

# Marine Combined Liability Insurance Policy



A sea change in  
marine insurance

Trident Insurance Group Pty Ltd  
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MT HAWTHORN WA 6915  
ABN: 94 247 973307  
AFS Licence No: 237360

Trident Marine Combined Liability V4

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## **IMPORTANT INFORMATION**

This Policy and Your current Schedule are important. Please ensure that You read them carefully and keep them in a safe place.

The Policy, current Schedule, Claims Conditions, General Conditions, Exclusions, Definitions and Endorsements (if any), are to be read together as one contract.

Where any word or expression has been given a specific meaning under the heading 'DEFINITIONS - Words with special meaning', such word or expression shall bear that meaning wherever it may appear in this Policy, unless such meaning is inapplicable to the context in which such word or expression appears.

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

The insurance by this Policy shall be invalid unless the Schedule and any alterations to the wording are signed by a person authorised by Us.

If You have any questions regarding this Policy, please contact Trident Insurance Group Pty. Ltd. t/as Trident Underwriting.

## **COOLING-OFF INFORMATION**

If You want to return Your insurance after Your decision to buy it, You may cancel it and receive a full refund. To do this You may notify Trident Insurance Group Pty. Ltd. t/as Trident Underwriting electronically or in writing within twenty-one (21) days from the date this Policy commenced.

This cooling-off right does not apply if You have made or are entitled to make a claim. Even after the cooling-off period ends, You still have cancellation rights. However, Trident Insurance Group Pty. Ltd. t/as Trident Underwriting may deduct certain amounts from any refund for administration costs or any non-refundable taxes.

## **PRIVACY**

Privacy legislation regulates the way private sector organisations can collect, use, keep secure and disclose personal information. We are bound by the Privacy Act 1988 (Cth) and its principles when collecting and handling personal information. We have developed a privacy policy which explains what sort of personal information We hold about You and what We do with it.

We will only collect personal information from or about You for the purpose of assessing Your application for insurance and administering Your insurance policy, including any claims You make.

We may need to disclose personal information to Our reinsurers (who may be located overseas), insurance intermediaries, insurance reference bureaus, credit reference agencies, Our advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting Us and them in providing relevant services and products, or for the purpose of litigation.

By providing Your personal information to Us, You consent to Us making these disclosures. Without Your personal information We may not be able to issue insurance cover to You or process Your claim.

Please contact Trident Insurance Group Pty. Ltd. t/as Trident Underwriting to obtain a copy of Our privacy information brochure. A copy of the brochure may also be obtained from any of Our offices or from Our website at [www.tridentinsurance.com.au](http://www.tridentinsurance.com.au).

## THE GENERAL INSURANCE CODE OF PRACTICE

We are a signatory to the General Insurance Code of Practice. The Code aims to raise standards of practice and service in the insurance industry.

It:

- promotes better communication between insurers and customers which will lead to better public understanding of insurance to allow customers to make informed choices, and
- outlines good standards of practice and service to be met by insurers to enhance their regulation for responding efficiently to their customers' needs.

## DISPUTE RESOLUTION

We will do everything possible to provide a quality service to You. However, We recognise that occasionally there may be some aspect of Our service or a decision We have made that You wish to query or draw to Our attention.

We have a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to Your complaint within fifteen (15) working days.

If You would like to make a complaint or access our internal dispute resolution service please contact Our nearest office and ask to speak to a dispute resolution specialist.

If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000

Telephone Number: (02) 9223 1433  
Facsimile Number: (02) 9223 1466

If your dispute remains unresolved you may be referred to the **Financial Ombudsman Service Limited** under the terms of the General Insurance Code of Practice. For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia at the address above.

The Underwriters accepting this Insurance agree that:

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

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney NSW 2000

- (iii) who has authority to accept service and to appear on the Underwriters' behalf;
- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to Trident.

## **YOUR RESPONSIBILITIES**

### **Your Duty of Disclosure**

Before You enter into a contract of general insurance with Us, (which includes this General and Products Liability Insurance Policy) You have a **duty** under the Insurance Contracts Act 1984 to tell Us everything that You know, or could reasonably be expected to know, is relevant to Our decision to insure You and the terms and conditions on which We insure You.

You have the same duty to tell Us those things before We issue cover, renew, extend, vary or reinstate a policy of insurance.

### **Information You do not need to give**

You do not have to tell Us anything that:

- reduces the risk;
- is common knowledge;
- We already know or should know in the ordinary course of Our business;
- has been indicated by Us as not necessary to know.

### **Non-Disclosure**

If You fail to comply with Your duty of disclosure, We may be entitled to reduce Our liability under the contract in respect of a claim or may cancel the contract.

If Your non-disclosure is fraudulent, We may also have the option of avoiding the contract from its beginning.

## **DUTIES OF INSURER**

We will act and conduct Ourselves with utmost good faith.

## **CLAIMS**

This Policy only provides cover in respect of Personal Injury and/or Property Damage and Advertising Liability that occurs during the Period of Insurance.

## **LIABILITY ASSUMED BY YOU UNDER AN AGREEMENT**

It is not possible for You to transfer to Us the entire spectrum of legal liabilities which You may be compelled to bear under the terms of a wide variety of Indemnity and/or Hold Harmless Clauses frequently inserted into commercial business contracts by principals, lessors or other parties.

Liability assumed by You under an agreement is covered only to the extent described in this General and Products Liability Insurance Policy.

Prior to accepting legal liability for loss, destruction, damage or injury, which would not otherwise have attached to You at law, You should contact Trident Insurance Group Pty. Ltd. t/as Trident Underwriting to enquire whether this Marine Combined Liability Insurance Policy covers such liability or, if not, whether it may be so extended.

## **CONTACT FOR ASSISTANCE OR CONFIRMATION OF COVER**

If You need to confirm any Policy transaction or clarify any of the information contained in this Policy document or if You have any other queries, please contact Trident Insurance Group Pty. Ltd. t/as Trident Underwriting.

## **DEFINITIONS - words with special meaning:**

For the purpose of determining the cover provided by this Policy:

1.1 **“Advertising Injury”** means:

Injury arising out of:

1.1.1 libel, slander or defamation, or

1.1.2 any infringement of copyright or passing off of title or slogan; or

1.1.3 unfair competition, piracy, idea misappropriation contrary to an implied contract; or

1.1.4 invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of Your advertising activities.

1.2 **“Aircraft”** means:

any craft or object designed to travel through air or space, other than model aircraft.

1.3 **“Business”** means:

the business as described in the Schedule (and, where applicable, as further described in any more specific underwriting information provided to Us at the time when this insurance was negotiated) and shall include:

1.3.1 the ownership of premises and/or the tenancy thereof by You.

1.3.2 the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting services by You or on Your behalf.

1.3.3 private work undertaken by Your employees for any of Your directors, partners, proprietors, officers or executives.

1.3.4 the provision of any canteen, social and/or sporting clubs or welfare and/or child care facilities by You or on Your behalf, which are primarily for the benefit of Your employees.

