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AUSTRALIA UNDERWRITING

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ABN 36 644 863 267 | AFSL 539612

AU EXCESS LIABILITY AUSTRALIAN POLICY WORDING (FOLLOW FORM) – 2024

Check that this placement summary, terms and policy wording meets with your requirements

AU CASUALTY DIVISION:

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AU - Insurance Placements Made Easy, Our Business.

AU EXCESS LIABILITY AUSTRALIAN WORDING (FOLLOW FORM) – 2024

I INSURING CLAUSE

Subject to the exclusions, conditions and other terms of this Policy, the Insurer(s) agree to indemnify the “Insured” in respect of their liability to pay compensation (including claimants’ costs and expenses) for claims arising out of personal injury and/or property damage and/or advertising liability occurring during the “Period of Insurance” all as covered by and defined in the Policy specified in the “Schedule” and issued by the “Primary / Underlying Insurer(s)” stated therein.

II LIMITS

PROVIDED ALWAYS THAT:

- (a) liability attaches to the Insurer(s) only after the “Primary / Underlying Insurer(s)” have paid or have been held liable to pay the full amount of their respective Ultimate Net Loss liability as specified in the “Schedule” and designated “Primary / Underlying Limits(s)” and the Insurer(s) shall only be liable for a further amount of Ultimate Net Loss as is set forth in the “Schedule” under the designation “Excess Limit(s)” in excess of the “Primary / Underlying Limit(s)”.
- (b) Neither the inclusion of more than one entity in the name of the “Insured” nor the addition of any additional insured(s) under this Policy shall, in any way, operate to increase the Insurer(s) limit of liability beyond that provided for under “Excess Limit(s)” in the “Schedule”.

III DEFINITIONS

- (a) Ultimate Net Loss: The words “Ultimate Net Loss” shall be understood to mean the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and for other valid and collectible insurances, excepting however the policy(ies) of the “Primary / Underlying Insurer(s)”, and shall exclude all Costs.
- (b) Costs: The word “Costs” shall be understood to mean investigation, adjustment and legal expenses (excluding, however, all office expenses of the “Insured”, all expenses for salaried employees of the “Insured” and general retainer fees for counsel normally paid by the “Insured”).

IV CONDITIONS

- (a) INCURRING OF COSTS: In the event of a claim or claims arising which appear likely to exceed the “Primary / Underlying Limit(s)”, no Costs shall be incurred by the “Insured” without the written consent of the Insurers.
- (b) APPORTIONMENT OF COSTS: Costs incurred by or on behalf of the “Insured” with the written consent of the Insurers and for which the “Insured” is not covered by the “Primary / Underlying Insurer(s)”, shall be apportioned as follows:
 - (i) should any claim or claims become adjustable prior to the commencement of trial for not more than the “Primary / Underlying Limit(s)”, then no such costs shall be payable by the Insurers;
 - (ii) should, however, the amount for which the said claim or claims may be so adjustable exceed the “Primary / Underlying Limit(s)” then the Insurers, if they consent to the proceedings continuing, shall contribute to the Costs incurred by or on behalf of the Insured in the ratio that their proportion of the Ultimate Net Loss as finally adjusted bears to the whole amount of such Ultimate Net Loss;
 - (iii) in the event that the “Insured” elects not to appeal a judgment in excess of the “Primary / Underlying Limit(s)”, the Insurers may elect to conduct such appeal at their own cost and expense and shall be liable for the court costs and interest incidental thereto, but in no event shall the total liability of the Insurers exceed the limit of liability as provided for herein, plus the expenses of such appeal.

- (c) **APPLICATION OF RECOVERIES:** All recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured and Insurers, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not payable until the “Insured(s)” Ultimate Net Loss has been finally ascertained.
- (d) **ATTACHMENT OF LIABILITY:** Liability to pay under this Policy shall not attach unless and until the “Primary / Underlying Insurer(s)” shall have admitted liability for the “Primary / Underlying Limit(s)” or unless and until the “Insured” has by final judgment been adjudged to pay an amount which exceeds such “Primary / Underlying Limit(s)” and then only after the “Primary / Underlying Insurer(s)” have paid or been held liable to pay the full amount of the “Primary / Underlying Limit(s)”.
- (e) **MAINTENANCE OF UNDERLYING INSURANCE:** This Policy is subject to the same terms, Definitions, Exclusions and Conditions (except as regards the premium, the obligation to investigate and defend, the renewal agreement (if any), the amount and limits of liability other than any deductible or self-insurance provisions and except as otherwise provided herein) as are contained in or as may be added to the policy of the “Primary / Underlying Insurer(s)” prior to the happening of an occurrence for which claim is made hereunder. Should, however, any alteration be made in the premium for the policy of the “Primary / Underlying Insurer(s)” during the currency of this Policy, Insurers reserve the right to adjust the premium hereon accordingly.

