

# Commercial Crime

## Policy wording





### 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.

### Unusual terms

Please read General Condition 1 and 2 (together with your Schedule) carefully as these sections detail the limit of liability.

This policy has an individual limit of liability as specified in the Schedule (which is an aggregate amount). As this policy can be purchased as part of a package of policies, this policy is also subject to a **Combined Policy Aggregate Limit of Liability**. The **Combined Policy Aggregate Limit of Liability** is the maximum amount that the **insurer** will pay for all loss payable under all the policies you have purchased from the **insurer**.

The limit of liability for this policy is a sub-limit of the **Combined Policy Aggregate Limit of Liability** (and is not in addition to it). Once the limit of liability for each individual policy is exhausted then the insurer will have no liability in excess of that limit of liability even if the **Combined Policy Aggregate Limit of Liability** has not been exhausted.

Once the **Combined Policy Aggregate Limit of Liability** has been exhausted this will mean that no further loss is payable by the insurer even if individual limit of liability for a particular policy (including this one) has not been exhausted.

If you have any questions about this then please contact your broker.

Please also note General Condition 14, which prevents the **insurer** from providing cover, benefits or paying claims where that would expose the **insurer** to sanctions, prohibitions or restrictions.

### Privacy

Delta Insurance Australia Pty Ltd is committed to protecting your privacy. We have adopted the Australian Privacy Principles (**APPs**) contained in the Privacy Act 1988 (Cth) (**Privacy Act**). The APPs govern the way in which we collect, use, disclose, store, secure and dispose of your Personal Information.

Any Personal Information collected about you will only be used for the purposes indicated in Delta Insurance Australia's Privacy Policy and only in the instance where you have provided consent to Delta Insurance Australia, or as otherwise required by law.

Delta Insurance Australia will need to collect personal information from you or your insurance agent to assist with assessing your risk in order to provide the insurance that you are applying for.

### Use of your Information

The information collected will be used for the purpose in assisting with underwriting and administering your insurance cover on behalf of the Insurers Delta Insurance Australia represents. Where reasonable and practicable to do so, Delta Insurance Australia, will collect your Personal Information only from you. In some cases, to verify your identity, Delta Insurance Australia may need to obtain or verify your Personal Information from a third party.

Information collected can also be used towards improving Delta Insurance Australia's customer service, product data research analysis and to advise you of any other products and services that may be of interest to you.

### Security of your information

Your Personal Information is stored in a manner that reasonably protects it from misuse and loss and from unauthorised access, modification or disclosure.

When your Personal Information is no longer needed for the purpose for which it was obtained, Delta Insurance Australia, will take reasonable steps to destroy or permanently de-identify your Personal Information. However, most of the Personal Information is or will be stored in client files which will be kept, by Delta Insurance Australia for a minimum of 7 years.

Whilst underwriting and reviewing your policy, Delta Insurance Australia may share your information with your insurance agent, claims assessors, and to third party administrators providing related services to your insurance policy. Your information will be provided to the Insurer's we represent, based in the UK and whose details we will provide to you when issuing an insurance quotation.

By providing Delta Insurance Australia with your Personal Information, you are consenting to the collection, use, disclosing and or processing of your personal data for the purposes as described above.

#### Further Information

Delta Insurance Australia understands that you may not want to share with us the information which is requested to review your insurance policy, and this may affect our ability in providing and assessing an insurance policy.

For more information regarding how Delta Insurance Australia collects, stores, uses and discloses your information, please read our privacy policy located at [www.deltainsurance.com.au](http://www.deltainsurance.com.au) or alternatively you can contact us at (07) 3017 4720.

THIS POLICY SETS OUT THE TERMS UPON WHICH THE **INSURER** AGREES TO INSURE THE **INSURED** IN CONSIDERATION OF THE PAYMENT OF, OR AGREEMENT TO PAY, THE PREMIUM. THE INSURING CLAUSES AND COVERAGE EXTENSIONS ARE SUBJECT TO ALL TERMS, CONDITIONS, RESTRICTIONS AND LIMITATIONS OF THIS POLICY.

### A. INSURING CLAUSES

#### 1. Employee crime

The **insurer** will reimburse the **insured** for **loss** which is first **discovered** during the **policy period** and which results directly from the **dishonest act of an employee**.

#### 2. Third party crime

The **insurer** will reimburse the **insured** for **loss** which is first **discovered** during the **policy period** and which results directly from:

- a **forgery and counterfeiting;**
- b **fund transfer fraud;**
- c **social engineering fraud,**
- d **physical loss of or damage to property;**
- e **extortion;**

f **computer malware,**

by a **third party**.