1.4 **“Compensation”** means:

monies paid or agreed to be paid by judgment, award or settlement for Personal Injury and/or Property Damage and/or Advertising Injury.

Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies.

1.5 **“Employment Practices”** means:

any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your employees.

1.6 **“Excess”** means:

the first amount of each claim or series of claims, arising out of any one Occurrence, for which You are responsible.

The Excess applicable to this insurance appears in the Schedule.



The Excess applies to all amounts for which We will be liable, including the indemnity provided by Insuring Clause 2.2 (Defence Costs and Supplementary Payments).

1.7 **“General Liability”** means:

Your legal liability for Personal Injury, Property Damage or Advertising Injury caused by or arising out of an Occurrence happening in connection with the Business other than Products Liability.

1.8 **“Geographical Limits”** means:

1.8.1 anywhere in the Commonwealth of Australia and its external territories;

1.8.2 elsewhere in the World, but only with respect to:

1.8.2.1 overseas business visits by any of Your directors, partners, officers, executives or employees but not where they perform manual work in North America.

1.8.2.2 Products supplied from the Commonwealth of Australia, but the indemnity granted in relation to such products shall not apply to claims in respect of Personal Injury and/or Property Damage happening in North America where such products have been exported to North America with Your knowledge.

1.9 **“Hovercraft”** means:

any vessel, craft or device made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

1.10 **“Incidental Contracts”** means:

1.10.1 any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault.

1.10.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities.

1.10.3 any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings.

1.10.4 those contracts designated in the Schedule.

1.11 **“Internet Operations”** means:

1.11.1 transfer of computer data or programmes by use of electronic mail systems by You or Your employees, including for the purpose of this definition only, part-time and temporary staff, contractors and others within Your organisation whether or not such data or programmes contain any malicious or damaging code, including but not limited to computer virus, worm, logic bomb, or Trojan horse,

1.11.2 access through Your network to the world wide web or a public internet site by You or Your employees, including for the purposes of this definition only, part-time and temporary staff, contractors and others within Your organisation;

1.11.3 access to Your intranet (meaning internal company information and computing resources) which is made available through the world wide web for Your customers or others outside Your organisation; and

1.11.4 the operation and maintenance of Your web site.

1.12 **“Medical Persons”** includes but is not limited to:

medical practitioners, medical nurses, dentists and first aid attendants.

1.13 **“Named Insured”** means:

1.13.1 the person(s), corporations and/or other organisations specified in the Schedule,

1.13.2 all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured incorporated in the Commonwealth of Australia and/or any other organisations under the control of the Named Insured;

1.13.3 all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Insured after the commencement of the Period of Insurance.

1.13.4 every subsidiary and/or controlled corporation and/or other organisation of the Named Insured which is divested during the Period of Insurance, but only in respect of claims made against such divested subsidiary, related or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the divestment.

1.14 **“North America”** means:

1.14.1 the United States of America and the Dominion of Canada,

1.14.2 any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and

1.14.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.

1.15 **“Occurrence”** means:

an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in clause 1.17.5) from Your standpoint.

With respect to Personal Injury or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of

media used, or the number of claimants) shall be deemed to be one Occurrence.

1.16 **“Period of Insurance”** means:

the Period of Insurance specified in the Schedule and any extension thereof which may be agreed in writing between You and Us.

1.17 **“Personal Injury”** means:

1.17.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom;

1.17.2 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;

1.17.3 wrongful entry or wrongful eviction or other invasion of privacy;

1.17.4 libel, slander or defamation of character, unless arising out of Advertising Injury;

1.17.5 assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

1.18 **“Pollutants”** means:

any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. ‘Waste material’ includes materials that are intended to be recycled, reconditioned or reclaimed.

1.19 **“Products”** means:

anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, re-supplied or distributed, imported or exported, by You or on Your behalf (including Your predecessors in the Business), including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which, by law or otherwise, You are deemed to have manufactured in the course of the Business including discontinued products.

Provided always that for the purpose of this insurance the term “Products” shall not be deemed to include:

1.19.1 food and beverages supplied by You or on Your behalf primarily to Your employees as a staff benefit ,

1.19.2 any vending machine or any other property rented to or located for use of others but not sold by You;

and any claims made against You in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

- 1.20 **“Products Liability”** means:
- Your legal liability for Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such products; but only where such Personal Injury and/or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such products has been relinquished to others.
- 1.21 **“Property Damage”** means:
- 1.21.1 physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or
- 1.21.2 loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence.
- 1.22 **“the Schedule”** means:
- the most current schedule issued by Us in connection with this Policy.
- 1.23 **“Tool of Trade”** means:
- a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by You at Your premises or on any Worksite. Tool of Trade does not include any Vehicle whilst travelling to or from a Worksite or Vehicles that are used to carry goods to or from any premises.
- 1.24 **“Vehicle”** means:
- any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.
- 1.25 **“Watercraft”** means:
- any vessel, craft or thing made or intended to float on or in or travel on or through water, other than model boats.
- 1.26 **“We, Us, Our, Ourselves”** means:
- the Insurer named in the Schedule.
- 1.27 **“Worksite”** means:
- any premises or site where any work is performed for and/or in connection with the Business together with all areas surrounding such premises or site and/or all areas in between such premises or site that You shall use in connection with such work.
- 1.28 **“You, Your, Insured”**
- Each of the following is an Insured to the extent specified below:-
- 1.28.1 the Named Insured,
- 1.28.2 every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee of the Named Insured (including the spouse of any such person while accompanying such person on any commercial trip or function in connection with the Business) or volunteer while such persons are

acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities.

- 1.28.3 any employee superannuation fund or pension scheme managed by or on behalf of the Named Insured, and the trustees and the directors of the trustee of any such employee superannuation fund or pension scheme which is not administered by corporate fund managers.
- 1.28.4 every principal in respect of the principal's liability arising out of:
  - 1.28.4.1 the performance by or on behalf of the Named 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 Limits of Liability as are provided by this Policy.
  - 1.28.4.2 any Products sold or supplied by the Named Insured, but only in respect of the Named Insured's own acts or omissions in connection with such products and in any event only for such coverage and Limits of Liability as are provided by this Policy.
- 1.28.5 every person, corporation, organisation, trustee or estate to whom or to which the Named Insured is obligated by reason of law (whether written or implied) to provide insurance such as is afforded by this Policy, but only to the extent required by such law and in any event only for such coverage and Limits of Liability as are provided by this Policy.
- 1.28.6 every officer, member, employee or voluntary helper of the Named Insured's canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charities, welfare and/or child care facilities, while acting in their respective capacities as such.
- 1.28.7 any director, partner, proprietor, officer or executive of the Named Insured in respect of private work undertaken by the Named Insured's employees for such person and any employee whilst actually undertaking such work.
- 1.28.8 the estates, legal representatives, heirs or assigns of:
  - 1.28.8.1 any deceased or insolvent persons, or
  - 1.28.8.2 persons who are unable to manage their own affairs by reason of mental disorder or incapacity, who would otherwise be indemnified by this Policy, but only in respect of liability incurred by such persons as described in clauses 1.28.8.1 and 1.28.8.2 above.
- 1.28.9 every party including joint venture companies and partnerships to whom the Named Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Liability as are provided by this Policy.

