

# Combined Liability Insurance (Australia)

## Wording v10



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## IMPORTANT NOTICES

There are two parts to this document: General Information and the Policy Wording. An overview of each of these parts is provided below. Words in bold are defined terms and their meaning can be found in the Definitions Section of the Policy Wording. For the purposes of the General Information the words “you/your” and “we/us/our” shall be synonymous with and have the same meaning as the defined terms “insured” and “underwriters” respectively.

### General information

This part of the document contains information you need to know before you take out a policy. Please read it carefully before taking out this insurance.

### Policy wording

This part of the document contains three sections, namely Section 1 – Professional Indemnity, Section 2 – General and Products Liability and Section 3 – Directors and Officers Liability. Each section details all the Insuring Clauses, Extensions, Exclusions, Conditions and Definitions relating to that section of this **Policy** and forms part of your legal contract with us.

If we issue you with an insurance policy, you will be given a **Schedule**. The **Schedule** sets out the specific terms applicable to your cover and should be read together with this **Policy**.

As this **Policy** and the **Schedule** that we send to you forms your legal contract with us, please keep them in a safe place for future reference.

If you require further information about this product, please contact your insurance broker.

### About Gallagher

Gallagher is one of Australia’s – and the world’s – largest insurance broking and risk management companies. We’re the broker of choice for more than 100,000 Australian businesses – from micro-SMEs through to multinational corporations and iconic brands.

With 25+ regional and metropolitan branches across Australia, we understand local business communities because we’re part of them ourselves.

Globally, the Gallagher network of 600+ offices in over 30 countries, enables us to leverage relationships with international insurance partners to create programs that achieve claims outcomes beyond the scope of many smaller brokers.

Gallagher does not act as the agent of the Insurer and does not issue, guarantee or underwrite this policy.

### About Lloyd’s

Lloyd’s is the world’s specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent.

In Australia, Lloyd’s is proud to be a member of the Insurance Council of Australia. Lloyd’s has adopted the General Insurance Code of Practice subject to certain specific qualifications. You can obtain a copy of the code at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

Our aim is to provide the highest service to our Australian policyholders and, to this end, we have developed the following procedures for the fair handling of complaints from Lloyd’s policyholders.

### Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Arthur J. Gallagher & Co (Aus) Limited t/as iSure in the first instance:

The Compliance Manager  
Arthur J. Gallagher & Co (Aus) Limited t/as iSure  
[complaints@ajg.com.au](mailto:complaints@ajg.com.au)  
02 9424 1700  
Level 12, 80 Pacific Highway, North Sydney,  
NSW 2060, Australia

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

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd’s Australia who will determine whether it will be reviewed by their office or the Lloyd’s UK Complaints team. Lloyd’s contact details are:

Lloyd’s Australia Limited  
Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

Telephone: (02) 8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001  
Website: [www.afca.org.au](http://www.afca.org.au)

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

The Underwriters accepting this Insurance agree that:

(i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;

(ii) any summons notice or process to be served upon the Underwriters may be served upon:

*Lloyd's Underwriters' General Representative in Australia  
Suite 1603  
Level 16  
1 Macquarie Place  
Sydney NSW 2000*

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

## Claims

In order to make a **Claim** arising under this Insurance, notice should be given as soon as practicable to:

Proclaim Management Solutions Pty. Ltd  
271 Collins Street  
Melbourne, VIC 3000  
Email: [claims@proclaim.com.au](mailto:claims@proclaim.com.au)

## General information

The information contained in this part is general information only and does not form part of your contract with us. The **Policy** Terms and Conditions in the rest of this booklet contain details of your contract.

## Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms. You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

reduces the risk we insure you for; or  
is common knowledge; or  
we know or should know as an Insurer; or  
we waive your duty to tell us about.

## If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it had never existed.

### Claims made and Notified

Sections 1 and 3 of this **Policy** are issued on a claims made and notified basis. This means that Section 2 of this **Policy** only covers the **Insured** for claims first made against the **Insured** during the **Period of Insurance** and notified to the Insurer during the **Period of Insurance**.

Section 40(3) of the Insurance Contracts Act 1984 may provide additional rights at law. That section provides that where the insured gave notice in writing to the insurer of facts that might give rise to a **Claim** against the insured as soon as was reasonably practicable after the insured became aware of those facts but during the **Period of Insurance**, the insurer is not relieved of liability under the contract in respect of the **Claim**, when made, by reason only that it was made after the expiration of the **Period of Insurance**.

### 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.) when collecting and handling your personal information.

Arthur J. Gallagher & Co (Aus) Limited t/as iSure and Lloyd's have developed a privacy policy that explains the 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 will only disclose and use your personal information for a purpose you would reasonably expect.

We may need to disclose personal information to our reinsurers (who may be located overseas), insurance intermediaries, insurance reference bureaux, 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 purposes of litigation. We may disclose personal information to people listed as co-insured on your policy and to family members or agents authorised by you. We may disclose information to organisations that conduct customer service surveys on our behalf. We will request your consent to any other purpose.

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.

You also have the opportunity to find out what personal information we hold about you and, when necessary, correct any errors in this information. Generally, we will do this without restriction or charge.

For further information about our privacy policy or to access or correct your personal information, please contact:

The Manager  
Arthur J. Gallagher & Co (Aus) Limited t/as iSure  
Level 12, 80 Pacific Highway  
North Sydney  
New South Wales 2060 Australia

### The General Insurance Code of Practice

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

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

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

### Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint, and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who, for any reason, does not satisfy all or part of its obligations.

## Australian Terrorism Insurance Act 2003 Notice

The Underwriters have treated this insurance (or part of it) as an insurance to which the Australian Terrorism Insurance Act 2003 ("ATIA") applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act", which is a "declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insured coverage and exclusions of this insurance, including applicable limits and deductibles, remain unchanged.

If any or all of the Underwriters have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA, which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

## Our agreement with you

This **Policy** is a legal contract between you and us. You pay us the premium, and we provide you with the cover you have chosen as set out in this **Policy**, occurring during the **Period of Insurance** shown on your **Schedule** or any renewal period.

The amount of any deductible that applies to this **Policy** will be shown on your **Schedule**.

## Your policy

Your insurance policy consists of the policy terms & conditions in this document and the **Schedule** we give you.

Please read your policy carefully and satisfy yourself that it provides the cover you require.

If you want more information about any part of your policy, please ask us or your insurance broker.

You should keep your policy booklet and **Schedule** together in a safe and convenient place, for future reference.

## Other party's interests

You must tell us of the interests of all parties (such as financiers, owners, lessors) who may be able to be covered by this insurance. We will protect their interests only if you have told us about them and we have noted them on your **Schedule**.

## Paying your premium

You must pay your premium by the due date. If we do not receive your premium by this date or your payment is dishonored, this **Policy** will not operate and there will be no cover.

## How good & services tax affects any payments we make

The amount of premium payable by you for this **Policy** includes an amount for the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay.

When you are not registered for GST, the amount we pay is the limit of liability or the other limits of insurance cover, including GST.

When you are registered for GST, we will pay the **Limit of Liability** or the other limits of insurance and, where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a damaged item that is **Insured** under this **Policy**), we will pay for the GST amount.

We will reduce the GST amount we pay, by the amount of any input tax credits ("ITC") to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the ITC may be claimable through your Business Activity Statement ("BAS"). You must advise us of your correct Australian Business Number and taxable percentage.

Any GST liability arising from your incorrect advice is payable by you. Where the settlement of your claim is less than the **Limit of Liability** or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for ITC) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST - exclusive amount of any supply made by any business of yours that is relevant to your claim.

