

General Liability

Policy wording





STATUTORY NOTICE

Section 40 Insurance Contracts Act 1984 (Cth)

This notice is provided in connection with but does not form part of the policy.

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 note exclusion 4.22 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 of 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 & Singapore 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 or alternatively you can contact us at (07) 3017 4720.

GENERAL LIABILITY INSURANCE POLICY

In consideration of the premium charged, the **underwriters** and the **named insured**, on behalf of all **insureds**, agree as follows:

SECTION 1: INSURING AGREEMENT

- 1.1 The **underwriters** shall indemnify the **insured** up to the limit of liability, and subject to the retention, for amounts the **insured** shall become legally liable to pay by way of **compensation** in respect of **personal injury** or **property damage** that:
- a occurs within the **territorial limits**; and
 - b happens during the **policy period**; and
 - c is caused by an **occurrence** in connection with the **insured's business**.

1.2 Defence costs

For any **claim** covered under clause 1.1 of the insuring agreement, the **underwriters** will pay, in addition to the limit of liability set at item 3a of the schedule and up to any applicable limit of liability set forth at item 3b of the schedule, **defence costs** necessarily and reasonably incurred in relation to any **claim** against the **insured**. The **underwriters** may investigate, negotiate and settle any such **claim** as it deems expedient; however, the **underwriters** shall not be obligated to pay any **claim** or judgment or to defend any suit after the limit of liability has been exhausted by payment of judgments or settlements.

Provided that:

- a in the event of a judgment or settlement that results in the **underwriters** paying the limit of liability in respect of any judgment or settlement, the **underwriters'** liability in respect of any further **defence costs** shall cease upon

the date of the judgment being handed down, or settlement agreement being executed by all parties;

- b if the amount of **compensation** the **insured** is legally required to pay to dispose of a **claim** exceeds the **underwriters'** limit of liability, the liability of the **underwriters** to pay **defence costs** in connection with such **claim** shall be limited to the same proportion of the **defence costs** as the **underwriters'** limit of liability bears to the total amount of **compensation** paid to dispose of the **claim**;
- c in the event of **underwriters** having paid over and above the limit of liability for an **insured's** entitlement to **defence costs** under (a) or (b) above, the **name insured** shall repay such amount to the **underwriters** within 30 days of being required by **underwriters** to do so.

SECTION 2: AUTOMATIC EXTENSIONS

The following extensions are included automatically, provided always that each extension, unless expressly stated otherwise, is subject to the terms, conditions, exclusions and limitations of this policy (including Section 1: Insuring agreement). Certain extensions have specified sub-limits of liability and specified retentions and these will apply unless specifically stated otherwise in the schedule.

2.1 Advertising liability

Notwithstanding section 1.1 of the insuring agreement and exclusion 4.9 (Defamation), the **underwriters** will indemnify the **insured** for all amounts that the **insured** is legally liable to pay by way of **compensation** in respect of **advertising injury** arising from an **advertisement** communicated or published during the **policy period** and within **territorial limits** and in connection with the **insured's business**.

Provided that the **underwriters** will not indemnify the **insured** for any legal liability in respect of actual or alleged **advertising injury** arising out of:

- a statements made by the **insured** or at the **insured's** direction with knowledge that such statements are false;
- b the failure of performance of a contract, except for claims for unauthorised appropriation of advertising ideas contrary to an implied contract;

- c any incorrect description of the **insured's products** or services;
- d any mistake in the advertised price of a service undertaken by the **insured's products** or services;
- e the failure of the **insured's products** or services to conform with advertised performance, quality, fitness or durability.

This extension does not apply to legal liability incurred by the **insured** if the **insured's business** is advertising, broadcasting, publishing or telecasting.

2.2 Business advice or service

Notwithstanding exclusion 4.18 (Professional advice), the **underwriters** will indemnify the **insured** for all amounts that the **insured** is legally liable to pay by way of **compensation** in respect of **personal injury** or **property damage** arising out of:

- a The rendering of or failure to render professional medical advice by **medical persons** employed by the **insured** to provide emergency first aid and routine medical services on the **insured's** premises.

Provided that:

- i The **insured** is not operating an ambulance service, hospital, healthcare clinic, long term care facility or other healthcare facility or institution; and
 - ii Such medical advice is not given for a fee; or
- b The rendering of professional advice or service by the **insured**, or error or omission connected therewith, provided that such advice or service is not given for a fee.

2.3 Care, custody or control

Notwithstanding exclusion 4.19(b) (property in the insured's care, custody or control), the **underwriters** will indemnify the **insured** for all amounts that the **insured** is legally liable to pay by way of **compensation** in respect of **property damage** to property, including employees' property, while the property is in the care, custody or control of the **insured**. This extension is subject to the care, custody or control sublimit of liability set forth in item 5 of the schedule and to the retention set forth in item 5 of the schedule.

For the purpose of this extension 2.3 only, "property" does not include **vehicles**.

This extension 2.3 does not apply to real property, or property owned, hired, leased or rented by or to the **insured**.

2.4 Landlord's liability

The **underwriters** will indemnify the **insured** for all amounts that the **insured** is legally liable to pay by way of **compensation** in respect of **personal injury** or **property damage** in connection with the **company's** legal ownership, but not physical occupation, of any premises.