## 2. **INSURING CLAUSES**

### 2.1 **What We Cover**

We agree (subject to the terms, Claims Conditions, General Conditions, Exclusions, Definitions and Limits of Liability incorporated herein) to pay to You or on Your behalf all amounts which You shall become legally liable to pay as Compensation in respect of:

2.1.1 Personal Injury, and/or

2.1.2 Property Damage; and/or

2.1.3 Advertising Injury;

happening during the Period of Insurance within the Geographical Limits and caused by or arising out of an Occurrence in connection with the Business.

### 2.2 **Defence Costs and Supplementary Payments**

With respect to the indemnity provided by this Policy, We will:

2.2.1 defend, in Your name and on Your behalf, any claim or suit against You alleging such Personal Injury, Property Damage or Advertising Injury and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent.

2.2.2 pay all charges, expenses and legal costs incurred by Us and/or by You with Our written consent:

2.2.2.1 in the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request, or

2.2.2.2 in bringing or defending appeals in connection with such claim or suit.

2.2.3 pay all charges, expenses and legal costs recoverable from or awarded against You in any such claim or suit and all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability thereon.

2.2.4 pay expenses incurred by You for:

2.2.4.1 rendering first aid and/or surgical or medical relief to others at the time of any Personal Injury (other than any medical expenses, which we are prevented from paying by any law).

2.2.4.2 temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or unpinning thereof.

2.2.4.3 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.

2.2.5 pay all legal costs incurred by You with Our consent for representation of You at:

2.2.5.1 any Coronial Inquest or Inquiry

2.2.5.2 any proceedings in any court or tribunal in connection with liability insured against by this Policy.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability of this Policy.

However, this policy does not cover defence costs or supplementary payments in respect of any claims or suits originating in any court in North America

Where We are prevented by law or otherwise from making payments on Your behalf, We will indemnify You for legal liability incurred to the extent that such liability is covered by this Policy.

In jurisdictions where We may not legally be permitted to, or cannot for any other reason, defend any claim or suit against You, We will reimburse You for the expense of such defence incurred with Our written consent.

### 2.3 **Limits of Liability and Excess**

Subject to clause 2.2 above and clauses 2.4 and 3.2.5 below:

2.3.1 The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims for General Liability arising out of any one Occurrence.

2.3.2 The Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one Period of Insurance, for Products Liability.

The applicable Limit of Liability will not be reduced by the amount of any Excess payable by You.

### 2.4 **Additional Benefit - Claims Preparation Costs**

In addition to the amount of cover provided by this Policy, We will pay up to **\$20,000** for reasonable professional fees and such other expenses incurred by You for the preparation of a claim under this Policy.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under clause 2.2 of this Policy.

### 2.5 **Additional Benefit – Hotwork Extension**

The cover provided by this Policy is extended to include Your liability in respect of or arising in connection with hotwork on any Watercraft including those previously engaged in the carriage of the following cargoes: ammunition, explosives, bulk oil, flammable liquids in bulk or gas in bulk.

It is a condition that the rules, regulations and requirements of the port or government authorities at the place where the hotwork is being carried out have been complied with including obtaining a gas free certificate and/or any other certificates or authorisation that may be required. All hotwork must be carried out within the standard set out within Australian Standard Safety in Welding and Allied Processes Part 1: Fire Precautions." - AS 1674.1 – 1997.

Hotwork means any worked conducted by You which involves the use of oxy-acetylene torches, welding or oil tank cleaning equipment.

2.6 **Optional Additional Benefit - Products Exported to North America**  
(Applicable only where this Additional Benefit is confirmed in the Schedule)

The cover provided by this Policy is extended to include any judgment, award or settlement made within North America or any order made anywhere in the World to enforce such judgment, award or settlement either in whole or in part, subject to the following additional terms and exclusions in respect of any such judgment, award or settlement:-

2.6.1 cover only applies in respect of Your legal liability for Personal Injury or Property Damage that arises out of any Products exported to North America.

2.6.2 cover is not provided for:

2.6.2.1 Personal Injury or Property Damage arising out of the discharge, dispersal, emission, release or escape of Pollutants,

2.6.2.2 the cost of removing, nullifying or clean up of Pollutants;

2.6.2.3 the cost of preventing the escape of Pollutants;

2.6.2.4 Personal Injury or Property Damage arising directly or indirectly from the existence of asbestos;

2.6.2.5 any claim for Compensation if in North America You have:

- (a) any assets other than Products,
- (b) a related or subsidiary company;
- (c) any person or entity with power of attorney;
- (d) any franchisor.



### 3. **WHAT WE EXCLUDE**

We do not cover any liability:

#### 3.1 **Property owned by You**

for Property Damage to property owned, hired or leased by You.

#### 3.2 **Property in Your care, custody or control**

for Property Damage to property in Your physical or legal care, custody or control; but this exclusion shall not apply with regard to:

3.2.1 the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors.

3.2.2 premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of the Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises.

3.2.3 3.2.3.1 premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business, or

3.2.3.2 any other property temporarily in Your possession for the purpose of being worked upon;

but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work.

3.2.4 any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your business.

3.2.5 any property (except property that You own, hire or lease) not mentioned in clauses 3.2.1 to 3.2.4 above whilst in Your physical or legal care, custody or control where You have accepted or assumed legal liability for such property. Provided that Our liability under this clause 3.2.5 shall not exceed the Limit of Liability shown in the Schedule in respect of any one claim or series of claims arising out of any one Occurrence and in the annual aggregate.

#### 3.3 **Vehicles**

for Personal Injury or Property Damage arising out of the ownership, possession or use by You of any Vehicle:

3.3.1 which is registered or which is required under any legislation to be registered, or

3.3.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance is effected);

but Exclusions 3.3.1 and 3.3.2 shall not apply to:

3.3.3 Personal Injury where:

3.3.3.1 that compulsory liability insurance or statutory indemnity does not provide indemnity, and

3.3.3.2 the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.

3.3.4 any Vehicle (including any tool or plant forming part of or attached to or used in connection with such vehicle) whilst being operated or used by You or on Your behalf as a Tool of Trade at Your premises or on any Worksite.

3.3.5 the delivery or collection of goods to or from any Vehicle.

3.3.6 the loading or unloading of any Vehicle.

3.3.7 any Vehicle temporarily in Your custody or control for the purpose of parking.

#### 3.4 **Aircraft**

for Personal Injury and/or Property Damage arising from:

3.4.1 the ownership, maintenance, operation or use by You of any Aircraft.

#### 3.5 **Aircraft Products**

arising out of any Products which, with Your knowledge, is intended for incorporation into the structure, machinery or controls of any Aircraft.

#### 3.6 **Damage to Products**

for Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to that part and only that part of such product to which the damage is directly attributable.

#### 3.7 **Faulty Workmanship**

for the cost of performing, completing, correcting or improving any work undertaken by You.