GST, ITC, BAS and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods & Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable percentage is your entitlement to an ITC on your premium as a percentage of the total GST on that premium.

## DATA PRIVACY NOTICE

Your information has been, or will be, collected or received by MS Amlin. We will manage personal data in accordance with data protection law and data protection principles. We require personal data in order to provide good-quality insurance and ancillary services and will collect the personal data required to do this. This may be personal information such as name, address, contact details, identification details, financial information and risk details. The full Data Privacy Notice can be found on [www.msamlin.com/en/site-services/data-privacy-notice.html](http://www.msamlin.com/en/site-services/data-privacy-notice.html). A paper copy of the Data Privacy Notice can be obtained by contacting the Data Protection Officer by email ([dataprotectionofficer@msamlin.com](mailto:dataprotectionofficer@msamlin.com)) or at the below address:

Data Protection Officer  
MS Amlin  
MS Amlin Corporate Services  
The Leadenhall Building  
122 Leadenhall Street  
London  
EC3V 4AG

### INSURING CLAUSE

This **policy** and the **schedule** have been prepared in accordance with **your** instructions.

**You** are required to read it carefully to ensure that it meets with its requirements.

Alterations in the insurance required after the issue of the **policy** and the **schedule** will only be effective when a new **policy** or an **endorsement** has been issued which contains those alterations.

All material facts must be disclosed to **us**. Failure to do so may affect **your** rights under the **policy** as outlined in clause A. Your Duty of Disclosure on page 2 of this **policy**. A material fact is a fact likely to influence **us** in the acceptance or assessment of this insurance.

**We** and **you** agree that:

- 1) this **policy**, the **schedule** (including any **schedule** issued by **us** in substitution) and any **endorsements** shall be considered one document;
- 2) the **proposal** shall be incorporated in and form the basis of this **policy**;
- 3) **We** will provide the insurance described in this **policy** subject to its terms, conditions and exclusions for the **period of insurance** shown in the **schedule** and any subsequent period for which **you** shall pay and **we** shall agree to accept the premium.

## DEFINITIONS

A defined word, term or phrase will be shown in bold each time it appears in the **policy** except where incorporated in headings and titles.

Each time one of the following defined words, terms or phrases is used, it will have the same meaning wherever it appears in the **policy** whether expressed in the singular or the plural, male, female or neutral, unless an alternative definition is stated to apply.

### 1) **building standard**

- a) Australian Standards, as published and amended at any relevant time, by Standards Australia Limited; or
- b) The National Construction Code, including the Building Code of Australia, or any superseding document, published and amended at any relevant time, by the Australian Building Codes Board; or
- c) Any conditions of use or application approved at any time by a recognised, and relevant, building standards organisation; or
- d) Any equivalent organisations to those outlined in a) to c) above, in any other relevant jurisdiction.

### 2) **business**

- a) **professional services;**
- b) In respect of Section 2 - Public and Products Liability only, **business** shall also include:
  - i) engagement of subcontractors for performance of work on **your** behalf;
  - ii) organisation of and participation in exhibitions, trade fairs and conferences;
  - iii) **your** activities as property owners, lessors and lessees including repair, refurbishment and maintenance of such property;
  - iv) provision and management for the benefit of any **employee** of canteen, social, sports, welfare, fire, first aid, rescue and ambulance services;
  - v) provision for the benefit of any **employee** of nursery, crèche or child or baby care facilities;
  - vi) private work undertaken by any **employee** for any director or partner or executive of the **named insured;**
  - vii) the activities of security organisations for the benefit of the **named insured;**
  - viii) the organisation or sponsorship of charitable events or similar fund raising activities;
  - ix) sponsorship of events, organisations, entities and individuals;
  - x) repair, maintenance and servicing of **your** mechanically-propelled vehicles;
  - xi) sale or disposal of own property and goods including owned mechanically-propelled vehicles;
  - xii) provision of gifts and promotional material incidental to the **business.**

### 3) **cladding**

Any cladding or a cladding system, including but not limited to the panels, lining, core, filler, insulation, attachment, fixing method or other elements used to affix the panels, whether or not insulated or made of composite materials, that is applied to any of a building's or structure's external walls or to another external area of a building

### 4) **claim**

- a) Any written or verbal notice of demand for compensation made by a third party against **you;**
- b) Any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon **you;**
- c) Any notice of intention, whether orally or in writing, to commence legal proceedings against **you.**



5) **computer system**

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.).

6) **computer virus**

any malicious software code including but not limited to any logic bomb, Trojan horse or worm that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems, software and ancillary equipment.

7) **continuity date**

The inception date of the first policy issued by **us** to **you** where **you** can demonstrate that **you** have been continually indemnified by **us** without interruption subsequent to such date.

8) **cyber act**

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**.

9) **cyber incident**

- 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**;
- 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**

10) **data**

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**.

11) **data protection law**

any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

12) **damage**

Physical loss or physical destruction or physical damage to material property.

13) **deductible**

The first part of each and every **claim** borne by **you** as stated in the **schedule**.

14) **defence costs**

Reasonable legal costs and legal expenses incurred by **you** or on **your** behalf with **our** prior written and continuing consent (which shall not be unreasonably withheld) in relation to the investigation and defence of any **claim** covered under this **policy**, including any appeal issued in connection with a **claim**. **Defence costs** shall not include **your** own costs and expenses, salaries, remuneration for **employees** or any other internal expenses, overheads, fees or benefits.

15) **documents**

All documents directly connected with the **professional services** kept in paper form belonging to **you** or for which **you** are legally responsible whilst in **your** custody, in the ordinary conduct of the **professional services**. **Documents** shall not include stamps, currency, coins, bank notes and bullion, travellers' cheques, cheques, postal orders, money orders, securities, **data** and any other negotiable instrument.

**16) employee**

- a) Any person under a contract of service or apprenticeship with the **named insured**;
- b) In respect of Section 2 - Public and Products Liability only, **employee** shall also include:
  - i) any labour master or labour only sub-contractor or persons supplied by them whilst under **your** direct control and supervision;
  - ii) self-employed persons engaged by **you**;
  - iii) persons engaged by **you** under work experience, training, study or similar schemes;
  - iv) any person hired to, borrowed by or supplied to **you** from any other employer;
  - v) **your** voluntary workers;
  - vi) **your** outworkers and home workers;
  - vii) any prospective **employee** who is being assessed by **you** as to his or her suitability for employment;whilst employed by or engaged by **you** and under **your** control in connection with the **business**.

**17) employment practices dispute**

Any **claim** brought by any past, present, or potential **employee** which alleges any breach of any employment contract; wrongful dismissal or termination of employment whether actual or constructive; unfair dismissal; unequal pay; unlawful deduction from wages; discrimination including on grounds of sex, sexual orientation, pregnancy, age, religion, race, disability; sexual or other harassment in the workplace; victimization in the workplace; employment related misrepresentations; wrongful deprivation of any career opportunity, employment or promotion and any wrongful discipline or evaluation or failure to adopt adequate employment or workplace policies or procedures.

**18) endorsement**

Any document which contains alterations or amendments to this **policy**.

**19) injury**

- a) Bodily injury, death, disease or illness which shall include psychiatric illness.
- b) In respect of Section 2 - Public and Products Liability only, **injury** shall also include:
  - i) False arrest, false detention, false imprisonment, wrongful eviction;
  - ii) Nuisance, trespass or interference with any easement, right of air, light, water or way.

**20) inquiry**

Any official investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of **professional services**.