### B. COVERAGE EXTENSIONS

The **insurer** will reimburse or pay on behalf of the **insured** for:

- 1 **data security breach costs, software removal or reconstitution costs, legal costs, audit costs and reputation costs** necessarily incurred by the **insured** with the **insurer's** prior written consent, following and in connection with a direct financial loss sustained by the **insured** and payable by the **insurer** under this policy.
- 2 **corporate identity fraud costs** necessarily incurred by the **insured** with the **insurer's** prior written consent.
- 3 interest that would have been receivable by the **insured** but was not received following and as a result of a direct financial loss sustained by the **insured** and payable by the **insurer** under this policy.
- 4 **client property loss** which is first **discovered** during the **policy period**, but only to the extent the **insured** is legally liable to the **client** for such **client property loss**.

### C. COVERAGE RESTRICTIONS

The **insurer** will not be liable to make any payment under this policy for that part of any **loss**:

#### 1. Directors and partners dishonesty

arising out of, based upon or attributable to, in whole or in part, any dishonest, fraudulent, malicious or criminal act of any director or partner of the **insured**, except to the extent that such director or partner is deemed to be an **employee**.

#### 2. Dishonest act of an employee

arising out of, based upon or attributable to, directly or indirectly, any dishonest, fraudulent, malicious or criminal act of any **employee**.

This Coverage Restriction will not apply to Insuring Clause 1 (employee crime) or Coverage Extensions 1, 2, 3 or 4.

#### 3. Extortion, kidnap or ransom

arising out of, based upon or attributable to extortion or kidnap or ransom.

This Coverage Restriction will not apply to Insuring Clause 1 (employee crime), 2(e) (extortion) or **software removal or reconstitution costs** covered under Coverage Extension 1.

#### 4. Fines, penalties or damages

comprising fines, penalties or damages of any type except direct compensatory damages arising out of a **loss** covered by this policy.

#### 5. Indirect loss

- a which is indirect or consequential except where covered under Coverage Extensions 1, 2 or 3;
- b which represents loss or deprivation of income or profits (including interest and dividends), except for interest covered under by Coverage Extension 3; or
- c arising out of, based upon or attributable to:
  - i business interruption or loss of computer time or use;
  - ii mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, **electronic media** failure or breakdown or any malfunction or error in programming; or
  - iii errors or omissions in processing.

#### 6. Litigation costs and loss establishment fees

which is incurred in establishing the existence or amount of **loss** covered under this policy, or in prosecuting or defending any legal proceeding, or incurred as a party to any legal proceeding.

This Coverage Restriction will not apply to Coverage Extensions 1 and 2.

#### 7. Prior discovery

which was **discovered** prior to the inception date of this policy.

#### 8. Profit, loss or inventory computation

where the proof of such **loss** is solely dependent upon:

- a a profit and loss calculation or comparison;
- b a comparison of inventory records with an actual physical count; or
- c bills of lading, warehouse receipts, shipping documents, trust receipts or any other bill document or receipt similar in nature.

#### 9. Property damage

arising out of, based upon or attributable to, directly or indirectly, loss, damage or destruction:

- a of or to any premises however caused, except damage to premises caused by the actual or attempted burglary, robbery or theft of tangible **property** from those premises, and the damage is not caused by fire;
- b of or to any property whatsoever by reason of wear, tear, gradual deterioration, moth or vermin;
- c as a result of looting, or any act of nature; or
- d arising out of, based upon or attributable to ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component.

#### 10. War and terrorism

- a arising out of, based upon or attributable to, directly or indirectly, war, invasion, act of foreign enemy, hostile operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, riot or civil commotion amounting to a popular uprising, military or takeover of power or martial law.
- b arising out of, based upon or attributable to, directly or indirectly, terrorism except where the **loss** results directly from any actual or attempted burglary, robbery, hold-up, theft or larceny.

This Coverage Restriction only applies to Insuring Clause 2(d) (physical loss of or damage to property); 2(e) (extortion) or Coverage Extensions 1 and 2.

### D. CLAIM PROVISIONS

#### 1. Discovery and notification of loss

- a Upon **discovery** of a **loss**, the **insured** must:
  - i give to the **insurer** written notice of that **loss**, as soon as practicable following **discovery**, but in no event later than 60 days after the end of the **policy period**, or within any applicable **discovery period**; and

- ii file a detailed proof of **loss** in a format agreed with the **insurer** within 6 months of such written notice, or within a further period as agreed in writing by the **insurer**.