#### 3.8 **Loss of Use**

for loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:

3.8.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement; or

3.8.2 failure of any Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You; but this Exclusion 3.8.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products or work performed by You or on Your behalf after such products or work have been put to use by any person or organisation other than You.

#### 3.9 **Product Guarantee**

for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

### 3.10 **Product Recall**

for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.

### 3.11 **Advertising Injury**

for Advertising Injury:

3.11.1 resulting from statements made at Your direction with knowledge that such statements are false.

3.11.2 resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract.

3.11.3 resulting from any incorrect description of Products or services.

3.11.4 resulting from any mistake in advertised price of Products or services.

3.11.5 failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability.

3.11.6 incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

### 3.12 **Asbestos**

for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by or arising from exposure to asbestos or materials containing asbestos.

### 3.13 **Breach of Professional Duty**

arising out of any breach of duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion shall not apply to claims:

3.13.1 for Personal Injury and/or Property Damage arising from such breach of duty.

3.13.2 arising out of the rendering of or failure to render professional medical advice by Medical Persons employed by You to provide first aid and other medical services on Your premises.

3.13.3 arising out of advice which is not given by You for a fee.

3.13.4 arising out of advice given in respect of the use or storage of Your Products.

### 3.14 **Contractual Liability**

which has been assumed by You under any contract or agreement that requires You to:

3.14.1 effect insurance over property, either real or personal.

3.14.2 assume liability for, Personal Injury or Property Damage regardless of fault; provided that this exclusion shall not apply with regard to:

- 3.14.2.1 liabilities which would have been implied by law in the absence of such contract or agreement; or
- 3.14.2.3 terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
- 3.14.2.4 liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

### 3.15 **Employers Liability**

- 3.15.1 for Bodily Injury to any Worker in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers' Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.

Provided that this Policy will respond to the extent that Your liability would not be covered under any such policy, fund, scheme or self insurance arrangement had You complied with its obligations pursuant to such law.

- 3.15.2 imposed by:

- 3.15.2.1 the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement.

- 3.15.2.2 any law relating to Employment Practices.

Notwithstanding anything herein contained to the contrary, it is hereby declared and agreed that Exclusions 3.15.1 and 3.15.2 are extended to include the following proviso:

"Provided always that Exclusions 3.15.1 and 3.15.2 shall not apply with respect to:

Liability of others assumed by the Named Insured under a written contract or agreement."

For the purpose of Exclusions 3.15.1 and 3.15.2:

- (a) the term 'Worker' means any person deemed to be employed by You pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be Your Workers.
- (b) the term 'Bodily Injury' means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

### 3.16 **Fines, Penalties, Punitive, Exemplary or Aggravated Damages**

for any fines, penalties, punitive, exemplary or aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

3.17 **Information Technology Hazards, Computer data, Program and Storage Media**

3.17.1 for Personal Injury or property damage arising directly or indirectly out of, or in any way involving Your internet operations, or

3.17.2 for Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:

3.17.2.1 the use of any computer hardware or software

3.17.2.2 the provision of computer or telecommunication services by You or on Your behalf

3.17.2.3 the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus

But this exclusion does not apply to:

3.17.3 Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site, or

3.17.4 liability which arises irrespective of the involvement of your internet operations, and

Nothing in this exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion

3.18 **Defamation**

for defamation:

3.18.1 resulting from statements made prior to the commencement of the Period of Insurance.

3.18.2 resulting from statements made at Your direction with knowledge that such statements are false.

3.18.3 related to advertising, broadcasting, publishing or telecasting activities conducted by You or on Your behalf.

3.19 **Liquidated Damages**

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

3.20 **Pollutants**

3.20.1 for Personal Injury and/or Property Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any water course or body of water.

3.20.2 for the cost of testing and monitoring for, removing, nullifying, or cleaning up of Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than North America, Exclusions 3.20.1 and 3.20.2 shall not apply where such discharge, dispersal, release or escape is caused by a

sudden, identifiable, unintended and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

### 3.21 **War, Terrorism, Radioactivity**

for loss, damage, destruction, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

3.21.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under order of any government or public or local authority, or

3.21.2 Any Act(s) of Terrorism.

For the purpose of this exclusion, an Act of Terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, ethnic or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

3.21.2.1 involves violence against one or more persons, or

3.21.2.2 involves danger to property; or

3.21.2.3 endangers life other than that of the person committing the action; or

3.21.2.4 creates a risk to health or safety of the public or a section of the public; or

3.21.2.5 is designed to interfere with or to disrupt an electronic system.

3.21.3 radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear waste or action of nuclear fission or fusion.

This Policy also excludes any loss, destruction, damage, death, injury, illness, liability, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing, retaliating against, or responding to or in any way relating to the above.

Provided that Exclusion 3.21.3 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

## 4. CLAIMS CONDITIONS

### 4.1 NOTIFICATION OF OCCURRENCE, CLAIM OR SUIT

You shall give:

- 4.1.1 written notice to Us, as soon as reasonably practicable, of any claim made against You or any Occurrence that may give rise to a claim being made against You and which is covered by this Policy.
- 4.1.2 all such additional information that We may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to the claim or Occurrence shall be forwarded to Us as soon as practicable after they are received by You.
- 4.1.3 Written notice (including facsimile transmission) must be given to Us via Trident Insurance Group Pty. Ltd. t/as Trident Underwriting.

### 4.2 YOUR DUTIES IN THE EVENT OF AN OCCURRENCE, CLAIM OR SUIT

- 4.2.1 You shall not, without Our written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim.
- 4.2.2 You shall use the best endeavours to preserve all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected without Our consent until We have had an opportunity of inspection.
- 4.2.3 You shall, when so requested, provide Us with details of any other insurances current at the time of any Occurrence, and/or Personal Injury and/or Property Damage and/or Advertising Injury and covering any of the liability insured by this Policy.

### 4.3 OUR RIGHTS REGARDING CLAIMS

- 4.3.1 Following the happening of any Occurrence in respect of which a claim is, or may be, made under this Policy, We shall have full discretion in the conduct of any proceedings in connection with any claim. You shall give such information and assistance that We may reasonably require in the prosecution, defence or settlement of any claim.
- 4.3.2 We may at any time pay to You, in respect of all claims against You arising directly or indirectly from one source or original cause:
  - 4.3.2.1 the amount of the Limit of Liability or such other amount specified in respect thereof (after deduction of any sum(s) already paid by Us, which sum(s) would reduce the amount of Our unfulfilled liability in respect thereof); or
  - 4.3.2.2 any lesser sum for which the claim(s) can be settled.
- 4.3.3 Upon making such payment, We shall relinquish conduct and control of, and be under no further liability under this Policy in connection with, such claim(s) except for Defence Costs and Supplementary Payments:
  - 4.3.3.1 recoverable from You in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or

4.3.3.2 incurred by Us, or by You with Our written consent, prior to the date of such payment.