2.5 Loss mitigation

If the **insured** reasonably determines that urgent action is needed in order to avoid or minimise a legal liability to pay **compensation** as defined under sections 1 and 2 of this **policy**, the **underwriters** will indemnify the **insured** for any of the following, provided in each case that the **insured** obtains **underwriters'** prior written consent, the **underwriters** being satisfied that such costs are reasonable and proportionate in all the circumstances:

- a fees, costs or expenses incurred for the advice or services of a loss mitigation advisor, public relations firm or crisis management firm directed towards avoiding or minimising such liability to the **insured**;
- b any other costs or expenses incurred in order to avoid or minimise any such liability.

This extension is subject to the sublimit of liability set forth in item 5 of the schedule and to the retention set forth in item 5 of the schedule.

2.6 Tenant's liability

Notwithstanding exclusion 4.19 (A) (property in the insured's care, custody or control), the **underwriters** will indemnify the **insured** for all amounts that the **insured** is legally liable to pay by way of **compensation** in respect of **property damage** to premises (including landlord's fixtures and fittings) leased or rented, but not owned, by the **company**.

2.7 Vehicles

Notwithstanding exclusion 4.19 (B) (property in the insured's care, custody or control) and exclusion 4.25 (Vehicles), the **underwriters** will indemnify the **insured** for all amounts that the **insured** is legally liable to pay by way of **compensation** in respect of:

- a** **property damage** to **vehicles**, other than **vehicles** owned or used by or on behalf of the **insured**, in the care, custody or control of the **insured** but only while such **vehicles** are in a car park owned or operated by the **insured** other than for income or reward as a car park operator;
- b** **personal injury** or **property damage** arising from the actual loading, unloading, delivery or collection of goods to or from any **vehicle**;
- c** **personal injury** or **property damage** arising from the use of any **tool of trade** either on any site where the **insured** is undertaking work or at the **insured's** premises. For the avoidance of doubt, this automatic extension 2.7 (c) does not extend cover to the use of any **tool of trade** whilst in transit or whilst being used for transport or haulage; or
- d** **personal injury** which is excluded by any statutory motor accident insurance scheme within Australia, or a **claim** not covered by any compulsory third party or statutory insurance policy.

2.8 Vehicle and watercraft service/repair

Notwithstanding exclusion 4.19 (B) (property in the insured's care, custody or control) and exclusion 4.25 (Vehicles), the **underwriters** will indemnify the **insured** for all amounts that the **insured** is legally liable to pay by way of **compensation** in respect of **personal injury** or **property damage** in Australia arising from the service, repair or modification by the **insured** of any **vehicle**, and/or **watercraft** capable of being transported by trailer and not exceeding eight metres in length, and/or its internal combustion engine, accessories or fittings.

Provided that:

- a** the **vehicle** or **watercraft** is not owned, hired, leased, or rented by the **insured**, and is in the care custody or control of the **insured** for the purposes of the service, repair, modification

or installation when the **personal injury** or **property damage** occurs; and

- b** the cost of rectifying defective workmanship in respect of the actual part or parts worked on is excluded; and
- c** legal liability in respect of **watercraft** during testing on water is excluded.

This extension is subject to the sublimit of liability set forth in item 5 of the schedule and to the retention set forth in item 5 of the schedule.

2.9 Visits outside territorial limits

Notwithstanding exclusion 4.15 (Legal jurisdiction) and exclusion 4.23 (Territorial limits) and clause 1.1(A) of the insuring agreement, the **underwriters** will indemnify the **insured** for all amounts that the **insured** is legally liable to pay by way of **compensation** in respect of **personal injury** or **property damage** occurring outside the **territorial limits** caused by an **occurrence** and arising solely out of the actions of non-resident directors, executives or salespersons temporarily visiting any state or territory outside of the **territorial limits** in the course of the **insured's business**.

Provided that:

- a** the **insured** has no premises, branch or subsidiary operation in the state or territory outside the **territorial limits** where the **personal injury** or **property damage** occurs; and
- b** **personal injury** or **property damage** arising out of any work performed in, on or in connection with, the manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the **insured's products** outside the **territorial limits** is excluded; and
- c** **personal injury** or **property damage** arising out of the ownership, possession, control, or maintenance or use of any **vehicle** or **watercraft** outside the **territorial limits** is excluded.

In addition, in respect of **personal injury** or **property damage** occurring in the United States of America or Canada (including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies) the following additional provisions shall apply to this extension:

- a the sublimit of liability for visits to any non-territorial country set forth in item 5 of the schedule shall apply; and
- b **defence costs** related to **personal injury** or **property damage** occurring in the United States of America or Canada (including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies) will not reduce or exhaust the sublimit in 2.9 (a) above, but they are subject to the sublimit of liability for visits to any non-territorial country – defence costs set forth in item 5 of the schedule.

SECTION 3: DEFINITIONS

3.1 advertisement means any manner of communication which promote the services or products of the **insured's business**.

3.2 advertising injury means one or more of the following:

- a defamation arising out of defamatory statements or material;
- b infringement of copyright, title or slogan;
- c unfair competition, misappropriation of advertising ideas or style of doing business;
- d invasion of privacy,

committed or alleged to have been committed in any **advertisement** and arising out of any advertising activities.

3.3 aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

3.4 claim means any civil legal action or demand for money or **compensation** made against the **insured**.

3.5 company means:

- a the **named insured**; and
- b any **subsidiary**.

3.6 compensation means amounts payable as compensation, including damages, interest, and claimant costs and disbursements.

3.7 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.

3.8 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**.

3.9 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**.

3.10 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**.