It is a condition of this Policy that the policy(ies) of the “Primary / Underlying Insurer(s)” shall be maintained in full effect during the currency of this Policy except for any reduction of the aggregate limits contained therein solely by payment of claims in respect of occurrences during the “Period of Insurance”.

In the event of the Insured’s failure to maintain the “Primary / Underlying Policy/ies” in full force and effect and except with respect to the aforementioned aggregate reduction, coverage hereunder shall not be invalid, but shall apply to the same extent that it would have applied had there been compliance with this condition.

In the event of reduction of the aggregate limits of liability of the Primary / Underlying insurance, this Policy shall pay the excess of the reduced aggregate limit. In the event of exhaustion of the aggregate limits of liability of the Primary / Underlying insurance this Policy shall continue in force as Primary insurance and the deductible set forth under the said Primary / Underlying insurance shall apply to this Policy.

- (f) **CANCELLATION:** The “Insured” may cancel this Policy by giving thirty (30) days’ notice in writing to the Insurers.

After cancellation by the “Insured” the premium for the period to cancellation shall be adjusted on a pro-rata basis and the “Insured” shall be allowed a return premium of ninety (90) per cent of the premium amount so calculated.

The Insurers may cancel this Policy in any of the circumstances set out in Sections 60 and 61 of the Insurance Contracts Act, 1984 (as amended).

- (g) **NOTIFICATION OF CLAIMS:** The “Insured” shall give written notice as soon as reasonably practical to the insurance intermediary through whom you arranged this insurance in the first instance of any claim made against the “Insured” (or any specific event or circumstance that may give rise to a claim being made against the “Insured”) which is likely to exceed 25% of the total “Primary / Underlying Limit(s)”.

ATTACHING TO AND FORMING PART OF THIS CONTRACT

TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes liability for loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

NMA2951 (Amended)
14/07/2002

DROP DOWN EXCLUSION

It is understood and agreed that coverage hereon is excluded in respect of sub-limited coverages within the Primary or Underlying policy(ies).

SANCTION LIMITATION AND EXCLUSION CLAUSE

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

LMA3100A
05 October 2023

CYBER AND DATA LIMITED EXCLUSION

1. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:
 - 1.1. **Cyber Act** or **Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**; or
 - 1.2. loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **Data**, including any amount pertaining to the value of such **Data**,regardless of any other cause or event contributing concurrently or in any other sequence thereto, unless subject to the provisions of paragraph 2.
2. Subject to all the terms, conditions and exclusions contained in this Policy or any endorsement thereto, clause 1.1 of this Endorsement shall not apply in respect of any actual or alleged liability for and/or arising out of:
 - 2.1. any ensuing third party bodily injury (other than mental injury, mental anguish or mental disease); or

2.2. any ensuing physical damage to or destruction of tangible third party property,

resulting from or arising out of a **Cyber Incident**, unless that **Cyber Incident** is caused by, contributed to by, resulting from, arising out of or in connection with a **Cyber Act**.

Nothing contained in the foregoing shall provide any coverage for any action taken in controlling, preventing, suppressing or remediating a **Cyber Incident** or a **Cyber Act**.

3. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
4. If the Underwriters allege that by reason of this endorsement loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

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:

- (a) 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
- (b) 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.

Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

LMA5469A
12 October 2022

INSURANCE COUNCIL OF AUSTRALIA'S GENERAL INSURANCE CODE OF PRACTICE

This Insurance is not subject to the Insurance Council of Australia's General Insurance Code of Practice.

Within the clause set out below, the term 'Wholesale Business', shall carry the meaning ascribed to it within the Insurance Council of Australia's General Insurance Code of Practice.

The following clause applies to 'Wholesale Business':

AUSTRALIAN LITIGATION DISPUTE RESOLUTION ENDORSEMENT

The Insurers hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Insurer 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.
- (ii) Any summons notice or process to be served upon the Insurers may be served upon:

Lloyd's Underwriters' General Representative in Australia
Chris Mackinnon Suite 1603 Level 16

1 Macquarie Place
Sydney NSW 2000

Telephone Number: +61 (0) 2 8298 0700
Mobile: +61 (0)431 944 132

Email: Christopher.Mackinnon@lloyds.com

who has authority to accept service and to enter an appearance on the Insurer's behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on the Insurer's behalf.

(iii) If a suit is instituted against any one of the Insurers, all Insurers hereon will abide by the final decision of such Court or any competent Appellate Court.

The amount of Premium specified herein is the amount due to the Insurers and any commission allowed by them is to be regarded as remuneration of the insurance intermediary placing this Insurance.

In the event of a claim arising under this Insurance notice should be given as soon as reasonably practicable to the insurance intermediary through whom you arranged this insurance in the first instance.