In the event that the **insured** is prevented from notifying any **loss** to the **insurer** (after the insured has sought consent to do so) due to any legal or regulatory prohibition restricting them from doing so, the **insured** must provide full details of the **loss** to the **insurer** as soon as such restriction is lifted.

If the **insured** does not give notice to the **insurer** in compliance with this provision, the **insurer** will have no liability under this policy in respect of that **loss**.

**b** A **single event** will be treated by the **insurer** as having been notified when the first of such **losses** was notified to the **insurer**, irrespective of whether or not the **insurer** has formally accepted the notice.

**c** All notices must be sent either by email or mail to the details specified on the Schedule.

## 2. Legal defence

The **insurer** will be entitled to participate fully in any legal proceedings and the incurring of **legal costs** where it is reasonably likely to involve the **insurer** making any payment under this policy.

If the **insured** admits liability or compromises or settles any demand, claim, suit or legal proceeding, or incurs any **legal costs**, without the **insurer's** prior written consent, this policy will afford no cover in connection with that admission, demand, claim, suit, legal proceeding or **legal costs**.

## 3. Allocation

Where a **loss** involves both parties covered and not covered and/or matters covered and not covered by this policy, the **insurer's** liability is limited to the proportion of the **claim, insured event, or loss** which represents a fair and proper allocation between the **insured** and the **insurer**, and/or matters covered and not covered by this policy, taking into account the relative legal and financial exposures attributable to the parties and/or matters covered and not covered by this policy.

In the circumstances where the **insured** and insurer cannot agree on an allocation between covered allegations and allegations that are

not covered, the dispute shall be submitted to a binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association or the State or Territory of Australia where this policy is issued.

## 4. Cooperation

The **insured** will:

- a** give all information and assistance to the **insurer** as it may reasonably require to enable it to investigate any matter notified under this policy;
- b** cooperate with the **insurer** in relation to any **loss** notified under this policy; and
- c** take all reasonable steps to prevent or minimise any **loss**.

Except where expressly provided for in this policy, these steps will not be paid for by the **insurer**.

## 5. Basis of valuation

- a** In calculating the amount payable under this policy for any **loss**, deductions will be made in respect of recoveries received from any source. The **retention** will apply to the net figure after making these deductions, but nothing in this clause will be construed to mean that such **loss** is not payable under this policy until the net figure has been ascertained
- b** In no event shall the **insurer** be liable for more than:
  - i** the actual market value of **securities**, foreign funds, currencies or precious metals which will be determined by their closing market value on the last business day prior to the **loss** being **discovered** or, if less, the actual cost of replacing the **securities**;
  - ii** the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the **insured** in order to reproduce physical records;
  - iii** the cost of blank electronic data processing media (such as memory sticks, USB drives or external hard drives) and the cost of labour for the actual transcription or copying of electronic data furnished by the **insured**, in order to reproduce that electronic data, however if that electronic data cannot be

reproduced and represents **securities** or other financial instruments of value, then the **loss** will be valued as indicated at subparagraphs (i) and (iv) of this clause (b);

- iv the actual cash value of other property at the time the **loss** was **discovered**, or the actual cost of repairing or replacing the property with property or material of like quality or value, whichever is less;
  - v the value of subscription, redemption, conversion or deposit privileges immediately prior to their expiry;
  - vi any interest receivable which exceeds the average Reserve Bank of Australia base rate between the time of sustaining **loss** and the date of **discovery** of the **loss**.
- c In the event that a loss of **securities** is covered by this policy, the **insurer** will, at their election, indemnify the **insured** for either:
- i any premium required to be paid by the **insured** to purchase lost instrument bonds; or
  - ii an amount which the **insured** may be required to pay either during the **policy period** or any time after by reason of any indemnity agreement executed by the **insured** in relation to any lost instrument bonds issued or purchased by the **insured**, for the reissuing of duplicate securities.
- d In calculating **loss** as a result of the physical loss of or damage to cancelled cheques, cancelled drafts or cancelled credit card receipts, additional reasonable **employee** expenses necessarily incurred by the **insured** in identifying the depositors of those lost or damaged cancelled items, or in assisting depositors in obtaining duplicates, shall be included.

## 6. Other insurance

This policy will only pay **loss** that is in excess of any amount recoverable from a more specific crime and/or cyber insurance available to the **insured**. As excess insurance this policy will not apply or contribute to the payment of any **loss** until the amounts of that other insurance have been exhausted.