3.11 defence costs means legal costs, disbursements, witnesses' costs, assessors' or adjusters' costs or experts' costs that relate directly to the investigation, defence, compromise or handling of any **claim**, incurred by the **underwriters**, or by the **insured** with the **underwriters'** prior written consent, and also includes expenses incurred by the **insured** for first aid to others at the time of any **personal injury**. The maximum limit of liability for all costs is set in item 3b of the schedule

defence costs does not include the **insured's** time assisting the **underwriters** or appointed solicitors with the conduct of any **claim**.

3.12 employment practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment or prospective employment by the **insured**.

3.13 insolvency means the appointment of an administrator, receiver, liquidator, trustee or similar official to control, supervise, manage or liquidate an entity.

3.14 insured means:

- a** the **company**;
- b** any director, executive officer, employee or partner of the **company**, voluntary worker or work experience person but only whilst acting within the scope of their duties in such capacity;
- c** every principal in respect of liability of such principal arising from:
 - i** the performance by or on behalf of the **insured** of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and limit of liability as are provided by this policy;
 - ii** any products sold or supplied by the **insured**, but only in respect of the **insured's** own acts or omissions in connection with such products and in any event only for such coverage and limit of liability as are provided by this policy;
 - iii** any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of the insured, other than an insured designated in (c) above, in respect of claims arising from duties connected with activities of any such club or organisation.

3.15 insured's business means the business and undertakings of the **insured**, as stated in item 1c of the schedule, including:

- a** the provision and management of lunchroom facilities, social, sports, welfare and similar organisations for the benefit of the **insured's** employees;
- b** the provision of the **insured's** own internal fire, first aid, medical, security and ambulance services;
- c** the participation in exhibitions, trade fairs, conferences and the like;
- d** the ownership, tenancy or occupation of premises by the **insured** including the repair and maintenance of property which the insured owns or is responsible for;
- e** the sponsorship of events, organisations, entities and individuals;

- f** any change in the activities undertaken by the **insured** provided that the **insured** has given prior written notice of such activities and has received confirmation of coverage from the **underwriters**.

3.16 insured's products means anything (after it has ceased to be in the possession of or under the control of the **insured**) manufactured, constructed, erected, assembled, installed, repaired, serviced, grown, treated, sold, supplied or distributed by the **insured** (including any container other than a vehicle and including, for the avoidance of doubt, buildings constructed or whose construction is supervised or managed by the **insured**).

3.17 jurisdictional limits mean, respectively, the states, territories or locations specified at item 7 of the schedule.

3.18 management control means:

- a** controlling the composition of the board of directors of an entity;
- b** controlling more than half of the shareholder or equity voting power of an entity; or
- c** holding more than half of the issued share or equity capital of an entity.

3.19 named insured means the entity named in item 1a of the schedule.

3.20 medical persons means qualified medical practitioners, dentists, nurses and first-aid attendants.

3.21 occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, that results in **personal injury** or **property damage**. All **occurrences** arising from or attributable to one source or original cause shall be deemed one **occurrence**.

3.22 organisational change means:

- a** the **named insured** consolidates with, merges into, or sells all or sells more than fifty percent (50%) of its assets to any other person or entity or group of persons or entities acting in concert such that the **named insured** is not the surviving entity;
- b** any person or entity, or group of persons or entities, acting in concert acquire more than

fifty percent (50%) of the assets or voting rights of the **named insured**; or

c the **insolvency** of the **named insured**.

3.23 personal injury means:

- a bodily injury, sickness or disease sustained by a person including death resulting from any of these at any time; or
- b disability, shock, fright, mental anguish and mental injury including such injury arising from the following by the **insured**:
 - i false arrest, false imprisonment, wrongful eviction and wrongful detention; or
 - ii invasion of rights of privacy; or
 - iii assault and battery not committed by or at the direction of the **insured** unless committed for the purpose of preventing or eliminating danger to persons or property.

3.24 policy period means the period of time from the inception date set forth in item 2a of the schedule to the expiry date set forth in item 2b of the schedule or the effective date of cancellation of this policy.

3.25 pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fibres, mould, spores, fungus, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.

3.26 property damage means:

- a physical damage to, or destruction, or loss of tangible property including the loss of use thereof at any time resulting therefrom; or
- b loss of use of tangible property, which has not been physically damaged or destroyed, provided such loss of use is a result of physical damage to, or destruction or loss of, other tangible property.

For the purposes of this insurance:

- a all loss of use of tangible property satisfying the definition of **property damage** shall be deemed to happen at the time of the physical damage to, or destruction or loss of, the tangible property that caused or resulted in the loss of use;

b where **property damage** caused by an **occurrence** first happens during the **policy period** but continues past the expiry of the **policy period**, all **property damage** caused by the **occurrence** (including such continuing **property damage**) shall be deemed to have happened during the **policy period**.

3.27 proposal form means the written proposal form submitted by the **named insured** to the **underwriters**, including any related documents and statements that have been submitted or provided by the **insured** to the **underwriters**.

3.28 subsidiary means any entity of which, prior to the inception date set forth in item 2a of the schedule, the **company** has **management control**.

3.29 territorial limits mean, respectively, the states, territories or locations specified in items 6 of the schedule.

3.30 tool of trade means any **vehicle** which has attached as an integral part of such **vehicle** any equipment for mechanical digging, scraping, grading, slashing, mowing, drilling, lifting or levelling, whilst such equipment is being used for the purposes for which it was designed.

3.31 underwriters means the underwriter(s) named in item 10 of the schedule.

3.32 vehicle means any type of machine on wheels or on caterpillar tracks made or intended to be propelled other than by manual or animal power.