Subject otherwise to the Terms, Conditions, Limitations and Exclusions of the Policy

AUSTRALIAN DISPUTE RESOLUTION

This Insurance is not subject to the provisions of the Insurance Council of Australia's General Insurance Code of Practice.

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 Australia Underwriting/Brokers in the first instance:

Australia Underwriting Pty Ltd
Email: complaints@australiaunderwriting.au
Toll Free: 1300 287 475 (AU RISK)
Level 14, 333 Collins Street
Melbourne 3000

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
Telephone: (02) 8298 0783
Post: 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:

Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: 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 notice should be given as soon as possible to:

Australia Underwriting Pty Ltd
Email: Claims@australiaunderwriting.au
Toll Free: 1300 287 475 (AU RISK)
333 Collins Street Level 14 Melbourne 3000

Explanatory Note (not forming part of this [document]):

1. *It is not compulsory for the Lloyd's General Representative to accept service on behalf of Underwriters. If Underwriters require a local law firm to be named as authorised to accept service, their details should replace those in italics above. This [document] is for use in respect of insurance business not within the scope of the Australian General Insurance Code of Practice.*
 2. *This wording replaces NMA1854, LMA5135, LMA5136 and LMA5137.*
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IMPORTANT NOTICE

MATERIAL FACTS

It is your duty to disclose, on behalf of your client, all material facts to insurers via us. Neither we nor the insurer is obliged to make enquiries and you must advise your client of the requirement to disclose all material information to insurers before the contract is concluded, at the time of any variation of the contract and upon renewal. You must also advise your client of the requirement to advise any such facts or changes to such facts during the currency of the contract, as these may also need to be disclosed. A material fact is a fact which may influence an insurer's judgement in their assessment of a risk, including its terms and pricing. If you are in any doubt as to whether a fact is material, we recommend that it be disclosed. Failure to disclose material facts may entitle insurers to avoid the contract from inception.

WARRANTIES

We would draw your attention to any warranties detailed in this placement. Any breach of a warranty may prejudice your rights under the contract and it may entitle insurers to terminate the contract from the date of that breach or some instances from inception. Please note warranties may exist in the contract using other terminology and without reference to the word "warranty".

CONDITIONS PRECEDENT

Please ask the insured to take particular note of any conditions precedent that appear in the contract.

If a condition precedent to the validity of this contract or the commencement of the risk is not complied with, the insurer will not come on risk. If a condition precedent to the insurer's liability under this contract is not

complied with, the insurer will not be liable for the loss. A condition precedent may exist in the contract using other terminology and without reference to the words "conditions precedent".

SUBJECTIVITIES

If the cover provided is granted by insurers subject to certain requirements, failure to comply may result in cover not being in place.

PREMIUM PAYMENT

Premium is due to Insurers 30 days from inception; to satisfy premium settlement terms set by Insurers, Australia Underwriting should be in receipt of cleared funds in advance of when the premium is due to Insurers.

Please contact us immediately if the insured is unable to comply with any warranty, condition precedent or subjectivity, or ask us if they require any further clarification.

THIS POLICY HAS BEEN PLACED THROUGH

Australia Underwriting Pty Ltd
ABN 36 644 863 267 | AFSL 539612
333 Collins Street Level 14, Melbourne, Australia

Australia Underwriting Pty Ltd is an underwriting agency who has placed the policy through Lloyd's Intermediary with:

Certain Underwriters at Lloyd's of London
1 Lime Street, London EC3M 7HA UK

REMUNERATION

We are normally remunerated by commission or brokerage earned on insurance policies placed and/or by a fee negotiated and agreed with you. Unless we have specifically agreed otherwise, and subject to regulatory requirements, we earn our entire brokerage or commission or fees when we place the insurance policy for you.

As this remuneration is earned on placement, we will be entitled to retain it (or to receive it where unpaid) even if insurance policies placed by us are subsequently terminated, amended or cancelled. You may not get back the full amount you paid.

DUTY OF DISCLOSURE NOTICE (AUSTRALIA) (Written Notice for Contracts of general insurance, other than eligible contracts) 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 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.

END OF DOCUMENT



Risk Placements Made Easy

AUSTRALIA UNDERWRITING

Insurance | Risk Management | Placement

ABN 36 644 863 267 | AFSL 539612

AU GENERAL LIABILITY AUSTRALIAN BROADFORM POLICY WORDING – 2024

Check that this placement summary, terms and policy wording meets with your requirements

AU CASUALTY DIVISION:

Email Property@australiaunderwriting.au
Distribution@australiaunderwriting.au
SME@australiaunderwriting.au

Phone +61 3 706 44 800

Toll Free 1300 28 7475 | 1300 AU RISK

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