## 7. Subrogation and recoveries

Following a payment under this policy, the **insurer** will be subrogated to all rights and remedies

available to the **insured** in connection with that payment therefore the **insurer** has the right to seek recovery of that payment from a third party and will be entitled to bring proceedings in the name of the **insured**.

Whether before or after payment under this policy, the **insured** will take all steps necessary, or required by the **insurer**, to preserve the rights and remedies which the **insured** may have to recover its **loss**.

The **insured** will provide to the **insurer** any assistance the **insurer** may require to secure the rights and remedies set out above. The **insurer** shall be entitled to take control of all steps taken to recover any loss.

Any amounts recovered will be applied in the following order:

- a to reimburse costs incurred in bringing proceedings against the third party;
- b then to the **insured** for the amount of any of the **loss** which exceeds the **limit of liability**;
- c then to the **insured** to reimburse the **retention**.

## 8. Goods and services tax

When the **insurer** makes a payment under this policy for the acquisition of goods, services or other supply, the **insurer** will reduce the amount of the payment by the amount of any input tax credit that the **insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

When the **insurer** makes a payment under this policy as compensation instead of payment for the acquisition of goods, services or other supply, the **insurer** will reduce the amount of the payment by the amount of any input tax credit that the **insured** is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or supply.

Where and to the extent that the **insurer** is entitled to claim an input tax credit for a payment made under the policy, then any monetary limit in the policy applying to the **insurer's** obligation to make such a payment, shall be net of the entitlement to the input tax credit.

Where and to the extent that the **insured**

is entitled to claim an input tax credit for a payment required to be made by the **insured** as a **retention**, then the amount of the **retention** shall be net of the **insured's** entitlement to the input tax credit.

## E. GENERAL CONDITIONS

### 1. Limit of liability

The **limit of liability** is the maximum amount payable by the **insurer** under this Commercial Crime policy in respect of all **insureds**, Insuring Clauses and Coverage Extensions.

Any **loss** paid by the **insurer** under this policy will reduce the **limit of liability**.

Where any sub-limit is specified in the policy or schedule, the **insurer** will have no liability in excess of that sub-limit.

Any sub-limit will be part of and not in addition to the **limit of liability**.

In the event that a **loss** is sustained by any **plan** that is covered under this policy, payment will be made by the **insurer** to the trustees of that **plan** for and on behalf of the beneficiaries.

### 2. Combined policy aggregate limit of liability

The **Combined Policy Aggregate Limit of Liability** listed in the Schedule is the combined total limit of liability for all Loss payable under this Commercial Crime Policy or any Employment Practices Liability, Statutory Liability or Directors' and Officers' and Corporate Legal Liability Policy provided by the **insurer**. The Schedule will indicate which policies have been purchased.

Each individual policy has its own limit of liability which is part of and not in addition to the **Combined Policy Aggregate Limit of Liability** and is a separate aggregate amount. Each individual policy's limit of liability operates as a sub-limit of the **Combined Policy Aggregate Limit of Liability**. Once the limit of liability for each individual policy is exhausted then the **insurer** will have no liability in excess of that limit of liability for each individual policy even if the **Combined Policy Aggregate Limit of Liability's** limit has not been exhausted.

Once the **Combined Policy Aggregate Limit of Liability's** limit has been exhausted then the **insurer** will have no liability in excess of the **Combined Policy Aggregate Limit of Liability**

even the limit of liability has not been exhausted for any individual policy purchased including this Commercial Crime policy.

### 3. Retention

The **insurer** shall be liable only for that part of **loss** which exceeds the **retention**.

Only one **retention**, being the largest, will be applied to the total amount of **loss** arising from a **single event**.

### 4. Change of control / acquisitions / employee dishonesty post discovery

In the event of a **change of control** of an **insured** no cover under this policy will apply for any loss of that **insured, subsidiary** or their **plans**, sustained after such **change of control**.

The **policyholder** will, as soon as practicable, give the **insurer** written notice of any **change of control** which takes place in respect of the **policyholder**.

In the event of an acquisition of a **subsidiary**, no cover under this policy will apply for any **loss** of that **subsidiary** or their **plans**, first sustained before such acquisition.

Cover under this policy shall cease in respect of any subsequent acts of any **employee**, as soon as any **responsible person**, not in collusion with that **employee, discovers** the commission of a dishonest, fraudulent, malicious or criminal act by such **employee** which could reasonably be foreseen to give rise to a **loss**, but without prejudice to the loss of **property** in transit in the custody of the **employee** at the time of **discovery**.