3.33 watercraft means any vessel, hovercraft, craft or thing made or intended to float on or in or travel on or through the water.

SECTION 4: EXCLUSIONS

This policy does not apply to, and the **underwriters** shall not be liable in respect of:

4.1 Aircraft and watercraft

Personal injury or **property damage** directly or indirectly arising out of the ownership, possession, control, service and repair, maintenance, operation, loading, unloading or use by the **insured** of:

- a any **aircraft**; or
- b any **watercraft** exceeding eight (8) metres in length.

4.2 Aircraft parts

Personal injury or **property damage** directly or indirectly arising out of the **insured's products** that are used with the **insured's** knowledge in any **aircraft** or any aerial device.

4.3 Asbestos

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

4.4 Assault and battery

Personal injury or **property damage** caused by or arising directly or indirectly out of or in connection with assault and battery committed by the **insured** or at the **insured's** direction unless reasonably necessary for the protection of persons or property.

4.5 Building defects

Personal injury or **property damage** which is directly or indirectly caused by or contributed to or arises from:

- a moisture or water or the penetration of external moisture or water (save where the **personal injury** or **property damage** is caused by a sudden, identifiable, unexpected and unintended happening and takes place in its entirety at a specific time and place); or
- b the action or effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms.

In addition, the **underwriters** shall not be liable for any costs or expenses arising out of abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway, responding to or assessing the effects of mould, fungi, mildew, rot, decay, micro-organisms, bacteria, protozoa or any similar or like forms.

4.6 Continuing property damage

Property damage happening during the **policy period** which is a continuation of **property damage** that first happened during, and has

continued past the expiry of, the policy period of a prior general liability insurance policy held by the **insured**, provided that liability for such continuing **property damage** is indemnifiable, or would be indemnifiable but for any limit or sublimit of indemnity, under such prior general liability insurance policy.

4.7 Contractual liability

Legal liability assumed by the **insured** under any contract or agreement except to the extent that such legal liability would have been implied by law. This includes a contractual obligation that excludes or limits the **insured's** rights of recovery from a third party.

This exclusion shall not apply to:

- a those written contracts designated in the schedule;
- b legal liability assumed by the **insured** under a warranty of fitness or quality in respect of the **insured's products**, subject always to exclusions 4.12 (Faulty workmanship) and 4.16 (A) (loss of use); or
- c legal liability assumed by the **insured** under any lease or hire of real or personal property.

4.8 Damage to insured's products

Property damage to the **insured's products** if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

4.9 Defamation

Personal injury directly or indirectly arising out of the publication or utterance of any defamatory or disparaging material.

4.10 Employer's liability

- a **personal injury** to any past, present or potential employee of the **insured** arising out of or in the course of employment of such person in the **insured's business**;
- b any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination;

- c any legal liability in respect of which the **insured** is entitled to seek indemnity under any fund, scheme, policy of insurance or self-insurance required to be taken out pursuant to any legislation relating to workers' compensation or accident compensation or any similar law whether or not the **insured** has effected such a policy; or
- d any **employment practices**.

4.11 Expected or intended

Personal injury or **property damage** expected or intended from the standpoint of the **insured**; provided, however, that this exclusion does not apply to:

- a **personal injury** or **property damage** resulting from the use of reasonable force to protect persons or property; or
- b legal liability of the **insured** to pay **compensation** as the result of an act committed by an **employee** which results in **personal injury** or **property damage** expected or intended from the standpoint of the **employee**, provided such act was not committed at the direction of the **insured**.

4.12 Faulty workmanship

The cost of performing, completing, correcting or improving any work undertaken by the **insured**.

4.13 Fines and penalties

Aggravated, punitive or exemplary damages, fines, penalties, performance warranties or liquidated damages.

4.14 Cyber and data

- a 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, resulting from, arising out of or in connection with any:
 - i **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

- ii 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.

- b in the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- c this endorsement supersedes any other wording in the policy or any endorsement thereto having a bearing on a **cyber act**, **cyber incident** or **data**, and, if in conflict with such wording, replaces it.
- d if the underwriters allege that by reason of this endorsement that loss sustained by the insured is not covered by this policy, the burden of proving the contrary shall be upon the insured.

4.15 Legal jurisdiction

- a any **claim** first brought in a court outside the **jurisdictional limits**;
- b any **claim** brought in a court within the **jurisdictional limits** to enforce a judgment handed down in a court outside the **jurisdictional limits** whether by way of a reciprocal agreement or otherwise; or
- c any **claim** to which the proper law to be applied to any issue in that action is that of a country outside the **jurisdictional limits**.

4.16 Loss of use

Loss of use of tangible property which has not been physically damaged or destroyed resulting from:

- a a delay in or lack of performance by or on behalf of the **insured** of any contract or agreement; or
- b the failure of the **insured's products or work** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **insured**;

However, this exclusion 4.16 (b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of the **insured's products** after

such **products** have been put to use by any person or entity other than the **insured**.

4.17 Pollution

Personal injury or **property damage** directly or indirectly caused by or arising out of the discharge, dispersal, release or escape of **pollutants** into or upon land, the atmosphere or any watercourse or body of water. In addition, the **underwriters** shall not be liable to pay any expenses incurred in the prevention, removal or clean-up of such **pollutants**.

This exclusion shall not apply, provided that:

- a such discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended happening; and
- b takes place in its entirety at a specific time and place and occurs outside of United States of America or Canada (including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies).

4.18 Professional advice

Personal injury or **property damage** directly or indirectly arising out of the rendering of or failure to render professional advice or service by the **insured** or any error or omission connected therewith.

