) is placed in liquidation (or provisional liquidation), is placed under Official Management, enters into a Scheme of Arrangement, has Receivers and/or Managers appointed over its assets or undertaking(s); or
- c. the Insured (being a natural person) becomes bankrupt or enters into a scheme of arrangement or compromise or composition with creditors;

then the insurance cover provided under Section 2 of this Policy in respect of such Business or Insured shall automatically and forthwith cease.

In the event that the Indemnity Period having begun to run in respect of any claim relating to such Business in part or in whole, the Indemnity Period shall be at an end, unless its continuance be admitted by memorandum signed for or on behalf of the Insurer(s).

#### **14. Observance of Terms and Conditions**

The due observance and fulfilment of these Conditions and the other terms of this Policy by the Insured is required by the Insurer(s) and to the extent that a breach of these Conditions by the Insured causes loss to the Insurer(s), the Insurer(s) may refuse to make any payment under this Policy to the extent of any prejudice the Insurer(s) may suffer as a result of the breach.

#### **15. Progress Payments**

Provided that liability has been admitted, progress payments on account of any claim may be made to the Insured at such intervals and for such amounts as may be agreed upon production of a report by the Loss Adjuster (if appointed) provided such payment(s) shall be deducted from the amount finally determined upon adjustment of the claim.

#### **16. Headings**

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 such headings.

#### **17. Service of Suit**

The Insurer(s) agree that:

- a. if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Insurer(s) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b. any summons, notice or process to be served upon the Insurer(s) may be served upon:

Lloyd's Underwriters' General Representative in Australia

Suite 1603

Level 16

1 Macquarie Place

Sydney NSW 2000

**Phone:** (02) 8298 0700

who has authority to accept service on behalf of the Insurer(s);

- c. if a suit is instituted against any of the Insurer(s), all Insurer(s) 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 NOTICE should be given as soon as reasonably practicable to Miramar.

#### **18. 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.



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