### 5. Discovery period

If this policy is not renewed or replaced the **insured** will be entitled:

- a to an automatic **discovery period** of 60 days; and
- b to purchase an optional **discovery period** for a longer period as specified in the Schedule, provided that written notice is given to the **insurer** by the **policyholder** within 30 days after the end of the **policy period** and any additional premium specified by the **insurer** is paid within 45 days of the end of the **policy period**.

The automatic **discovery period** is part of and not in addition to any optional **discovery period** purchased by the **insured**.

The **discovery period** is non-cancellable and the premium for the optional **discovery period** is deemed fully earned at the inception date of the optional **discovery period**.

In the event of a **change of control** of the **policyholder**, the **policyholder** is entitled to purchase a 72 month **discovery period** on such terms and conditions and for such additional premium as the **insurer** requires.

## 6. Cancellation

The **policyholder** may cancel this policy at any time giving the **insurer** 30 days' written notice. If the **insured** has notified any **claims** or **insured events** or the **insurer** has made any payments of **loss** under the policy prior to such cancellation then the premium for this policy will be deemed fully earned and there will be no refund of any premium due.

If the **insured** has not notified any **claims** or **insured events** and the **insurer** has not made any payments of **loss** then the **insurer** will make a pro-rata refund of premium.

The **insurer** may cancel this policy in accordance with the Insurance Contracts Act (cth).

## 7. Authorisation

The **policyholder** will act on behalf of all **insureds** in connection with all matters relevant to this policy unless the **policyholder** is insolvent in which event the remaining entities will agree with the **insurer** as to which one of them will act on behalf of all **insureds**.

**Loss** sustained by any nominee company where the board of directors is composed exclusively of directors, officers or **employees** of the **policyholder** established to handle specific business transactions shall be deemed to be **loss** sustained by the **insured**.

## 8. Third parties

Nothing in this policy is intended to confer a directly enforceable benefit on any third party other than an **insured**.

## 9. Assignment

Neither this policy nor any right under it may be assigned without the prior written consent of the **insurer**.

## 10. Policy interpretation

This policy, its schedule and any endorsements

are one contract in which, unless the context otherwise requires:

- a headings and subheadings are descriptive only, solely for convenience, not an aid to interpretation and form no part of the terms and conditions of coverage;
- b the singular includes the plural, and the masculine includes the feminine, and vice versa;
- c "Including" and "include(s)" means without limitation;
- d references to specific legislation include amendments to and re-enactments of that legislation and any similar or equivalent legislation in the relevant jurisdiction;
- e references to positions, offices or titles will include their equivalents in any jurisdiction;
- f if any provision of this policy is or becomes void or illegal, is invalid or unenforceable by a court or other competent body under the law of any applicable jurisdiction, such provision will be deleted. The **insurer** and the **insured** will use their best efforts to agree a replacement for the provision which achieves as far as possible the same effect as would have been achieved by the deleted provision.

## 11. Governing law

This Policy will be governed by and construed in accordance with the laws of the Commonwealth of Australia.

In the event of any dispute arising under this policy including, but not limited to, its construction and/or validity and/or performance and/or interpretation, the **insured** will submit to the exclusive jurisdiction of any competent Court in the Commonwealth of Australia.

Any summons, notice or process to be served upon the **insurer** may be served upon:

Lloyd's Underwriters' General Representative  
in Australia  
Level 9, 1 O'Connell Street  
Sydney, NSW 2000  
Australia

who has authority to accept service and to appear on the behalf of the **insurer**.



## 12. Insurer's consent

Where the **insured** is required under this policy to seek the consent of the **insurer**, the **insurer** will not unreasonably withhold, delay or deny such consent.

## 13. Sanction limitation

The **insurer** will not be liable to provide any cover, benefit or pay any claim under this policy to the extent that the provision of such cover, benefit or payment of such claim would expose the **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, United States of America or Australia.

## 14. Complaints

### General Insurance Code of Practice

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

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

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

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 Delta Insurance Australia Pty Ltd in the first instance:

Managing Director  
Delta Insurance Australia Pty Ltd  
Email: [complaints@deltainsurance.com.au](mailto:complaints@deltainsurance.com.au)  
Telephone: 07 3017 4720  
Post: GPO 1832, Brisbane, QLD, 4001, Australia

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: [idraustralia@lloyds.com](mailto:idraustralia@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](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001  
Website: [www.afca.org.au](http://www.afca.org.au)

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

## 15. Several liability

The liability of the **insurer** under this policy is several and not joint with other insurers who may be a party to this policy. Any **insurer** is liable only for the proportion of liability it has underwritten. The insurer and any insurers are not jointly liable for the proportion of liability underwritten by any other insurer; nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this policy.