However this exclusion 4.18 shall not apply for:

- a the rendering of or failure to render professional medical advice by medical persons employed by the insured to provide first aid at the **insured's** premises where the **insured's business** does not involve the provision of medical treatment; or
- b professional advice or services provided by the **insured** without charging a fee.

4.19 Property in the insured's care, custody or control

Property damage to:

- a real property, or property owned, hired, leased or rented by or to the **insured**; or
- b property in the care, custody or control of the **insured**.

4.20 Radioactive contamination and explosive nuclear assemblies

This policy does not cover:

- a loss or destruction of, or damage to, any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss; or

- 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 fuel or from any nuclear waste from the combustion of nuclear fuel; or
- ii the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

4.21 Recall of products

Compensation, costs or refunds claimed for the recall, withdrawal, removal, inspection, repair, modification, replacement or loss of use of the **insured's products**, or of any property of which such **products** form a part, or work undertaken by or for the **insured**, if such **products** or property are withdrawn from the market or from use, or such work is required because of any defect or deficiency therein or because of any government or statutory ban, order or notice.

4.22 Sanctions

No **underwriter** 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 **underwriter** or (re)insurer to any sanction, prohibition or restriction under united nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

4.23 Territorial limits

Personal injury or **property damage**:

- a occurring outside the **territorial limits**;

- b caused by or arising out of the **insured's products** that have been knowingly exported by the **insured** or their agents to a state, territory or location outside the **territorial limits**; or
- c where the legal liability of the **insured** in respect of the **personal injury** or **property damage** arises out of any contract entered into by the **insured** under the terms of which work is to be performed outside the **territorial limits**.

4.24 Terrorism

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with 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 exclusion, 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, and or the threat or actual use of cyber-terrorism, 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 exclusion also excludes loss, 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.

If the **underwriters** allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance, the burden of proving the contrary shall be upon the **insured**.

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

4.25 Vehicles

Subject to coverage extensions 2.3 (Care, custody or control) and extension 2.7 (Vehicles),

personal injury or **property damage** caused by or arising out of the ownership, possession, use of or operation by the **insured** of any **vehicle**.

4.26 War and civil war

Notwithstanding anything to the contrary contained herein, this policy does not cover any loss or liability directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of, or damage to, property by or under the order of any government or public or local authority.

4.27 Communicable disease

Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a communicable disease or the fear or threat (whether actual or perceived) of a communicable disease.

For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a communicable disease.

As used herein, a communicable disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- a the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- b the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

- c the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

SECTION 5: CLAIMS CONDITIONS

5.1 Notification

- 5.1.1 Irrespective of the quantum, the **insured** shall give the **underwriters** immediate notice in writing of every **occurrence**, **claim**, summons, proceedings, impending prosecution or inquest and all information in relation thereto in respect of which a claim may result under this policy, irrespective of whether the **insured** believes that no **claim** will proceed or that any **claim** would be groundless.
- 5.1.2 The **insured** shall, as a condition precedent to the obligations of the **underwriters** under this policy, give notice of any matter described in section 5.1.1 above at the physical posting address or the e-mail address indicated in the schedule. All other notices to the **underwriters** under this policy shall be given to the postal address indicated in the schedule.
- 5.1.3 As a condition precedent to the right to be indemnified under this policy, the **insured** must provide to the **underwriters** (or the **underwriters'** appointed agent) promptly, and in any event within fourteen (14) days of any request made by the **underwriters** (or the **underwriters'** appointed agent), the full details together with any other information requested regarding any matter for which the **insured** has requested to be indemnified. The **insured** must also provide such cooperation and assistance as the **underwriters** (or its legal advisers or appointed agents) may require, including but not limited to:
 - a providing all documentation;
 - b providing detailed comments on any **claim** document;
 - c providing detailed signed statements of fact;
 - d ensuring access to any and all information;
 - e providing information, assistance and signed statements of fact in respect of any subrogation proceeding commenced by the **underwriters**; and
 - f providing all other information and assistance,

within the time period requested by the **underwriters**.

All **insureds** and all persons, firms and companies acting for or on the **underwriters'** behalf shall ensure that all documents that may be relevant to any **occurrence** or other matter for which coverage may be provided under this policy shall not be intentionally destroyed or otherwise intentionally disposed of.

5.2 Defence and settlement

- 5.2.1 The **underwriters** do not assume any duty to defend any **claim** brought against the **insured** under this policy. However, the **underwriters** shall have full discretion, but not the duty, to fully and effectively associate with the **insureds** in the control, investigation, defence and settlement of any **claim**, including but not limited to, the right to investigate, conduct settlement negotiations, and enter into the settlement of any **claim** that the **underwriters** deems appropriate.
 - 5.2.2 The **insureds** shall not admit or assume any liability, incur any **defence costs**, make any settlement offers, enter into any settlement agreement or stipulate to any judgments without the prior written consent of the **underwriters** (such consent not to be unreasonably withheld or delayed). However, the **underwriters'** consent is not required for the **insured** to settle a **claim** if the total settlement amount (including **defence costs**) is within the applicable retention, provided that such settlement fully resolves the **claim** with respect to all **insureds** and the **underwriters**.
 - 5.2.3 Each and every **insured** shall give the **underwriters** full cooperation and such information as the **underwriters** may reasonably require relating to:
 - i the investigation and defence of any **claim**; and
 - ii the prosecution of any counterclaim, cross-claim or third-party claim.
- The failure of any insured natural person to give the **underwriters** such cooperation and information shall not impair the rights of any other insured natural person under this policy.
- 5.2.4 Where a **claim** or **occurrence** involves both parties and or matters covered and not covered by this policy, **underwriters'** liability is limited to the proportion of the **claim**, or **occurrence** which

represents a fair and proper apportionment between the parties 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.