**21) insured person**

Any natural person who is or was or may during the **period of insurance** become a director or officer of the **named insured** and any natural person who is construed to be a director or officer within the meaning of any applicable law or regulation governing such matters.

**22) limit of indemnity**

The amount stated in the **schedule** for each section of the **policy** being the amount payable by **us** under such section.

23) **loss**

Your legal liability to pay for:

- a) **defence costs;**
- b) awards of costs, including claimants legal costs and expenses;
- c) settlements entered into with **our** prior written consent.

24) **named insured**

The person, company, firm, partnership, organisation or other entity stated in the **schedule**.

25) **occurrence**

An accident or event, including continuous or repeated exposure to the same conditions, which results in **injury** or **damage** neither expected nor intended. All **injury** or **damage** arising out of such exposure to substantially the same general conditions shall be deemed to arise out of one occurrence.

26) **offshore**

From the time of embarkation onto a conveyance at the point of final departure to an offshore rig, offshore platform, or support or accommodation vessel, until disembarkation from such offshore rig, offshore platform, or support or accommodation vessel,

27) **paparazzi**

A freelance photographer who pursues celebrities in order to publish photographs for subsequent sale to newspapers and/or magazines.

28) **period of insurance**

The period of insurance stated in the **schedule**.

29) **policy**

- a) All terms, conditions, exclusions, extensions and the **schedule** comprising this document;
- b) All other schedules, notices, appendices, subjectivity notices and other **documents** agreed by **us** and by **you** attaching to this document from time to time;
- c) All **endorsements** for incorporation in this document,

all of which shall be read together and constitute the contract of insurance between **you** and **us**.

30) **pollution**

Discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste.

31) **pollution incident**

Sudden, unexpected and unintended **pollution** that takes place in its entirety at a specific time and place during the **period of insurance**.

32) **principal**

Any party, other than a director, partner or **employee** or **yours**, with whom **you** have entered into a contract in the course of the **business**, but only to the extent that the contract between **you** and the **principal** requires such additional party to be indemnified in a like manner to **you**.

33) **prior and pending litigation date**

The inception date of the first **policy** issued by **us** to **you** where **you** can demonstrate that **you** have been continually indemnified by **us** without interruption subsequent to such date.

**34) products**

Goods or products (after they have ceased to be in **your** possession or under **your** control) manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by **you**, including any container and instructions for use and including any structure constructed, erected or installed or any contract works executed by **you** or on **your** behalf, in the course of the **business**.

**35) professional services**

Professional advice and professional services provided by **you** as declared in the **proposal** and stated in the **schedule** as the Profession and Sub-Professions

**36) proposal**

Any information provided by **you** or by **your** broker or agent on **your** behalf in connection with this insurance.

**37) retroactive date**

- a) The date specified as the Retroactive Date in the **schedule**; or
- b) If no date is in specified in the **schedule**, the inception date of the first policy issued by **us** to **you** where **you** can demonstrate that **you** have been continually indemnified by **us** without interruption subsequent to such date.

**38) schedule**

The **schedule** attaching to and forming part of this **policy** together with any renewal **schedule**.

**39) subsidiary**

any entity in which the **named** insured:

- a) holds 50% or more of the share capital;
- b) controls more than 50% of the voting power;
- c) controls the composition of the board of directors.

**40) territorial limits**

The **territorial limits** stated in the **schedule**.

**41) underground resources**

- a) Oil, gas, water or other mineral substances which have not been reduced to physical possession above the surface of the earth or above the surface of the sea;
- b) Any well-hole, shaft, underground or undersea pipeline (including process transportation and storage facilities);
- c) Any geological formation, stratum, reservoir or area in or through which exploration for or production of any substance is carried on;
- d) Any casing, pipe, bit, tool, pump or other drilling or well servicing machinery or equipment located beneath the surface of the earth in any such well hole or shaft.

**42) we/us/our**

Arthur J. Gallagher (Aust) Ltd T/as iSure on behalf of Certain Underwriters at Lloyd's.

**43) wrongful act**

Any actual or alleged defamation, breach of duty, neglect, error, misstatement, misrepresentation, omission or other act done or attempted by any **insured person** in the discharge of their duties solely in their capacity as **insured person** of the **named insured** or any matter claimed against them solely by reason of their status as an **insured person**.

44) **you/your/yourself**

- a) The **named insured**;
- b) Any person who is or who becomes during the **period of insurance** a partner, director, principal or member of the **named insured**;
- c) Any former partners, directors, principals or members of the **named insured**;
- d) In the event of the death or bankruptcy of any person insured under this **policy**, such person's estate, heirs, legal representatives or assignees, for legal liabilities incurred due to any act, error or omission of such deceased or bankrupt person.

Provided always that such parties requiring indemnity shall observe, fulfil and be subject to the terms, conditions, exclusions, extensions and **endorsements** of this **policy**

## SECTION 1 – PROFESSIONAL INDEMNITY

Section 1 of this **policy** operates on a 'claims-made and notified' basis. This means that indemnity shall only be provided for **claims** made against **you** and notified to **us** during the **period of insurance**.

### INSURING CLAUSE

#### 1) Civil Liability

**We** shall, subject to the terms, conditions, exclusions, extensions and **endorsements** contained in this **policy**, indemnify **you** in respect of damages and claimants' costs for which **you** shall become legally liable to pay in connection with any **claim** first made against **you** and notified to **us** during the **period of insurance** arising out of civil liability incurred by **you** in the conduct of **professional services**, including any **claim** arising out of

- a) any actual or alleged negligent act, negligent error or negligent omission;
- b) any actual or alleged breach of Australian Consumer Law or the Competition and Consumer Act 2010 (Cth) or any similar legislation enacted by states or territories in Australia or New Zealand;
- c) any actual or alleged defamation, libel, slander, product disparagement or other tort-related disparagement or harm to character or reputation;
- d) any actual or alleged breach of privacy, breach of confidentiality, invasion of privacy or misuse of information which is either confidential or subject to statutory restrictions on its use;
- e) any actual or alleged infringement of any intellectual property right (other than any patent or trade secret), including any act of passing off;
- f) any act, error or omission on the part of any party acting on **your** behalf for whom you are legally liable.

#### 2) Defence Costs

**We** shall also indemnify **you** in respect of all **defence costs** incurred in connection with a **claim** covered under Insuring Clause 1 (Civil Liability) of this section.

### AUTOMATIC EXTENSIONS OF COVER UNDER SECTION 1

Subject otherwise to the terms, conditions and exclusions of this **policy**, in so far as they can apply, **we** shall provide indemnity in respect of the following Extensions:

#### 1) Attendance at Inquiries

**We** shall, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **policy**, indemnify **you** in respect of all reasonable legal costs and expenses incurred with **our** prior written consent (which shall not be unreasonably withheld) for representation of **you** at any **inquiry**.

Provided always that:

- a) the **inquiry** is ordered or commissioned during the **period of insurance**; and
- b) notice of such **inquiry** is provided to **us** during the **period of insurance**; and
- c) the maximum amount payable by **us** under this Extension during the **period of insurance** for all **inquiries** shall not exceed AUD250,000 in the aggregate during the **period of insurance**.

#### 2) Continuous Cover

**We** shall indemnify **you** in respect of any **claim** that would otherwise be excluded by Exclusion 8) of this section (Known Claims or Circumstances).

Provided always that:

- a) there has been no fraudulent non-disclosure or fraudulent misrepresentation; and
- b) **you** first became aware of the facts or circumstances giving rise to the **claim** after the **continuity date**.