The proportion of liability under this policy underwritten by any insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion; nor is any member otherwise responsible for any liability of any insurer that may underwrite this policy. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to this policy in the singular, where the circumstances so require this should be read as a reference to Policies in the plural.

## F. DEFINITIONS

The following definitions are applicable to all sections of this policy:

**audit costs** means reasonable fees and expenses necessarily incurred for independent outside accountants or similar specialists to determine the amount and extent of the **loss** payable by the **insurer** under this policy.

**authenticated** means the verification of the identity of a person and validation of the contents of a **written or printed payment instruction** or **electronic or telephonic transfer communication**.

**change of control** means any one of the following events:

- a the **policyholder** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
- b any person or entity, whether individually or together with any other person or persons, entity or entities becomes entitled to exercise more than 50% of the rights to vote at general meetings of the **policyholder** or control the appointment of directors who are able to

exercise a majority of votes at meetings of the board of directors of the **policyholder**;

- c the appointment of a receiver, liquidator, administrator or other insolvency practitioner in respect of an **insured**, but only in relation to that **insured**; or
- d an entity ceases to be a **subsidiary** or **plan**, or becomes controlled by another entity by virtue of any law.

**combined policy aggregate limit of liability** is the amount specified in the Schedule as applicable in the aggregate to any individual policy, including this policy, provided by the **insurer** to the **insured**.

**client** means a customer of the insured to whom the insured provides goods or services under a written contract for a fee.

**client property loss** means the direct financial loss or physical damage to property sustained by a client resulting directly from the dishonest act of an employee not in collusion with the client or any agent or employee of the client.

**computer malware** means the dishonest, fraudulent, malicious or criminal introduction or activation of any computer virus, software or computer code which causes:

- a the damage, destruction, loss or modification of electronic data contained on any **electronic media** or within any computer system operated by the **insured**.
- b damage to or destruction of **electronic media** or any computer system operated by the **insured**.

**computer malware** does not include **loss** due to **social engineering fraud**.

**corporate identity fraud** means the fraudulent modification, corruption, or theft of publicly-available data relating to the **insured's** formation and genuine identity.

**corporate identity fraud costs** means reasonable fees, costs and expenses necessarily incurred in connection with **corporate identity fraud** first **discovered** during the **policy period**:

- a to investigate that **corporate identity fraud**;
- b to correct or reinstate public records;
- c when applying for civil proceedings to be dismissed or withdrawn because the alleged

liability resides with someone other than the **insured**;

- d** to procure public relations services to redress adverse publicity or reputational injury.

**counterfeit** means the imitation of any instrument which, because of the quality of the imitation, the **insured** believes is the authentic original instrument.

**data security breach costs** means the reasonable costs of:

- a** hiring security experts, forensic investigators or similar experts to determine the existence and cause of an unauthorised appropriation and/or disclosure of personal or confidential information;
- b** notifying natural person customers of the **insured** who have been affected by an unauthorised appropriation and/or disclosure of personal or confidential information;
- c** hiring external lawyers to determine the mandatory actions required by any regulator;
- d** credit monitoring services (to the extent required by applicable data protection laws) in respect of natural persons affected by an unauthorised appropriation and/or disclosure of personal or confidential information; and
- e** establishing, publicising and running call centre services,

which directly arises out of a legal obligation on the **insured** to comply with applicable data protection laws to notify natural persons of an unauthorised appropriation and/or disclosure of their personal or confidential information, held on file by the **insured** in either physical or electronic form, provided that it was the practice and procedure of the **insured** to install available software updates and releases and apply security-related software patches.

**data security breach costs** does not mean costs that are incurred more than 90 days after discovery of the unauthorised appropriation and/or disclosure of personal or confidential information or any **employee benefits**.

**discovered, discovers or discovery** means the time at which a **responsible person** becomes aware of facts which would cause a reasonable person to believe that a **loss** of the kind covered by this policy has been or will be incurred, even

though the exact amount or details of that **loss** may not be known at that time. **Discovery** shall constitute discovery by every **insured**.

**discovery period** means the period of time following the end of the **policy period** during which notice may be given to the **insurer** of any **loss** sustained prior the end of the **policy period**.

**dishonest act of an employee** means a dishonest, fraudulent, malicious or criminal act of any **employee**, committed alone or in collusion with others. However, in respect of **loss** resulting from **loans or trading, dishonest act of an employee** only means dishonest, fraudulent, malicious or criminal acts of any **employee** committed with the intent to obtain an improper financial gain for themselves or for any other person or organisation in dishonest, fraudulent, malicious or criminal collusion with the **employee**. The term 'improper financial gain' does not include **employee benefits**.