5.2.5 If the **insured** does not agree with the apportionment under 5.2.4, the **insured** can elect, at **underwriters'** cost, to obtain the opinion of a senior legal counsel (to be mutually agreed upon by the insured and the **underwriters** or in the absence of agreement by determination of the President of Bar Association of the state or territory the **claim** is being heard) as to the appropriate apportionment under 5.2.4, with such opinion binding the parties.

5.3 Fraudulent claims or occurrences

If the **insured** shall give any notice or make any request in respect of any **claim** or **occurrence**, knowing such notice or request to be false or fraudulent as regards amount or otherwise, this policy shall become void and all entitlements to any indemnity under this policy shall be forfeited.

5.4 Subrogation

5.4.1 Upon payment by the **underwriters** of any amounts covered under this policy, the **underwriters** shall be subrogated to the extent of such payment to all of the **insureds'** rights of recovery, including but not limited to any of the insured natural person's rights of recovery against a **company** for indemnification.

5.4.2 The **insureds** shall execute all papers required (including those documents necessary for the **underwriters** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights.

5.4.3 All recoveries for payments made under this policy, whether made by the **underwriters** or the **insured**, shall be applied net of the expense of such recovery:

- a** First, to the **insured** in satisfaction of the **insured's** covered loss in excess of the amount paid;
- b** Second, to the **insured** in satisfaction of any retention; and

c Third, to the **underwriters** in satisfaction of amounts paid in settlement of the **insured's** claim

d Fourth, to the **insured** in satisfaction of any loss not covered.

5.4.4 Recoveries do not include any recovery for insurance, suretyship, reinsurance, security or indemnity taken for the **underwriters'** benefit.

5.5 Waiver

Where the **underwriters** instruct lawyers to act on behalf of the **insured** in the investigation, defence or settlement of any **claim** against the **insured**, the **insured** authorises those lawyers to disclose to the **underwriters** any information or documents received by those lawyers in connection with the **claim**, including any information or documents relevant to indemnity received by those lawyers from the **insured**, and the **insured** waives any privilege it might otherwise have in respect of that information or those documents to give effect to this clause.

SECTION 6: GENERAL CONDITIONS

6.1 Limit of liability

6.1.1 The **underwriters'** maximum liability in respect of any one **occurrence**, irrespective of the number of **claims** arising therefrom, shall not exceed the limit of liability stated in item 3a of the schedule. All **personal injury** or **property damage** in respect of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one **occurrence**.

6.1.2 The **underwriters'** total aggregate liability during any one **policy period** for all **claims** arising out of the **insured's products** shall not exceed the limit of liability stated in item 3a of the schedule.

6.2 Retention

6.2.1 The **underwriters** shall only pay the amounts covered under the policy that exceed the applicable retention set forth in item 4 or 5 of the schedule. The retention is to be borne by the **insured** and remain uninsured.

6.2.2 The application of the retention to any amounts covered under one coverage section shall not

reduce the retention that applies to any amounts covered under this policy. If different retention amounts apply to different parts of a **claim** or **occurrence**, the applicable retention amount shall be applied separately to each part of the **claim** or **occurrence**, and the sum of such retention amounts shall not exceed the largest single retention amount which applies to such **claim** or **occurrence**.

6.2.3 If the **company** is legally required or permitted to indemnify an insured natural person for any amounts covered by this policy, and does not do so for any reason, the **underwriters** shall not require payment of the applicable retention by an insured natural person. However, the **company** hereby agrees to reimburse the **underwriters** for the full amount of such retention immediately upon request, unless the **company** is unable to do so solely by reason of **insolvency**.

6.3 Alteration of risk

6.3.1 The **insured** must notify the **underwriters** in writing as soon as practicable of any material alteration to the risk covered by this policy that occurs during the **policy period**.

6.3.2 Following the receipt of such notice, the **underwriters** shall have the right to either:

- a** exclude coverage for this additional exposure by issuing an endorsement to this policy specifically excluding such exposure; or
- b** offer to provide coverage for this additional exposure by issuing a quote to the **named insured** for such coverage.

6.3.3 Coverage for any such additional exposure shall be provided by the **underwriters** only if the **named insured**:

- a** provides the **underwriters** with full particulars of the event(s), as requested by the **underwriters**, that materially alter the risk covered by this policy;
- b** accepts in writing the terms, conditions and additional premium required by the **underwriters** for such coverage; and
- c** pays such additional premium when due.

6.3.4 Nothing in this section 6.3 (Alteration of risk) limits the rights of **underwriters** to cancel this policy in accordance with section 6.13 (Cancellation).

6.4 Assignment

This policy and any and all rights hereunder are not assignable without the prior written consent of the **underwriters**.

6.5 Authorisation

Except as otherwise specifically provided under any other provision of this policy, the **named insured** shall act on behalf of all **insureds** with respect to all matters under this policy including:

- a** giving of notice of a **claim**, **occurrence** or circumstance;
- b** defending or settling a **claim**;
- c** giving and receiving all correspondence and information;
- d** giving and receiving notice of cancellation;
- e** paying any premium;
- f** receiving any return premium;
- g** receiving and accepting any endorsements issued to form a part of this policy; and
- h** exercising any right to an extended reporting period.