3) **Loss of Documents**

**We** shall indemnify **you** in respect of the reasonable and necessary costs of repair, replacement and/or reconstitution of any **document** which has been unintentionally destroyed, damaged beyond reasonable use, lost or mislaid during the **period of insurance** and which after diligent search cannot be found. Provided always that:

- a) such loss is suffered, first discovered and notified to **us** during the **period of insurance** and in any event within 30 days of discovery; and
- b) no indemnity shall be afforded in relation to any **data**; and
- c) **you** shall provide **us** with bills and accounts substantiating the expenses incurred by **you** in repairing, replacing and/or reconstituting such **documents**; and
- d) no expense shall be incurred without **our** prior written consent (which shall not be unreasonably withheld); and
- e) the maximum amount payable by **us** under this Extension during the **period of insurance** shall not exceed AUD500,000 in the aggregate.

4) **Dishonesty**

Notwithstanding Exclusion 3) of this section (Fraud and Dishonesty), **we** shall indemnify **you** in respect of any **claim** arising out of any dishonest or fraudulent act or omission committed by any **employee** in the conduct of **professional services**. Provided always that:

- a) **you** shall give all necessary information and assistance to enable **us** to endeavour to obtain reimbursement for such **claim**; and
- b) any monies which, but for the dishonest or fraudulent act or omission, would be due from **you** to the dishonest or fraudulent person shall be deducted from the indemnity afforded under this Extension; and
- c) no indemnity shall be afforded to any person insured under this **policy** or any other person or party who commits, condones or ignores such dishonest or fraudulent act or omission; and
- d) nothing in this extension shall preclude **us** from exercising any right of subrogation against any person or party committing or condoning such dishonest or fraudulent act or omission; and
- e) **you** shall bear the burden of providing satisfactory proof to substantiate a loss under this Extension (including any costs incurred in such process) and **we** shall be under no obligation to provide indemnity to **you** until such time as **we** are satisfied that such loss has in fact been sustained; and
- f) **we** shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned

5) **Reinstatement of Limit**

In the event the **limit of indemnity** under this **policy** has been entirely exhausted during the **period of insurance**, the **limit of indemnity**, inclusive of all **defence costs**, shall be reinstated in the same amount, once only.

Provided always that:

- a) the reinstated **limit of indemnity** shall only apply to **claims** which are not caused by, contributed to by, or arising out of the same source or originating cause of any of the **claims** already paid or payable under the original **limit of indemnity**; and
- b) all terms, conditions, extensions, exclusions and **endorsements** contained in this **policy** shall continue to apply in the same manner to the reinstated **limit of indemnity**; and
- c) there shall be no reinstatement of:
  - i) the **limit of indemnity** for any **claim** caused by, contributed to by, or arising out of any dishonest or fraudulent act or omission;
  - ii) any sub-limit of indemnity provided under any extension of cover; and
- d) the reinstated **limit of indemnity** shall only apply following the exhaustion of the indemnity limit of any policy of insurance which operates in excess of the original **limit of indemnity**

#### LIMIT OF LIABILITY UNDER SECTION 1

- 1) The total amount payable by **us** under this section of the **policy** for all **claims** inclusive of all **defence costs** in any one **period of insurance** shall be the **limit of indemnity** irrespective of the number of claimants and/or the numbers of parties against whom such **claims** are made.
- 2) All **claims** arising out of or in connection with, consequent upon or attributable to one source or originating cause shall be deemed to be one **claim**.
- 3) Any applicable sub-limit of indemnity available under any Extension of Cover or any **endorsement** shall be deemed to be part of and not in addition to the **limit of indemnity**.

#### DEDUCTIBLE APPLICABLE UNDER SECTION 1

- 1) **We** shall only be liable to indemnify **you** for that part of **your** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where **we** have paid on **your** behalf part or all of the **deductible**, **you** shall reimburse **us** promptly upon request.

#### EXCLUSIONS APPLICABLE TO SECTION 1

The indemnity provided by this section of the **policy** shall not apply to:

##### 1) **Cost Estimates**

any **claim** caused by or contributed to by, or arising from any estimate of probable construction cost, including **claims** caused by or contributed to by, or arising from any cost estimate being exceeded.

##### 2) **Cyber and Data**

- a) any actual or alleged loss, damage, liability, **claim**, fine, penalty, cost (including, but not limited to, **defence costs** and mitigation cost) or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with:
  - i) a **cyber incident**, unless subject to the provisions of paragraph b);
  - ii) a **cyber act**;
  - iii) a breach of **Data Protection Law** by **you**, or parties acting for **you**, involving access to, processing of, use of or operation of any **computer system** or **data**, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.
- b) Subject to all the terms, conditions, limitations and exclusions of this **policy** or any **endorsement**, sub-paragraph 2) a) i) above shall not apply to any otherwise covered **claim** arising out of any actual or alleged breach of professional duty by **you** involving access to, processing of, use of or operation of any **computer system** or **data** unless such actual or alleged breach of professional duty by **you** is caused by, contributed to by, resulting from, arising out of or in connection with a **cyber act**.

##### 3) **Fraud and Dishonesty**

any **claim** caused by, contributed by or arising from any actual or alleged fraudulent or dishonest act, error or omission.

##### 4) **Injury and Damage**

any **claim** caused by or contributed to by, or arising from:

- a) **injury**;
- b) **damage** other than as provided for under Automatic Extension of Cover 3) (Loss of Documents);

unless arising directly from a negligent act, negligent error or negligent omission in the conduct of **professional services**.



**5) Intellectual Property**

any **claim** caused by or contributed to by, or arising from infringement of any patent or trade secret.

**6) Investment Advice**

any **claim** caused by or contributed to by, or arising from:

- a) the sale of any financial product or investment;
- b) the provision of any financial planning or investment advice by or on behalf of **you** including but not limited to the provision of any advice or recommendation as to valuation or performance of any financial product or investment;
- c) any advice or other service provided by or on behalf of **you** in respect of which there is a requirement to hold an Australian Financial Services Licence or Australian Credit Licence in order to provide such advice or service.

**7) Joint Ventures and Consortia**

any joint venture or consortium of which **you** are a member.

**8) Known Claims or Circumstances**

- a) any **claim** which has been, or ought to have been, notified under any other policy of insurance in force prior to the inception of this **policy**;
- b) any **claim** which is based upon, arising from or in consequence of:
  - i) any circumstance which could reasonably be foreseen to give rise to a **claim** if written notice of such circumstance has been given, or ought to have been given, under any other policy;
  - ii) any circumstance which could reasonably be foreseen to give rise to a **claim** of which **you** was actually aware, or ought reasonably to have been aware, prior to the inception date of this **policy**.

**9) Licensing Inquires**

any prosecution, **inquiry** or other investigation in relation to **you** failing to be properly licenced, registered or accredited to provide services in the conduct of **professional services** as required by law or other regulation.

**10) Product Liability**

any **claim** caused by or contributed to by, or arising from any **products**

**11) Profession Specific**

any **claim** caused by or contributed to by, or arising from:

- a) any valuation of any residential or commercial property;
- b) the provision of any legal advice or legal services. However, this exclusion shall not apply to legal services provided by any paralegal or legal secretary where such work is undertaken under the direct supervision of a qualified legal practitioner;
- c) any pest inspection or pre-purchase building inspection, including the provision of any verbal or written advice in connection with any such inspection;
- d) the issuance of any construction or development certificate in connection with any building;
- e) the provision of any advice or services by any person acting in the role of a social worker, or the provision any advice or services which would normally be provided by a social worker.

**12) Retroactive Date**

any actual or alleged act, error, omission or event committed or occurring wholly or in part prior to the **retroactive date**.