#### 4.4. **GOODS AND SERVICES TAX**

You must inform Us of the extent to which You are entitled to an input tax credit for the premium each time that You make a claim under this Policy. No payment will be made to You for any GST liability that arises on the settlement of a claim under this Policy when You have not informed Us of Your entitlement or correct entitlement to an input tax credit.

Notwithstanding anything contained in this Policy (including the Schedule and any endorsements attached hereto) to the contrary, Our liability will be calculated after taking into account:

4.4.1 any input tax credit to which You, or any claimant against You, is entitled for any acquisition relevant to a claim paid under this Policy; and

4.4.2 any input tax credit to which You, or any claimant against You, would have been entitled were You or the claimant to have made a relevant acquisition; and

4.4.3 the GST exclusive amount of any supply made by You which is relevant to Your claim.

If the applicable Limit of Liability is not sufficient to cover Your claim, We will only pay GST (less any relevant input tax credit) that relates to Our proportion of Your claim.

The terms '**GST**', '**input tax credit**', '**acquisition**' and '**supply**' have the meanings ascribed to them in the A New Tax System (Goods and Services Tax) Act 1999.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, Claims Conditions, General Conditions, Exclusions or Definitions of this Policy other than as stated above.



## 5. GENERAL CONDITIONS

### 5.1 ADJUSTMENT OF PREMIUM

If the first premium or any renewal premium for this Policy or any part thereof shall have been calculated on estimates provided by You, You shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow Us to inspect such record.

You shall, where requested by Us after the expiry of each Period of Insurance, provide to Us such particulars and information as We may require as soon as reasonably practicable. The premium for such Period shall thereupon be adjusted and any difference paid by or allowed to You, as the case may be, subject to retention by Us of any minimum premium that may have been agreed upon between Us and You at inception or the last renewal date of this Policy.

### 5.2 ALTERATION OF RISK

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each Period of Insurance, that shall come to the knowledge of Your officer responsible for insurance matters, shall be notified to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium as We may require.

### 5.3 BANKRUPTCY OR INSOLVENCY

In the event that You should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

In case of execution against You of any final judgment covered by this Policy being returned 'unsatisfied' by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against Us in the same manner, and to the same extent as You but not in excess of the Limit of Liability

### 5.4 BREACH OF CONDITION OR WARRANTY

Your rights under this Policy shall not be prejudiced by any unintentional and/or inadvertent:

- 5.4.1 breach of a condition or warranty without Your knowledge or consent, or
- 5.4.2 error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of "You, Your, Insured"; or
- 5.4.3 error in name, description or situation of property or
- 5.4.4 failure to report any property and/or entity and/or insurable exposure in which You have an interest.

Provided always that, upon discovery of any such fact or circumstances referred to above, Your officer responsible for insurance matters shall give written notice thereof to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium that We may require.

## 5.5 CANCELLATION OF THIS POLICY

### By You

5.5.1 You may cancel this Policy at any time by tendering notice in writing to Us to that effect, in which event the cancellation will become effective from the earlier of the date the notice is received by Us or the date on which You arranged alternative insurance protection.

### By Us

5.5.2 Subject to General Conditions 5.4 and 5.12, We may cancel this Policy in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984 (as amended).

Such cancellation shall take effect at the earlier of the following times:

5.5.2.1 the time when another policy of insurance between You and Us or some other insurer, being a policy that is intended by You to replace this Policy, is entered into; or

5.5.2.2 at 4.00 p.m. on the thirtieth (30th) business day after the day on which notification was given to You.

In the event of cancellation of this Policy by either party, You shall be entitled to a pro rata refund of premium subject to any minimum and deposit premium that may apply.

If the premium is subject to adjustment, cancellation will not affect Your obligation to supply Us with such information as is necessary to permit the premium adjustment to be calculated.

## 5.6. CROSS LIABILITIES

This insurance extends to indemnify:

5.6.1 each of the parties comprising the Named Insured, and

5.6.2 each of the Insureds hereunder,

separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in clauses 5.6.1 and 5.6.2 in respect of claims made by any other of such parties.

Provided always that:

5.6.3 each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, Exclusions and Definitions of this Policy in the same manner and to a like extent as though separate policies had been issued, and

5.6.4 in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

## 5.7 INSPECTION AND AUDIT

We shall be permitted, but not obligated, to inspect Your premises and operations at any reasonable time. Neither Our right to make inspections, nor Our failure to make inspections, nor the making of inspections, nor any report of an inspection shall constitute an undertaking, on behalf of or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.

We may examine and audit Your books and records at any time during the currency of this Policy and within three (3) years after the final termination of this Policy but only with regard to matters which in Our opinion are relevant to this Policy.

## 5.8 JURISDICTION

This contract of insurance shall be governed by and construed in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such Court.

## 5.9 PREMIUM FUNDERS

If the premium has been funded by a premium funding company which holds a legal right over this Policy by virtue of a notice of assignment and irrevocable power of attorney, then subject to Section 60 of the Insurance Contracts Act 1984, We may cancel this Policy at the request of the premium funding company, after substantiation of the debt and default in payment by You has been made and proven to Us, by giving You not less than three (3) business days written notice to that effect, following which a refund will be made to the premium funding company of the proportionate part of the premium applicable to the unexpired Period of Insurance.

## 5.10 REASONABLE PRECAUTIONS

You must:

5.10.1 exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition.

5.10.2 take reasonable precautions to prevent:

5.10.2.1 Personal Injury, Property Damage and Advertising Injury.

5.10.2.2 the manufacture, sale or supply of defective Products, and comply, and ensure that Your employees, servants and agents comply, with all statutory obligations, by-laws or regulations imposed by any public authority in respect of Your Products for the safety of persons or property.

5.10.2.3 at Your own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency You have knowledge of or have reason to suspect.

#### 5.11 **RELEASE**

Where You are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or any landlord or any other persons or parties from liability for loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance.

Notwithstanding General Condition 5.14 of this Policy, We agree to waive all Our rights of subrogation against any such Authority or persons or parties in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

#### 5.12 **NON-IMPUTATION**

Where this insurance is arranged in the joint names of more than one Insured, as described in clause 1.13, it is hereby declared and agreed that:

5.12.1 each Insured shall be covered as if it made its own proposal for this insurance.

5.12.2 any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured.

5.12.3 any knowledge possessed by any Insured shall not be imputed to the other Insured(s).

#### 5.13 **FOREIGN CURRENCY**

All amounts referred to in this Policy are in Australian Dollars.

If You incur liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by Us shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the free rate of exchange published in the Australian Financial Review on the date when the award was made or settlement was agreed upon; subject always to the applicable Limit of Liability.

#### 5.14 **SUBROGATION AND ALLOCATION OF THE PROCEEDS OF RECOVERIES**

Subject to General Condition 5.15 'Subrogation Waiver', any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying You in respect of legal liability under this insurance.

Should You incur any legal liability which is not covered by this insurance:

5.14.1 due to the application of an Excess; and/or

5.14.2 where the amounts of any judgments or settlements exceed the applicable Limit of Liability;

You will be entitled to the first call on the proceeds of all recoveries made, by either You or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to reimburse Us.