**electronic media** means the media on which electronic data is stored in a form readily usable in a computer system.

**electronic or telephonic transfer communication** means an electronic or telephonic communication authorising, directing, requiring or acknowledging the transfer, payment, delivery or receipt of funds or **property**.

**employee** means any:

- a** natural person:
  - i** under a contract of employment with;
  - ii** working under the control and supervision of, the **insured**;
- b** director or officer of the **insured** when performing acts coming within the scope of the usual duties of an employee of the **insured** or while acting as a member of a committee duly elected or appointed by resolution of the board of directors of the **insured** to perform specific acts, as distinguished from general directorial acts, on behalf of the **insured**;
- c** trustee, fiduciary, administrator, or officer of any **plan**;
- d** ex-employee, for a period not exceeding 60 days following the termination of their employment with the **insured**, other than when that termination is a result of a dishonest, fraudulent, malicious or criminal act;

- e solicitor, other than a sole practitioner, retained by the **insured** whilst providing legal services exclusively for the **insured**; or
- f company or person authorised by a written contract with the **insured** to perform accounting, data processing of the cheques, payroll or computing services outsourced by the **insured**,

whether or not the insured is able to identify that person by name, provided that the insured proves beyond reasonable doubt that the loss was due to the act of that person.

The term employee does not mean any independent broker, independent financial advisor, or any similar agent or independent representative remunerated on a sales or commission basis.

**employee benefits** means salaries, fees, commissions, bonuses and similar employee benefits (including business entertainment whether or not constituting bribery under any applicable bribery legislation in any jurisdiction) earned in the normal course of employment.

**extortion** means the insured having delivered, transferred or caused to have transferred funds or property as a result of a threat:

- a to do bodily harm to:
  - i a director, officer or **employee** of the **insured**; or
  - ii any lawful spouse, civil or domestic partner or family member of a person in (i) above.
- b to do damage to the premises or **property** of the **insured**;
- c to sell or disclose confidential security codes, computer programs or electronic data to another person or party;

provided that, prior to or immediately after the delivery or transfer of funds or **property**, the person receiving the threat has made a reasonable effort to report the extortionist's demand to a director or officer of the **insured** and to the police or local law enforcement authorities.

**forged** means bearing a forged signature of a genuine person without the authority of that person and with the intent to deceive. A mechanically or electronically reproduced signature shall be treated the same as a handwritten signature.

**Forged** does not include the signing of one's own name, in whole or in part, in any capacity.

**forgery and counterfeiting** means the **insured** having acted or relied upon any **security, written or printed payment instruction or money** which has been **forged, fraudulently altered or counterfeited** and which is, at the time of the act or reliance, in the physical possession of the **insured**.

**fraudulently altered** means materially altered for a fraudulent purpose by any person other than the person who was authorised to prepare or sign the document.

**fraudulent impersonation** means the intentional and fraudulent deceiving of an **employee** by any natural person purporting to be another natural person.

**fund transfer fraud** means the transfer of **money, securities** or other property due to electronic data, computer programs or **electronic or telephonic transfer communications** within a computer system operated by the **insured** having been dishonestly, fraudulently, maliciously or criminally modified, replicated, corrupted, altered, deleted, input, created, or prepared.

**fund transfer fraud** does not include **loss** due to **social engineering fraud, computer malware or extortion**.

**insured** means the **policyholder, any subsidiary and plan**.

**insurer** means Delta Insurance Australia Pty Ltd writing on behalf of the Lloyd's Underwriters named in the Schedule.

**legal costs** means reasonable fees, costs and expenses necessarily incurred in the defence, settlement or appeal of any demand, claim, suit or legal proceeding which the **insured** establishes results directly from the **loss** payable by the **insurer** under this policy.

**limit of liability** means the amount specified in the Schedule applicable to the Commercial Crime policy.

**loan** means:

- a all extensions of credit by the **insured** and/or all transactions creating a creditor or lessor relationship in favour of the **insured**; or
- b any note, account, agreement or other evidence of debt assigned to, or discounted

or acquired by, the **insured** including the purchase, discounting or acquisition of false or genuine accounts or invoices.

**loss** means:

- a** direct financial loss sustained by the **insured**;
- b** **data security breach costs, software removal or reconstitution costs, legal costs, audit costs, reputation costs** to the extent afforded by Coverage Extension 1;
- c** **corporate identity fraud costs** to the extent afforded by Coverage Extension 2;
- d** in respect of Coverage Extension 3, its legal liability for interest to customers; and
- e** **client property loss** to the extent afforded by Coverage Extension 4.