**13) Trading Liability**

any **claim** caused by or contributed to by, or arising from:

- a) any trading loss or trading liability incurred by **you** or any business managed or carried on by or on behalf of **you** (including the loss of any client account or business);
- b) the actual or alleged overcharging or improper receipt of fees by **you** or any business managed or carried on by **you**;
- c) the arrangement or maintenance of, or failure to arrange or maintain, any finance or credit;
- d) the solvency or financial failure of any person or entity involved in any project.

**14) Workmanship**

any **claim** caused by or contributed to by, or arising from any faulty workmanship or construction.

## SECTION 2 – PUBLIC AND PRODUCTS LIABILITY

Section 2 of this **policy** operates on a 'losses occurring' basis. This means that indemnity shall only be provided for losses that first occur during the **period of insurance**.

### INSURING CLAUSES

#### 1) Injury and Damage

**We** shall, subject to the terms, conditions, extensions, exclusions and **endorsements** contained in this **policy**, indemnify **you** in respect of damages and claimants costs for which **you** shall become legally liable to pay in connection with any **claim** for or arising out of:

- a) **injury**; and/or
- b) **damage**

happening during the **period of insurance** within the **territorial limits** from an **occurrence** in connection with **your business** or **products**.

#### 2) Defence Costs

**We** shall also indemnify **you** in respect of all **defence costs** incurred in connection with a **claim** covered under Insuring Clause 1) of this section (Injury and Damage).

#### 3) Representation Costs

**We** shall indemnify **you** in respect of all reasonable legal costs and expenses incurred with **our** prior written consent (which shall not be unreasonably withheld) for **your** representation at proceedings in any court of summary jurisdiction arising out of any alleged breach of statutory duty that resulted in **injury**.

### AUTOMATIC EXTENSIONS OF COVER UNDER SECTION 2

Subject otherwise to the terms, conditions and exclusions of this **policy**, in so far as they can apply, **we** shall provide indemnity in respect of the following Extensions:

#### 1) Contingent Motor Liability

Notwithstanding Exclusion 7) a) of this section (Vehicles), **we** shall indemnify **you** in respect of damages and claimants costs for which **you** shall become legally liable to pay in connection with any **claim** arising out of or consequent upon **injury** to any person and/or **damage** occurring in connection with the use, in the course of conduct of the **business**, of any mechanically propelled vehicle not the property of, nor provided by **you**.

Provided always that no indemnity shall be afforded in respect of any **claim** arising out of or consequent upon:

- a) **damage** to such vehicle or to property conveyed therein; or
- b) **injury** or **damage** arising while such vehicle is being driven by **you** or any person who, to the knowledge of **you** or **your** representative, does not hold a licence to drive such vehicle, unless such person has held and is not disqualified from holding or obtaining such a licence; or
- c) **injury** or **damage** in respect of which **you** are entitled to indemnity under any other insurance; or
- d) **injury** or **damage** for which **you** are obliged to affect insurance by virtue of compulsory insurance as is required by the Motor Vehicle (Third Party Insurance) Act 1942 (NSW) and any subsequent amending legislation or similar in other States or Territories in Australia.

**2) Sudden and Accidental Pollution**

Notwithstanding General Policy Exclusion 18) (Pollution), **we** shall indemnify **you** in respect of damages and claimants costs arising out of any **claim** in respect of **injury** or **damage** caused solely by a **pollution incident**.

Provided always that:

- a) all **pollution** which arises out of any one **pollution incident** shall be deemed to have occurred at the time such incident takes place; and
- b) **we** shall not indemnify **you** under this Extension in respect of any liability directly or indirectly caused by or arising from **pollution** happening anywhere in the United States of America or Canada or any territory within their jurisdictions.
- c) no indemnity shall be afforded in respect of any **claim** directly or indirectly arising from **pollution** (including any costs and expenses incurred in the prevention thereof) emanating from **underground resources**.

The maximum amount payable by **us** under this Extension shall be the **limit of indemnity**, and nothing in this clause shall increase **our** liability to pay any amount in excess of such **limit of indemnity**.

Any sum **we** pay under this Extension shall reduce the amount of the aggregate **limit of indemnity** available for any other payment under this section in respect of **claims** arising out of **your products**.

The remaining amount of such aggregate **limit of indemnity** is the most that will be available for any other payment.

**3) Cross Liabilities**

If **you** are comprised of more than one party **we** shall provide indemnity to each such insured in the same manner and to the same extent as if a separate **policy** had been issued to each, provided always that the cumulative total amount payable hereunder to all such insureds shall not exceed the **limit of indemnity**.

**4) Indemnity to Principals**

Notwithstanding General Policy Exclusion 5) (Contractual Liability), to the extent that any contract or agreement entered into by **you** with any **principal** so requires, **we** shall, subject to the **limit of indemnity**:

- a) indemnify **you** against liability assumed by **you**; and
- b) indemnify the **principal** in like manner to **you** in respect of the liability of the **principal** arising out of the performance by **you** of such contract or agreement.

Provided always that:

- i) the conduct and control of **claims** is vested in **us**; and
- ii) the **principal** shall observe, fulfil and be subject to the terms, exclusions, conditions and **endorsements** of this **policy**; and
- iii) Indemnity to any **principal** shall only apply in respect of any **claim** for which indemnity would otherwise have been provided hereunder if the **claim** had been made directly against **you**.

**LIMIT OF LIABILITY UNDER SECTION 2**

- 1) In respect of Public Liability, the maximum amount payable by **us** shall not exceed the **limit of indemnity** any one **occurrence**.
- 2) In respect of Products Liability, the maximum amount payable by **us** shall not exceed the **limit of indemnity** any one **occurrence** or all **occurrences** during any one **period of insurance**.
- 3) Where **we** are required to indemnify more than one party, the total amount payable under the **policy** shall not exceed the **limit of indemnity**.
- 4) Any applicable sub-limit of indemnity available under any Extension of Cover specified in Section 2 - Public and Products Liability of this **policy** shall be deemed to be part of and not in addition to the **limit of indemnity**.

## DEDUCTIBLE APPLICABLE UNDER SECTION 2

- 1) **We** shall only be liable to indemnify **you** for that part of **your** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where **we** have paid on **your** behalf part or all of the **deductible**, **you** shall reimburse **us** promptly upon request.

## EXCLUSIONS APPLICABLE TO SECTION 2

The indemnity provided by this section of the **policy** shall not apply to:

### 1) **Airside Liability**

any **claim** arising from or in connection with any area of airport premises which has restricted rights of access, including manoeuvring areas, aprons, taxiways, runways and service roads, which are directly associated therewith.

### 2) **Cyber and Data**

- a) **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
- b) 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.

### 3) **Damage to Products**

any **claim** caused by contributed by or arising from **damage** to any **products** caused by any defect therein or the unsuitability thereof for their intended purpose.

### 4) **Product Repair, Replacement or Recall**

any costs and/or expenses in relation to the repair of or recall of, or the provision of any refund in respect of **products**.

### 5) **Property**

- a) any **claim** caused by, contributed to by or arising from **damage** to any property which, at the time of the **occurrence** giving rise to such **claim**, is owned by or held in trust by or in the custody or control of **you** other than:
  - i) **employees**', directors', partners', guests', customers', clients' or visitors' personal effects including vehicles and their contents;
  - ii) premises, including fixtures, fittings and contents not owned by or leased to or rented to **you**, where **you** are undertaking work in connection with the **business**;
  - iii) premises and their fixtures and fittings hired, leased, rented or lent to **you** other than **damage** in circumstances where liability is assumed by **you** under a tenancy or other agreement and which would not have attached in the absence of such agreement;
  - iv) any vehicle, craft, container or railway rolling stock, including contents and accessories, not owned by or leased to **you**, for the purpose of or whilst being loaded or unloaded by **you**;
  - v) food or beverages for consumption on **your** premises or at any other premises where **you** are carrying on the **business**.
- b) **damage** to that part of any property on which **you**, or any of **your** servants or agents are or have been working.