**5.15. SUBROGATION WAIVER**

Notwithstanding General Condition 5.14 We hereby agree to waive all Our rights of subrogation under this Policy against:

5.15.1 each of the parties described under clause 1.28

5.15.2 any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.

## STATUTORY LIABILITY EXTENSION

### 1. PREAMBLE

In consideration of payment of the Premium, We agree to provide insurance in accordance with, and subject to, the terms of this Extension.

For the sake of clarity, this Extension does not cover any Loss based upon, attributable to or in consequence of any wilful, intentional or deliberate Wrongful Breach or a Wrongful Breach caused by gross negligence or recklessness by the Insured or any dishonest, fraudulent or malicious act or omission of the Insured. In this regard, refer to the full terms and effect of the exclusions contained in clause 4.1 of this Extension.

### 2. INSURING CLAUSES

2.1 We agree to pay to and on behalf of the Insured any Loss arising from any Claim first received by the Insured and notified to Us during the Period of Insurance.

2.2 We shall not be liable to indemnify the Insured for Defence Costs under clause 2.1 unless the Insured obtains Our written consent.

We shall not be obliged to provide such consent unless We are satisfied that the Insured has Reasonable Grounds for Defence.

2.3 If We refuse to provide the consent set out in clause 2.2, We shall give to the Insured reasons for its refusal.

If after receipt of those reasons the Insured contests Our refusal to provide such consent the Insured may obtain the written opinion of a Senior Counsel. The Senior Counsel shall be mutually agreed upon by both parties or failing agreement shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

If the Senior Counsel is of the opinion that the Insured has Reasonable Grounds for Defence then We will:

2.3.1 give Our consent in accordance with clause 2.2;

2.3.2 be responsible for the Senior Counsel's reasonable fees for providing such opinion.

2.4 If the Insured continues to defend a Claim where We have refused to provide consent in accordance with clause 2.2 and the Insured is successful in respect of that Claim, then the consent set out in clause 2.2 shall be deemed to have been given at the time it was first requested by the Insured.

For the purpose of this clause "successful" means that the outcome of the Claim establishes that at the time at which We refused consent, the Insured had Reasonable Grounds for Defence.

### 3. LIMIT OF LIABILITY AND EXCESS

3.1 Our liability under this Extension in respect of all Losses arising out of all Claims covered by this Extension during the Period of Insurance will not exceed the Limit of Liability stated in the Schedule.

3.2 Our liability under this Extension applies only to that part of each Loss above the Excess.

3.3 For the purposes of this Extension, all Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

#### 4. EXCLUSIONS

4.1 This Extension does not provide indemnity in respect of any Claim:

4.1.1 based upon, attributable to or in consequence of:

- 4.1.1.1 any wilful, intentional or deliberate Wrongful Breach;
- 4.1.1.2 a wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
- 4.1.1.3 any Wrongful Breach caused by gross negligence or recklessness by the Insured;
- 4.1.1.4 a dishonest, fraudulent, malicious act or omission of the Insured;
- 4.1.1.5 the Insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;
- 4.1.1.6 any Wrongful Breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees;
- 4.1.1.7 a Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the performance of their duties as Officers and Employees;
- 4.1.1.8 any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Law; and any amendment, consolidation or re-enactment of any of those Sections;
- 4.1.1.9 a Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
- 4.1.1.10 a Wrongful Breach relating to the regulation of vehicular, air or marine traffic;
- 4.1.1.11 ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
- 4.1.1.12 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 4.1.1.13 war, invasion, act 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; or any act of Terrorism;
- 4.1.2 made, threatened or in any way intimated against the Insured prior to the Period of Insurance;
- 4.1.3 arising from any matter disclosed to any insurer (including Us) prior to the Period of Insurance as either a Claim or circumstance which may give rise to a Claim against the Insured;
- 4.1.4 arising from any circumstances of which the Insured had become aware prior to the Period of Insurance and which the Insured knew (or ought reasonably to have known) to be circumstances which may give rise to a Claim;

- 4.1.5 arising from any Wrongful Breach where the Insured knew (or ought reasonably to have known) prior to the Period of Insurance that there had been such a Wrongful Breach;
- 4.1.6 for any Loss or part of any Loss which is attributable to the period after the Insured knew (or ought reasonably to have known) that its conduct was a Wrongful Breach;
- 4.1.7 deliberately or intentionally solicited by the Insured. This exclusion does not apply to Officers and Employees where such Claims arise in the discharge of their duties as Officers and Employees;
- 4.1.8 any Defence Costs incurred or paid before Our consent has been given in accordance with the provisions of this Policy;
- 4.1.9 for any Loss or part of any Loss arising from or which is attributable to the Insured's participation in any Joint Venture. Provided that this exclusion shall not apply to Outside Directorship as stated in Extension 6.4;
- 4.1.10 for any Penalty
  - 4.1.10.1 imposed pursuant to any law of any country, state or territory outside the Territorial Limits;
  - 4.1.10.2 imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with such Penalty.

4.2 We shall not be liable to pay the amount of the Excess in respect of each Loss.

## 5. DEFINITIONS

5.1 "Act" means:

5.1.1 any Act of the Parliament of the Commonwealth of Australia and any Act of the Parliaments of the States or Territories of the Commonwealth of Australia, including any subordinate or delegated legislation made under those Acts; and

5.1.2 any amendment, consolidation or re-enactment of any of the above Acts or legislation.

5.2 "Appointed Representative" means the solicitors, barristers, assessors, consultants or investigators appointed in accordance with this Policy in respect of a Claim.

5.3 "Business" means the business conducted by the Named Insured as described in the Schedule.

5.4 "Claim" means any verbal or written notice received by the Insured which alleges a Wrongful Breach and claims that the Insured is liable to pay a Penalty.



5.5 “Consumer Protection Act” means any of the following:

Fair Trading Act 1985 (VIC)  
Fair Trading Act 1987 (NSW)  
Fair Trading Act 1987 (SA)  
Fair Trading Act 1987 (WA)  
Fair Trading Act 1989 (QLD)  
Fair Trading Act 1990 (TAS)  
Fair Trading Act 1992 (ACT)  
Consumer Affairs and Fair Trading Act 1996 (NT)  
Trade Practices Act 1974 (Cth)

and any amendment, consolidation or re-enactment of any of those Acts.

5.6 “Excess” means the amount as stated in the Schedule.

5.7 “Defence Costs” means any reasonable legal costs and associated expenses incurred with the written consent of Us in connection with the investigation, defence (including appeal or resisting appeal) and settlement of any Claim but shall not include wages, salaries or other remuneration of the Insured.

Provided that where proceedings are commenced to impose a Penalty and those proceedings are also in respect of other matters, then We will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in relation to those other matters.

5.8 “Employee” means any person employed by the Named Insured under a contract of service during or prior to the commencement of the Period of Insurance, but does not include any independent contractor or any employee of any independent contractor.