**loss** does not include **employee benefits** except those paid to an **employee** for a specific transaction in respect of which that **employee** committed a dishonest, fraudulent, malicious or criminal act.

**management control** means:

- a** controls the composition of the board of directors;
- b** controls more than half of the shareholder voting power; or
- c** holds more than half of the issued share capital.

**money** means cash, bullion, precious metals, stamps and postal orders.

**physical loss of or damage to property** means:

- a** the theft of tangible **property** from the **insured's** premises;
- b** the criminal damage or destruction of tangible **property** at the **insured's** premises;
- c** the actual or attempted theft, criminal damage or destruction, of tangible **property** in the custody of the **insured** or an **employee**, or any other person or company authorised by the **insured** and for whom the **insured** is legally liable.

**plan** means:

- a** any superannuation fund, welfare benefit, share saver or share option or other plan maintained by the **insured** for the benefit of the past, present and/or future **employees** or their respective beneficiaries; or

- b** any charitable trust, fund or foundation with a social or cultural objective which was founded and is currently supported directly by the **policyholder** or indirectly through a **subsidiary**.

**policyholder** means the entity named in the Schedule.

**policy period** means the period specified in the Schedule.

**property** means **money, securities, electronic media** or other property.

**reputation costs** means the reasonable fees, costs and expenses necessarily incurred by the **insured** with the prior written consent of the **insurer** in appointing public relations consultants to mitigate the adverse or potential adverse effect on the **insured's** reputation following the **discovery** of a **loss** covered under this policy. **Insurer's** liability for **reputation costs** shall be sub-limited to the amount specified in the Schedule.

**responsible person** means any member of the Board of Directors, the Risk Manager, Insurance Manager, Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Compliance Officer, Head of Audit or General Counsel including any individual in a substantially similar position or with substantially similar responsibilities as those referenced, irrespective of the exact title of such individual, of the **policyholder**.

**retention** means the amount specified in the Schedule.

**security** means negotiable and non-negotiable instruments, cheques, or contracts representing **money** or tangible property.

**single event** means all **loss** arising out of, based upon or attributable to the same originating cause, source or event.

**social engineering fraud** means the **insured** having authorised, directed or acknowledged the transfer, payment, delivery or receipt of funds or **property** based on:

- a** an **electronic or telephonic transfer communication** which dishonestly, fraudulently, maliciously or criminally purports to be, but is not, from a customer of the **insured**, another office or department of the **insured**, a financial organisation or **vendor**; or

- b** a written or printed payment instruction obtained by **fraudulent impersonation**.

The **Insurer's** liability for **social engineering fraud** shall be subject to the sub-limit stated on the Schedule.

If such **electronic or telephonic transfer communication** or **written or printed payment instruction** was not **authenticated** by the **insured**, **insurer's** liability in connection with any **loss** shall be sub-limited to the amount specified in the Schedule which is part of and not in addition to the overall **social engineering fraud** sub-limit stated on the Schedule.

**software removal or reconstitution costs** means reasonable fees and expenses necessarily incurred for the verification, reconstitution or removal of electronic data or computer programs, or removal of computer or software codes.

**subsidiary** means any entity in which the **policyholder** either directly or indirectly through one or more entities has or had **management control** on or before the inception date of this policy.

**subsidiary** will include:

- a** any new entity which the **insured** incorporates during the **policy period** and which, at the time of incorporation, the **insured** has **management control** provided such entity is not located in or has any employees located in the United States of America;
- b** any entity that the **insured** acquires **management control** of during the **policy period** provided that at the time of obtaining that **management control** the acquired entity is not located in or has any employees located in the United States of America.

**subsidiary** does not include any fund, investment vehicle, managed investment scheme or trust.

**third party** means any natural person other than an **employee**.

**trading** means the purchase, sale or other dealings in:

- a securities**, commodities, futures, options, derivatives, funds, currencies, foreign exchange and similar instruments; or
- b** any other instruments traded through any regulated stock exchange, commodities or mercantile exchange, futures or derivatives exchange, or clearing house, or any other regulated trading facility, trading system or network providing services or functionality of a similar nature.

**vendor** means any entity or individual which has a written or electronic agreement with the **insured** for the provision of products or services by such entity or individual to the **insured**.

**written or printed payment instruction** means a written or printed instruction or advice directed to the **insured** authorising, directing, requiring or acknowledging the transfer, payment, delivery or receipt of funds, **money** or **securities**.



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