### 6) **US Product Sales**

any **claim** caused by contributed to by or arising from **products** or services which to **your** knowledge are sold, supplied, erected, repaired, altered, treated or installed by **you** in, or for delivery or use in, the United States of America or Canada.

**7) Vehicles**

any **claim** caused by, contributed to by or arising from the ownership, possession or use by or on **your** behalf of any:

- a) mechanically-propelled vehicle or mobile plant, other than any **claim** arising out of:
  - i) the use of plant as a tool of trade on site; or
  - ii) the use of plant at **your** premises; or
  - iii) the loading or unloading of any vehicle, trailer or container; or
  - iv) the unauthorised movement on **your** premises or contract site.

Provided always that:

- (a) indemnity is not provided by any motor insurance contract; or
  - (b) compulsory motor insurance is not required by law; or
  - (c) there is not more specific insurance applying
- b) aircraft or aerospace device; or
  - c) hovercraft or hydrofoil; or
  - d) water-borne craft, other than:
    - i) hand propelled or sailing craft in inland territorial waters; or
    - ii) water-borne craft not owned by **you**, but used by **you** for business entertainment; or
    - iii) mechanically-propelled water-borne craft not exceeding 22 feet in length in inland or territorial waters.

**8) Professional Advice and Service**

any **claim** arising from or in connection with:

- a) advice;
- b) designs;
- c) formulae;
- d) specifications;
- e) professional services;

provided solely for a fee.

### SECTION 3 – DIRECTORS AND OFFICERS INDEMNITY

Section 3 of this **policy** operates on a 'claims made and notified' basis. This means that indemnity shall only be provided for **claims** made against **you** and notified to **us** during the **period of insurance**.

#### INSURING CLAUSE

Notwithstanding General Exclusion 10) (Director's and Officer's Liability) **we** shall, subject to the terms, conditions, exclusions, extensions and **endorsements** contained in this **policy**, indemnify:

- a) any **insured person** in respect of **loss** arising from any **claim** first made against them during the **period of insurance**;
- b) the **named insured** in respect of **loss** arising from any **claim** first made against any **insured person** when, and to the extent that **you** have indemnified that **insured person**;

where such **claim** arises from a **wrongful act** committed by an **insured person** in the course of the performance of their duties solely in their capacity as a director or officer of the **named insured**.

#### LIMIT OF LIABILITY UNDER SECTION 3

The maximum amount payable by **us** under this Section for all **claims** shall not exceed AUD250, 000 in the aggregate during the **period of insurance**.

#### DEDUCTIBLE APPLICABLE UNDER SECTION 3

- 1) **We** shall only be liable to indemnify **you** for that part of **your** liability for each **claim** that is greater than the **deductible**.
- 2) The **deductible** shall be inclusive of **defence costs**.
- 3) The full **limit of indemnity** shall apply over and above the **deductible**.
- 4) Where **we** have paid on **your** behalf part or all of the **deductible**, **you** shall reimburse **us** promptly upon request.

#### EXCLUSIONS APPLICABLE TO SECTION 3

The indemnity provided by this section of the **policy** shall not apply to:

1) **Bodily Injury and Property Damage**

any **claim** for **injury** or **damage**.

2) **Employment Claims**

any **claim** arising out of any obligation owed by **you**, as employer, to any current or former or prospective **employee**, including any **claim** arising out of any **employment practice dispute**;

3) **Fraudulent, Dishonest and Wilful Conduct**

any **claim** caused by, contributed to by, or arising from:

- a) the gaining of any financial advantage to which **you** or any **insured person** was not entitled, including the repayment of any wrongfully received monies;
- b) any conduct which involves wilful breach of duty in relation to **you**, or any breach of Section 182 or Section 183 of the Corporations Act (Cth);
- c) any dishonest, fraudulent, criminal or malicious act.

4) **Known Circumstances and Prior Litigation**

- a) any **claim** based upon, attributable to or arising out of any prior or pending litigation or proceedings, commenced before the **prior and pending litigation date**, including allegations deriving from the same or essentially the same facts, involving **you** or an **insured person** which has been, or should have been, the subject of notice given under any prior insurance;
- b) any **claim** which has been, or ought to have been, notified under any other **policy** of insurance in force prior to the inception of this **policy**; or
- c) any **claim** which is based upon, arising from or in consequence of:
  - i) any circumstance which could reasonably be foreseen to give rise to a **claim** if written notice of such circumstance has been given, or ought to have been given, under any other policy; or
  - ii) any circumstance which could reasonably be foreseen to give rise to a **claim** of which **you** or any **insured person** was actually aware, or ought reasonably to have been aware, prior to the inception date of this **policy**.

5) **Pension Schemes**

any **claim** caused by any **insured person** acting in the capacity of trustee or fiduciary or administrator of any employer-sponsored pension or superannuation scheme or superannuation programme.

6) **Professional Services**

any **claim** caused by, contributed to by or arising from any breach of or failure to provide professional services.

7) **Shareholders**

any **claim** brought by or on behalf of any company owning 15% or more of the **named insured's** issued share capital.

8) **Share Offerings**

any **claim** based upon, arising out of, resulting from, in consequence of or in any way involving a **wrongful act** committed by any **insured person** in relation to any actual public offering of the **named insured's** share capital.



## GENERAL POLICY EXCLUSIONS

The following exclusions shall apply to all sections of this **policy**.

The indemnity provided by this **policy** shall not apply to:

**1) Abuse**

any **claim** arising from or in connection with:

- a) any act of hurting or injuring, mentally or physically, by maltreatment or ill use;
- b) repeated or continuing contemptuous, coarse or insulting words and/or behaviour;
- c) actual or attempted sexual relations, sexual conduct or sexual intimacy, sexual harassment or sexual exploitation or any act for the purpose of obtaining sexual gratification.

**2) Asbestos**

any **claim** caused by or contributed to by, or arising from asbestos or any material containing asbestos in whatever form or quantity.

**3) Associated Companies**

any **claim** brought by or on behalf of:

- a) any of **you**;
- b) any parent or **subsidiary**;
- c) any person having a financial, executive or controlling interest in the **named insured** (unless the financial interest is less than 5%); or
- d) any entity controlled or managed by any of **you**; or where **you** have greater than a 5% interest or where **you** have accepted a financial interest, irrespective of the amount, in the entity in exchange for fees incurred,

unless such **claim** is brought against **you** by an independent third party.

**4) Avionics and Marine Products**

any **claim** caused by or contributed to by or arising from **products** (including hardware, software, firmware and cabling) or electronic equipment used in connection with:

- a) the safety, communication, navigation, control of flight or maintenance of orbit of any aircraft, spacecraft or other aerial device; or
- b) the safety, communication, navigation or propulsion of any hovercraft or watercraft.

**5) Contractual Liability**

any liability or obligation assumed by **you** under the terms of a contract, agreement or warranty unless **you** would have been liable to the same extent in the absence of such contract, agreement or warranty.

**6) Construction and Erection**

any liability caused by, contributed to by, or arising from any construction or erection work undertaken by **you**, or for which **you** are responsible for, as a building or engineering contractor.