5.9 “Insured: means:

5.9.1 the Named Insured;

5.9.2 any Officer whilst acting in the performance of their duties to the Named Insured;

5.9.3 any Employee whilst acting in the performance of their employment by the Named Insured.

5.10 “Joint Venture” means any enterprise undertaken jointly by the Named Insured and another party or parties.

5.11 “Limit of Liability” means the amount as stated in the Schedule.

5.12 “Loss” means any Penalty and Defence Costs.

5.13 “Named Insured” means the Insured described in the Schedule and /or any Subsidiary Company which was a Subsidiary Company prior to the commencement of the Period of Insurance.

5.14 “Officer” means any past, present or future director, executive officer (as defined by the Corporations Law) or company secretary of the Named Insured.

5.15 “Outside Directorship” means an executive position held by the Insured in connection with the Business at the specific request of the Named Insured in any corporation, joint venture, partnership, trust or other enterprise which is not included in the definition of the Named Insured.

5.16 “Penalty” means any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act for a Wrongful Breach by the Insured but excluding:

5.16.1 any amount payable as compensation;

- 5.16.2 any compliance, remedial, reparation or restitution costs;
- 5.16.3 any damages, including any exemplary or punitive damages;
- 5.16.4 any consequential economic loss;
- 5.16.5 any legal costs and associated expenses.

Notwithstanding clause 5.16.5, We will pay any reasonable legal costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this Policy. Provided that where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in sub-clauses 5.16.1 to 5.16.5, We will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in sub-clause 5.16.1 to 5.16.5.

5.17 "Period of Insurance" means the period of insurance stated in the Schedule.

5.18 "Policy" means:

- 5.18.1 the Policy wording;
- 5.18.2 the Schedule;
- 5.18.3 the proposal; and
- 5.18.4 any endorsements agreed by the parties attaching to and forming part of this Policy either at inception or during the Period of Insurance.

5.19 "Premium" means the amount stated in the Schedule.

5.20 "Reasonable Grounds for Defence" means:

- 5.20.1 the Insured has reasonable prospects of success in avoiding or reducing any Penalty alleged in the Claim; or
- 5.20.2 the Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim,

and that having regard to the likely legal costs incurred in defending the Claim it is reasonable for the Claim to be defended. Provided that in either scenario 5.20.1 or 5.20.2 above the Claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.

5.21 "Regulatory Authority" means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorised to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

5.22 "Retroactive Date" means the date shown in the Schedule. However, unless otherwise agreed in writing by Us, such date in respect of any entity acquired or created by the Named Insured shall be the date of acquisition or creation of that entity by the Named Insured or the date shown in the Schedule, whichever is the later date.

5.23 "Subsidiary Company" means any entity in respect of which the Named Insured:

- 5.23.1 controls the composition of the board of directors;  
or
- 5.23.2 is in a position to cast, or control the casting of, more than 50% of the issued voting shares;  
or
- 5.23.3 holds more than 50% of the issued share capital,

and shall include any entity which is deemed to be a subsidiary of the Named Insured by virtue of any legislation or law.

5.24 "Schedule" means the document attaching to and forming part of this Policy which is signed by Our authorised representative.

5.25 "Senior Officer" means any director, chief executive officer, or company secretary of the Named Insured.

5.26 "Territorial Limits" means anywhere in Australia.

5.27 "Terrorism" means an act, including but not limited to the use of force or violence and / or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and / or to put the public, or any section of the public, in fear.

5.28 "Wrongful Breach" means any act, error or omission which occurs:

5.28.1 in connection with the Business;

5.28.2 within the Territorial Limits; and

5.28.3 after the Retroactive Date,

WHEREBY:

5.28.4 the Insured contravenes an Act or is involved in the contravention of an Act;

5.28.5 the Insured commits an offence pursuant to an Act; or

5.28.6 such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.

## 6. EXTENSIONS

### 6.1 Preamble

6.1.1 We agree to provide indemnity in accordance with the following extensions.

6.1.2 Each extension is subject to the terms of this Policy except to the extent that they are expressly varied by the extension.

6.1.3 The inclusion of any of the extensions shall not increase the Limit of Liability.

### 6.2 Acquired Companies

Provided that notice has been given to Us as soon as practicable, it is understood and agreed that the definition of the Named Insured is extended to include any Subsidiary Company acquired or created subsequent to the commencement of the Period of Insurance but the indemnity granted by virtue of this extension shall only apply in respect of any Wrongful Breach committed or

alleged to have been committed by the Insured in respect of such Subsidiary Company subsequent to such acquisition or creation. PROVIDED THAT:

We shall be entitled to such additional information as it may require in respect of such acquired or created Subsidiary Company and shall have the right to charge an additional premium.

### **6.3 Continuous Cover**

We agree to provide indemnity to the Insured in respect of any Claim notified to Us during the Period of Insurance where that Claim arose from circumstances which the Insured knew (or ought reasonably to have known) to have been circumstances which may have given rise to a Claim prior to commencement of the Period of Insurance. PROVIDED ALWAYS THAT:

- 6.3.1 the Insured has not committed or attempted to commit any fraudulent non-disclosure or fraudulent misrepresentation;
- 6.3.2 We were the Insured's Statutory Liability insurer for a continuous (and uninterrupted) period from the date the Insured first became aware of the circumstances which the Insured knew (or ought reasonably to have known) to be circumstances which may have given rise to such a Claim, up to and including when the Claim was first made against the Insured and notified to Us;
- 6.3.3 We agree to indemnify the Insured under this extension in accordance with this Policy held by the Insured with Us at the time the Insured first became aware that circumstances existed which the Insured knew (or ought reasonably to have known) to be circumstances which may have given rise to such Claim BUT the Insured shall have no greater cover than otherwise available under this Policy; and
- 6.3.4 We reserve the right to reduce our liability in respect of such Claim by the amount which fairly represents the extent to which Our interests are prejudiced as a result of the late notification of such circumstances.

### **6.4 Outside Directorship**

We shall indemnify the Insured for a Loss in respect of any Outside Directorship held by the Officer;

PROVIDED THAT:

- 6.4.1 such indemnity shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and
- 6.4.2 the coverage afforded by this extension shall not apply to any part of any Loss covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.

## **7. CLAIMS CONDITIONS**

### **7.1 Notification of Claims / Circumstances**

7.1.1 The Insured shall as a condition precedent to the Insured's right to be indemnified under this Policy give Us immediate notice in writing:

7.1.1.1 of any Claim made against the Insured; and

7.1.1.2 of any circumstances which the Insured shall become aware which may give rise to a Claim under this Policy, irrespective of whether the Penalty is likely to be within or above the amount of the Excess.

7.1.2 If a Claim is made against the Insured during the Period of Insurance and the Insured notifies Us of such Claim within 21 days after the expiry of the Period of Insurance, such Claim shall be deemed to have been notified to Us during the Period of Insurance.

7.1.3 If during the Period of Insurance the Insured becomes aware of any circumstances which may subsequently give rise to a Claim against the Insured and the Insured gives written notice of such circumstances to Us during the Period of Insurance (or within 21 days after the expiry of the Period of Insurance), then any Claim which may subsequently be made against the Insured shall be deemed to be a Claim made against the Insured and notified to Us during the Period of Insurance.