6.6 Confidentiality

The **insured** shall not disclose to any third-party the terms, conditions, exclusions, or limits of liability of this policy or the amount of the premium paid, except to the extent that they are required by law to do so or receive written consent from the **underwriters** to make such disclosure.

6.7 Third parties

No person or entity other than the **insured** shall have any rights under this policy whether pursuant to statute or otherwise.

6.8 Underwriters' rights

In the event that the **underwriters** are entitled to avoid or repudiate this policy ab initio, the **underwriters** may instead at their election give written notice to the **insured** that they regard this policy as of full force and effect, except that the policy shall exclude coverage for any amounts arising from a **claim** or an **occurrence** that has arisen or that may arise and that is related to the

circumstances which entitle the **underwriters** to avoid or repudiate this policy. This policy shall then continue in full force and effect and such applicable exclusion shall be added to this policy by endorsement attached hereto.

6.9 Late notice, innocent non-disclosure and material non-disclosure

6.9.1 The **underwriters** shall not exercise their right to avoid this policy, nor will the **underwriters** reject a request for indemnity, solely on the grounds of non-disclosure in the **proposal form** or a breach of the applicable notice provisions set forth in section 5.1, provided that:

- a the **insured** shall establish to the **underwriters'** reasonable satisfaction that such non-disclosure or breach was free of any fraudulent conduct or intent to deceive;
- b if the **insured** was aware, prior to the inception date set forth in item 2a of the schedule, of any **claim**, circumstance or any matter for which cover is provided under this policy, then if the indemnity available under this policy is greater or wider in scope than that which would have been available, if any, to the **insured** prior to such inception date, the **underwriters** shall only be liable to indemnify the **insured** for such amount and on such terms as would have been available to the **insured** prior to such inception date, except that nothing in this provision shall entitle the **insured** to any indemnity wider or more extensive than is otherwise available under this policy;
- c if such non-disclosure or breach has resulted in prejudice to the **underwriters** in the handling or settlement of any **claim** or request for indemnity, the indemnity afforded by this policy in respect of such **claim** or request for indemnity shall be reduced by such sum as would have been payable, in the **underwriters'** reasonable opinion, by the **underwriters** in the absence of such prejudice; and
- d no indemnity shall be available for **claim** for which the **insured** fails to provide notice during the **policy period** or within thirty (30) days after the expiry date set forth in item 2b of the schedule.

6.9.2 In consideration of the **underwriters** waiving their right to avoid this policy in accordance with section 6.9.1 above, and in the event of a

material non-disclosure in the **proposal form**, the **underwriters** shall be entitled in their sole discretion:

- a to determine the amount of any additional premium to be paid by the **insured**; and
- b to charge such additional premium to the **insured**.

6.10 Other insurance

This policy shall apply only in retention of any other valid and collectable insurance, whether or not such insurance is collected to the extent permitted by the Insurance Contracts Act 1984 (Cth). In case such other insurance is provided by the **underwriters**, or any other member company, associate or affiliate, and it covers a loss or liability covered by this policy in respect of a **claim** or **occurrence**, the **limit of liability** under this policy in respect of that **claim** or **occurrence** shall be reduced by any amount paid by the **underwriters** (or member company, associate or affiliate) under such other insurance.

6.11 Organisational change

6.11.1 If an **organisational change** occurs during the **policy period**, then this policy shall continue in full force and effect as to any acts, events or matters covered by this policy that occur prior to the effective date of the **organisational change**; however, there shall be no coverage afforded by this policy for any acts, events or matters covered by this policy occurring after the effective date of the **organisational change**.

6.11.2 The **named insured** shall give the **underwriters** written notice of the **organisational change** as soon as practicable, but no later than thirty (30) days after the effective date of the **organisational change**.

6.12 Subsidiaries acquired during the policy period

6.12.1 The term **subsidiary** shall automatically include any entity of which the **named insured** first has **management control (controlled entity)** during the **policy period**, either directly or indirectly through one or more other controlled entities, as long as:

- a such acquired entity is not formed as a partnership; and

- b such acquired entity's total consolidated assets are less than thirty-five percent (35%) of the consolidated gross assets of the **named insured** at the inception date set forth in item 2a of the schedule;

Provided, however, that the **insured** gives written notice to the **underwriters** of such acquired entity prior to the end of the **policy period**.

6.12.2 Any entity acquired during the **policy period** by the **named insured**, other than any entity described in section 6.12.1 Above, shall automatically be covered for a period of ninety (90) days from the effective date of the acquisition, but only in respect of any acts, events or matters covered by this policy which occur after such date. The **underwriters** may extend such coverage beyond ninety (90) days if the **named insured** submits a written request to the **underwriters** within ninety (90) days from the effective date of the acquisition with full details regarding such entity. This extension of coverage is conditioned upon the **insured** paying when due any additional premium required by the **underwriters** and accepting any amended terms and conditions of this policy.

6.12.3 Coverage afforded under this policy for any acts, events or matters relating to a **subsidiary**, or any natural person insured thereof, shall only apply to acts, events or matters committed or allegedly committed or occurring during the time such entity is a **subsidiary**.

6.13 Cancellation

6.13.1 The **insured** may cancel this policy at any time by giving the **underwriters** written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. In such event, the **underwriters** will make a Pro-rata refund of premium.

6.13.2 The **underwriters** may cancel this policy in accordance with the provisions of the Insurance Contracts Act 1984 (Cth.) Such cancellation is to take effect thirty (30) days from the time notification is received by the **insured**. In such event, the **underwriters** shall retain the pro-rata proportion of the premium.