7) **Communicable Disease Exclusion**

**injury or damage** caused by, arising out of or in any way involving:

- a) Coronavirus disease (COVID-19);
- b) Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- c) any mutation or variation of SARS-CoV-2);
- d) any other communicable disease;
- e) any fear or threat of a), b), c), or d) above

8) **Content Liability**

any **claim** caused by or contributed to or arising from any content published on **your** own website.

9) **Deliberate Acts**

any **claim** caused by or contributed to by, or arising from any intentional act or omission committed or condoned by **you**, or any wilful breach of or in reckless disregard of any statute, regulation, contract or duty by **you**.

10) **Director's and Officer's Liability**

any **claim** made against any of **your** directors, trustees or officers arising from any unlawful or negligent act, error or omission, actual or alleged breach of trust, breach of warranty of authority, or breach of duty committed or attempted by such director or officer where such **claim** is made solely by reason of them holding the position of director or officer and having acted in that capacity, including but not limited to any **claim** arising from any statement, representation or information regarding the **business** contained within any accounts, reports or financial statements. This exclusion shall not apply in respect of the indemnity afforded under Section 3 – Directors and Officers Indemnity.

11) **Employment Liability**

any **claim** caused by or contributed to by, or arising from:

- a) **injury** to any **employee**;
- b) any breach of any contract of service or of any obligation owed by or any liability **you** have as an employer or potential employer to any **employee** or prospective **employee** including any **employment practices dispute**.

12) **Fines and Penalties**

any fine or penalty or any liquidated, punitive, exemplary, non-compensatory, multiple, or aggravated damages or any **claim** deemed uninsurable by law.

13) **Insolvency and Insurance**

any **claim** caused by or contributed to by, or arising from:

- a) the insolvency or bankruptcy of **you** or any supplier or licensor to **you**;
- b) any failure to maintain or obtain adequate insurance or finance;
- c) any lost profit, any mark up or any tax.

14) **Jurisdiction and Territorial Limits**

- a) legal proceedings brought in a Court of Law outside the Jurisdiction stated in the **schedule** or brought in a Court of Law within that Jurisdiction to enforce a judgment or order made in any Court of Law outside that Jurisdiction;
- b) any **claim** caused by or contributed to by, or arising from **business** undertaken outside the **territorial limits**.

**15) Medical Malpractice**

any **claim** caused by or contributed to by, or arising from the provision of medical and/or care services by any person (including but not limited to surgical, medical and dental practitioners, nurses and midwives, ambulance personnel and paramedics).

**16) Nuclear Risks**

any **claim** caused by or contributed to by, or arising from:

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**17) Oil and Gas Conditions**

- a) any **claim** caused by, contributed to by, or arising from loss of or **damage** to any **underground resources**;
- b) any costs and expenses incurred in restoring the place of exploration and/or exploitation to a safe and workable condition.

**18) Pollution**

any actual alleged or threatened **pollution** (other than as provided for under Automatic Extension of Cover 2) (Sudden and Accidental Pollution) in Section 2 - Public and Products Liability.

**19) Sanctions**

any **claim** to the extent that to do so would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

**20) United States of America and/or Canada**

- a) any legal proceedings brought against **you** in the courts of the United States of America and/or Canada and/or any territories which come within the jurisdiction of the United States of America and/or Canada or elsewhere under the laws of those countries, or any arbitration or other award entered against **you** under the laws of those countries;
- b) any judgment or order wherever obtained for the enforcement of any judgment of the courts of the United States of America or Canada or under the laws of those countries (whether by way of reciprocal agreements or otherwise), or for the enforcement of any arbitration or other award entered against **you** under the laws of those countries.

**21) War and Terrorism**

any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the **claim** or loss:

- a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not) civil war, rebellion, revolution, insurrection or military or usurped power;
- b) any act including, but not limited to, the use of force or violence or the threat thereof of any person or group of persons whether acting alone or on behalf of or in connection with any organisation or government 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 any nature whatsoever caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

22) **Aluminium Composite Materials / Facades**

any **claim** caused by, contributed to by, arising from or in any way connected:

- a) any **cladding** which is not, or is alleged to be not compliant with any relevant legislation, regulation, standard, instructions or **building standard**; or
- b) any **cladding** which does not conform to, or is alleged not to conform to any relevant legislation, regulation, standard, instructions or **building standard**; or
- c) any **cladding** which is installed, applied, specified or utilised, or which is alleged to be installed, applied, specified or utilised in such a manner that is not compliant with or which is alleged not to be compliant with any relevant legislation, regulation, standard, instructions or **building standard**;
- d) any **cladding** which is installed, applied, specified or utilised, or which is alleged to be installed, applied, specified or utilised in such a manner which does not conform to, or which is alleged to not to conform to any relevant legislation, regulation, standard, instructions or **building standard**

## GENERAL POLICY CONDITIONS

The following General Conditions shall apply to the **policy**.

### 1) Alteration

**You** must give written notice to **us** of any alteration during the **period of insurance** which materially affects the risk as soon as practicable after becoming aware of such alteration. Such notice should be provided to **us** at the address stated in the **schedule**. On receipt of such notice **we** may:

- a) vary the terms of the **policy** and/or charge such reasonable additional amount as **we** may determine appropriate having regard to the nature of the risk assumed by **us**; or
- b) elect to terminate the **policy**, in accordance with **our** rights at law, including under the Insurance Contracts Act 1984 (Cth).

In the event that **we** charge an additional premium then **you** may have the option of cancelling the **policy** in accordance with General Policy Condition 4) Cancellation.

### 2) Adjustment – Directors and Officers Indemnity

a) If, after the inception of this **policy** and during the **period of insurance**, **you** acquire or create a **subsidiary**, the indemnity afforded under Section 3 - Directors and Officers Indemnity in relation to such **subsidiary** shall attach from the date of acquisition or creation for subsequent acts, provided that if the **subsidiary**:

- i) exceeds 25% of the consolidated assets of the **named insured**; or
- ii) is listed on any stock exchange anywhere in the world

then no indemnity shall be afforded in relation to such **subsidiary** without **our** prior written consent (which shall not be unreasonably withheld). In this event **we** reserve the right to review the terms and conditions of this **policy** and may:

- iii) vary the terms of the **policy** and/or charge such reasonable additional amount as **we** may determine appropriate having regard to the nature of the risk assumed by **us**; or
- iv) elect to terminate the **policy** in accordance with **our** rights at law, including under the Insurance Contracts Act 1984 (Cth).

In the event that **we** charge an additional premium then **you** may have the option of cancelling the **policy** in accordance with General Policy Condition 4) Cancellation.

b) If, during the **period of insurance**, an entity ceases to be a **subsidiary**, or ceases to be a **subsidiary** during any insurance of which this is a renewal, the following provisions apply:

- i) there shall be no coverage for subsequent **wrongful acts** relating to that **subsidiary**;
- ii) the indemnity afforded to that **subsidiary** shall continue for the remainder of the **period of insurance** in respect of any **claim** arising from a **wrongful act** committed prior to the date the entity ceased to be a **subsidiary**.

### 3) Assignment

**You** cannot assign this **policy** or any rights under it without **our** prior written consent by way of an **endorsement**.

### 4) Cancellation

This **policy** may be cancelled by **us** in accordance with the provisions of the Insurance Contracts Act 1984 (Cth). If the **policy** is cancelled, **you** shall be entitled to a rebate equal to the proportionate part of the premium corresponding to the unexpired portion of the **period of insurance**.

This **policy** may be cancelled by **you** at any time by giving written notice to **us**. In such case, if no **claim** has been made or **occurrence** or circumstance or other matter triggering coverage under the **policy** has been notified prior to such cancellation **we** will be entitled to retain the premium for the period during which the **policy** has been in force and **you** shall be entitled to a refund of the unexpired premium.