### **7.2 Settlement / Defence / Co-Operation**

7.2.1 The Insured shall use all reasonable care and do and concur to do all things reasonably practicable to avoid a Wrongful Breach or diminish a Loss.

7.2.2 We shall have the right, but not the obligation, to conduct in the name of the Insured, the investigation, defence (including appeal and resisting appeal) and settlement of any Claim.  
Any amount incurred by Us shall be deemed to be part of the Defence Costs.

7.2.3 Where We recommend to the Insured to agree to pay any Penalty, consent to any order directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then We are entitled to reduce Our liability to the Insured to the extent of any prejudice suffered by Us by reason of the Insured's failure to so agree.

7.2.4 The Insured may request Us to nominate the Appointed Representative to act on behalf of the Insured. Alternatively, if the Insured wishes to nominate the Appointed Representative the Insured must obtain Our consent to the appointment of the Appointed Representative, which consent shall not be unreasonably withheld. If the parties cannot agree on the appointment of the Appointed Representative then the parties may agree to refer this issue to the then President of the Law Society or Law Institute within the relevant State or Territory to appoint the Appointed Representative.

7.2.5 The Insured shall not enter into any agreement to appoint the Appointed Representative without first obtaining Our consent as to the terms of the appointment of the Appointed Representative, including remuneration terms. Further, the Insured shall not represent to the Appointed Representative that all costs and associated expenses are covered by this Policy.

7.2.6 The Insured shall do all things reasonably necessary to allow Us to obtain from the Appointed Representative any information, report, documents or advice relating to the Claim.

7.2.7 The Insured shall upon request by Us or the Appointed Representative and at its own expense:

- 7.2.7.1 provide all information and assistance as may be required;
- 7.2.7.2 give a complete and truthful account of the facts relevant to any Claim;
- 7.2.7.3 supply all documents and other evidence relevant to the Claim; and
- 7.2.7.4 obtain and sign all documents reasonably required to be obtained and signed and attend any meeting or conferences when reasonably requested,

AND in respect of a Claim against:

- 7.2.7.5 the Named Insured, the Named Insured shall, upon request from Us or the Appointed Representative and at its own expense ensure that a Senior Officer attends and if necessary gives evidence, on behalf of the Named Insured, at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against the Named Insured;
- 7.2.7.6 any Officer or Employee, the Officer or Employee shall, upon request from Us or the Appointed Representative and at their own expense attend, and if necessary give evidence at any conference, hearing, enquiry, investigation, proceeding or review in connection with any Claim made against such Officer or Employee.

7.2.8 For the purpose of clauses 7.2.1 to 7.2.7 any reference to a Claim includes circumstances notified under clause 7.1.1 of this Policy.

## **8. GENERAL CONDITIONS**

### **8.1 Reasonable Care**

The Insured shall take reasonable care at all times:

- 8.1.1 to only employ competent Officers, Employees, agents and contractors;
- 8.1.2 to comply and ensure that its Officers, Employees, agents and contractors comply with the provisions of any Act; and
- 8.1.3 to maintain all premises, fittings and plant in a safe and sound condition.

### **8.2 Change in Circumstances**

The Insured shall give written notice as soon as possible to Us of any change in any of the facts or circumstances existing at the commencement of this Extension which materially changes the nature or extent of the risk insured by this Extension.

### **8.3 Notices Under Acts**

The Insured shall comply with any lawful notice or direction received from, or any enforcement action taken by, any appropriate Regulatory Authority under any Act within the time specified or if no time is specified, within a reasonable time.

### **8.4 Governing Law / Jurisdiction**

The construction, interpretation and meaning of the provisions of this Extension shall be determined in accordance with the law of the Commonwealth of Australia and the State or Territory where this Policy is issued, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the courts of Australia.

### **8.5 Cancellation**

8.5.1 We may cancel this Extension in accordance with the relevant provisions of the Insurance Contracts Act 1984. Upon cancellation by Us (except cancellation for fraudulent non-disclosure or fraudulent misrepresentation), We shall refund to the Insured that part of the Premium calculated by reference to the unexpired Period of Insurance.

8.5.2 This Extension may be cancelled at any time at the written request of the Insured in which case We retain:

8.5.2.1 that part of the Premium calculated by reference to the proportion that the expired part of the Period of Insurance bears to the whole Period of Insurance, plus

8.5.2.2 twenty percent (20%) of that part of the Premium calculated by reference to the proportion that the unexpired part of the Period of Insurance bears to the whole Period of Insurance.

### **8.6 Confidentiality**

It shall be a condition of this Extension that (except to the extent that the Insured is compelled by law to do so) the Insured not release to any third party, or otherwise publish, details of the nature of the liabilities insured by this Extension, the extent of cover provided by this Extension, or the amount of the Premium specified in the Schedule, without Our written consent.

### **8.7 Severability and Non-Imputation**

We agree that where this Extension insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

8.7.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984;

8.7.2 made a misrepresentation to Us before this Extension was entered into;

8.7.3 failed to comply with any term or condition of this Extension; and / or

8.7.4 acted in a manner which gives rise to the application of an exclusion of this Extension,

shall not prejudice the right of the remaining party or parties to indemnity as may be provided by this Extension.

PROVIDED ALWAYS THAT such remaining party or parties shall:

8.7.5 not have participated in and have had no prior knowledge of any such conduct; and

8.7.6 as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct.

## 8.8 **Other Insurance**

8.8.1 In the event that a policy of insurance or policies of insurance are listed in the Schedule, those policies of insurance will act as primary insurance and this Extension will only apply in excess of such policy(ies) of insurance;

8.8.2 The Insured shall notify Us immediately upon entering into any other policy(ies) of insurance that provides insurance cover in respect of the risks insured by this Extension.

## 8.9 **Subrogation**

If any payment is made under this Extension, We shall be subrogated to the extent of such payment to all of the Insured's rights of recovery. In such case the Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable Us to effectively bring suit in the name of the Insured.

## 8.10 **Assignment or Alteration of Interest**

No change in, or modification of, or assignment of interests under this Extension shall be effective except if agreed to in writing by Us.

## 8.11 **Authorisation**

The Named Insured described in the Schedule agrees to act on behalf of all the Insureds under this Extension and each Insured agrees that such Insured is authorised to act on their behalf with respect to the giving and receiving of notice of any Claim, the receiving and giving of notice of cancellation or expiry of this Extension, the payment of Premium and the return of any part of the Premium that may become due under this Extension, the negotiation, agreement to and acceptance or endorsements, and the giving and receiving of any other notice provided for in this Extension.

## 8.12 **Preservation**

Any provision of this Extension which is illegal, void or unenforceable is only ineffective to the extent of that illegality, voidness or unenforceability, without invalidating the remaining provisions.



### 8.13 **Construction**

The marginal notes, titles of paragraphs or headings in this Extension are included for descriptive purposes only and do not form part of this Extension for the purpose of its construction and interpretation.