However, if any **claims** have been notified to us during the relevant **policy period** and prior to the date of cancellation, no refund of premium shall be made to the **named insured**.

6.14 Reinstatement of limit

In the event the **underwriters** recover amounts they have paid under this policy, the **underwriters** will reinstate the limit of liability as set forth in item 3a of the schedule to the extent of such recovery, less costs incurred by the **underwriters** in administering and obtaining such recovery. The **underwriters**, in their sole and absolute discretion, shall determine the amounts to be credited, if any, toward a reinstatement of such limit of liability. The **underwriters** assume no duty to seek a recovery of any amounts they have paid under this policy.

6.15 Several liability

6.15.1 The liability of an **underwriter** under this policy is several and not joint with other **underwriters** party to this policy. An **underwriter** is liable only for the proportion of liability it has underwritten. An **underwriter** is not jointly liable for the proportion of liability underwritten by any other **underwriter**; nor is an **underwriter** otherwise responsible for any liability of any other **underwriter** that may underwrite this policy.

6.15.2 The proportion of liability under this policy underwritten by an **underwriter** (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.

6.15.3 In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an **underwriter**. 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 other **underwriter** 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.

6.15.4 Although reference is made at various points in this section 6.15 to this policy in the singular, where the circumstances so require this should be read as a reference to policies in the plural.

6.16 Valuation and currency

All amounts stated in this policy are expressed in Australian dollars and all amounts payable under this policy are payable in Australian dollars. If a judgment rendered or settlement entered into under this policy is stated in a currency other than Australian dollars, then payment under this policy shall be made in Australian dollars at the rate of exchange published in the Australian Financial Review on the date the final judgment is rendered or the settlement payment is established.

6.17 Insured's right to contest a claim

If the **insured** does not agree with a decision by the **underwriters** to settle a **claim**, the **insured** can elect to contest the **claim** at its own expense but the liability of the **underwriters** will not exceed the amount for which the **claim** could have been settled in the opinion of a senior legal counsel (to be mutually agreed upon by the **insured** and the **underwriters** or in the absence of agreement by determination of the President of Bar Association of the state or **territory** the **claim** is being heard. The **underwriters** shall pay all **defence costs** incurred up to the date the **insured** notifies the **underwriters** in writing of its election under this section 6.17, and shall pay the **insured** (subject to the retention) the amount for which the **claim** could have been so settled. The **insured** expressly agrees that the **underwriters'** liability in respect of such **claim** shall then be at an end.

6.18 Representations and severability

6.18.1 It is agreed between the **insured** and the **underwriters** that the written proposal provided by the **insured** and any other underwriting information shall be deemed to be incorporated into and forms the basis of this policy and the **insured** warrants the truth of all statements made therein. All such statements and representations shall be deemed to be the basis of this policy and are to be considered as incorporated into this policy.

6.18.2 No statements or representations made by, information or knowledge possessed by an insured natural person or any conduct of any insured natural person shall be imputed to any other insured natural person for the purpose of determining whether coverage is available under this policy for any **claim** made against such

insured natural person. However, the knowledge possessed by any insured natural person who is a past or current chief executive officer, president or chief financial officer of the **company** shall be imputed to such **company** for the purpose of determining whether coverage is available under this policy for any **claim** made against the **company**.

6.19 Insurance Contracts Act 1984

Nothing contained in this policy is to be construed to reduce or waive either the **insured's** or the **underwriter's** privileges, rights or remedies available under the Insurance Contracts Act 1984.

6.20 Governing law and jurisdiction

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.

6.21 Address for service

Delta Insurance Australia Pty Limited as agent for and on behalf of certain underwriters at Lloyd's will accept notification of any claims or circumstances upon presentation to the address set forth in the schedule.

6.22 Complaints procedure

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
Phone: 07 3017 4720
Post: GPO Box 1832, Brisbane, QLD 4001

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

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
Post: GPO Box 3 Melbourne VIC 3001
Email: info@afca.org.au
Website: www.afca.org.au

Details of AFCA's complaint procedures and any relevant time limits are available at www.afca.org.au. AFCA is an independent external dispute resolution scheme approved by the Australian Securities and Investments Commission that provides financial services complaint resolution for free to consumers.

6.23 Adjustment of premium

Where premium has been calculated on estimates furnished by the **insured**, the **insured** shall, within thirty (30) days after the expiry of each **policy period**, furnish to the **underwriters** such information as the **underwriters** may require to adjust the premium for the expired **policy period**. Any difference in premium shall be paid by, or allowed to, the **insured**. The **insured** shall allow the **underwriters** to inspect the **insured's** records of such information.

6.24 Inspection of property

The **underwriters** shall be permitted but not obligated to inspect the **insured's** property and operations at any time. Neither the **underwriters'** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of, or for the benefit of, the **insured**, or others, to determine or warrant that such property or operations are safe.

6.25 Cross liability

Where the **insured** consists of more than one legal entity then each legal entity shall be considered as a separate **insured** as though a separate policy had been issued to each, but nothing in

this section 6.25 shall operate to increase the limit of liability stated in item 3a of the schedule.

6.26 Headings

The descriptions in the headings and any subheading of this policy or any endorsement attached hereto are inserted solely for convenience and do not constitute any part of the general conditions.

6.27 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.



**Embrace
Change.**

Delta Insurance Australia

contactus@deltainsurance.com.au

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GPO Box 1832, Brisbane QLD 4001

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