Otherwise, in the event that **you** notify **us** of an **occurrence** or circumstance or other matter triggering coverage under the **policy** then the premium shall be deemed fully earned at cancellation and there will be no return of premium by **us** to **you**. In the event that a **claim** is made after cancellation of the **policy** then **we** shall retain the right to offset the unexpired premium amount against the agreed claim amount.

5) **Changes to Policy**

The terms of the **policy** shall not be waived or amended except by **endorsement** issued by **us** in accordance with the provisions of Section 53 of the Insurance Contracts Act 1984 (Cth).

6) **Confidentiality**

**You** shall not disclose the terms of this **policy** or the amount of premium paid to any third party:

- a) except to the extent that **you** are required by law to do so, or by any regulatory authority as may be necessary to demonstrate to such regulatory authority that any mandatory insurance requirements of such authority have been satisfied; or
- b) except that the existence of the **policy** and the **limit of indemnity** may be disclosed to an insurer, to a client or a prospective client or broker where this is necessary to maintain agency facilities, provided that no such disclosure shall be permitted in circumstances where **you** are aware, or should have reasonably been aware, that the person to whom disclosure is going to be made had made or is likely to make a **claim**; or
- c) except to the extent that **we** consent in writing to such disclosure.

7) **Enforceability**

In the event that any portion of the **policy** is found to be invalid or unenforceable the remainder shall remain in full force and effect.

8) **Interpretation**

The **policy** and the **schedule** shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this **policy** or the **schedule** shall bear such specific meaning wherever it may appear.

9) **Law and Jurisdiction**

The meaning, validity and effect of this **policy** will be interpreted in accordance with the law of the Commonwealth of Australia and the Courts of the Commonwealth of Australia will have exclusive jurisdiction in any dispute hereunder.

10) **Reasonable Precautions**

**You** shall:

- a) take reasonable precautions to:
  - i) prevent any circumstances or to cease any activity which may give rise to liability under this **policy**; and
  - ii) maintain all buildings, furnishings, ways, works, machinery, plant and vehicles in sound condition; and
- b) as soon as practicable after discovery cause any defect or danger in respect of **products**, buildings, fittings, furnishings, plant, or machinery to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances require.

11) **Titles and Headings**

Titles and Headings are descriptive and are used solely for convenience of reference and shall not be deemed to limit or affect the provisions to which they relate in any way.

12) **Waiver of Subrogation Rights**

**You** shall not surrender any right of recovery that **you** may have against another party without **our** prior written consent. Failure to comply with this condition may permit **us** to reduce any payment under this **policy** to the extent that prejudice has been suffered.

## GENERAL CLAIMS CONDITIONS

### 1) Action by you

a) **You** shall give written notice to **us** as soon as reasonably practicable of any:

- i) **claim**;
- ii) loss;
- iii) **occurrence**;
- iv) discovery of any cause for suspicion of any dishonest or fraudulent act or omission

regardless of any **deductible** that may apply.

In respect of Section 1 - Professional Indemnity and Section 3 - Directors and Officers Indemnity such notice must, in any event, be given during the **period of insurance**.

The notice must include full particulars, including the identity of the claimant or potential claimant, details of the allegations and potential allegations against **you**, identification of the project and services giving rise to the **claim** or potential **claim** and the potential quantum, if known, involved in the **claim**. Every letter, **claim**, writ, summons and process in connection with such circumstances shall be forwarded to **us** as soon as practicable on receipt.

b) **You** shall also give written notice to **us** as soon as reasonably practicable, with full particulars of any circumstances of which **you** shall become aware, which could reasonably be expected to give rise to a **claim** or otherwise result in a payment under this **policy**

c) The notice shall include the reasons for the belief that the circumstance is reasonably expected to give rise to a **claim**.

In respect of Sections 1 - Professional Indemnity and Section 3 - Directors and Officers Indemnity of this **policy** only, any **claim** subsequently arising from a circumstance notified to **us** shall be deemed to have been made during the **period of insurance** in which notice of such circumstance was first received by **us**.

Such notice required under clause 1) a) and 1) b) above shall be provided to **us** at the address stated in the **schedule**.

d) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of **you** without **our** prior written consent.

e) **You** shall not surrender any right to, or settle any **claim** for, contribution, recovery or indemnity from any other party without **our** written consent.

f) **You** shall give all assistance as **we** and **our** representatives may reasonably require.

g) **You** shall use due diligence and shall ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a **claim** or loss.

Compliance with this condition shall be at **your** own cost.

### 2) Conduct of the Claim

a) **We** shall be entitled, but not obliged, to take over and conduct in **your** name for **our** own benefit, and shall have full discretion in the conduct of, any proceedings and in the settlement of any **claim**.

b) **We** shall be entitled to select and appoint lawyers or other parties that will defend and represent **you** in respect of any **claim**.

c) Subject to General Claims Condition 5) (Right to Contest) **we** shall be entitled to settle a **claim** at **our** sole discretion.

d) If **we** believe that a **claim** will not exceed the **deductible**, **we** may require **you** to conduct the defence of the **claim** at **your** own expense.

e) **We** shall be entitled, but not obliged, to tender any remaining amount of the **limit of indemnity** to **you** at any time, whereupon **our** liability for **defence costs** incurred after the date of tender shall cease

3) **Interlocking Clause**

No request for indemnity shall be made under both Section 1 - Professional Indemnity and 2 - Public and Products Liability of this **policy** in respect of any one **claim, loss or occurrence**.

Furthermore, it is agreed that if, in the event that any **claim, loss or occurrence** triggers indemnity under more than one section of the **policy**, the only right to indemnity in respect of such **claim or occurrence** shall be under that section with the highest remaining **limit of indemnity**.

4) **Right to Contest**

If **we** recommend settlement in respect of any **claim** and **you** do not agree that such **claim** should be settled, then **you** may elect to contest the **claim** provided that the maximum amount payable by **us** in respect of such **claim** shall not exceed the amount for which the **claim** could have been settled plus the **defence costs** incurred up to the date of such election.

5) **Our Rights**

In the event that **we** are entitled to avoid or repudiate the **policy** ab initio, **we** may instead, at **our** election, give notice in writing to **you** that **we** regard the **policy** as of full force and effect save that there shall be excluded from any insurance afforded hereunder any **claim** which has arisen or which may arise and which is related to the circumstances which entitle **us** to avoid or repudiate the **policy**. This **policy** shall then continue in full force and effect, but shall be deemed to exclude the particular **claim** referred to in the said notice.

6) **Senior Counsel**

- a) **We** shall not require **you** to contest a **claim** unless a Senior Counsel (agreed upon by **you** and by **us** or, failing such agreement, to be nominated by the Chairman of the New South Wales Bar Association or, where appropriate, by a similar official of any similar body in any other State or Territory) advises that the **claim** should be contested taking into account all likely costs, prospects of success and the damages and costs likely to be recovered by the third party claimant.
- b) The cost of Senior Counsel's advice shall be regarded as part of the **defence costs**.

7) **Subrogation and Waiver of Rights**

**We** shall be subrogated to all **your** rights of recovery against any third party before and after any indemnity is given under this **policy**, provided always that **we** shall not exercise any such rights against any current or former **employee** unless the **claim** in respect of which the indemnity is afforded under this **policy** was caused by or contributed to by serious or wilful misconduct by the **employee** or former **employee**.

**You** shall, without charge, provide such assistance as **we** may require in any subrogation.

In the event that any amount is recovered by **us**, it shall first be allocated against any amount previously incurred by **us** with any surplus thereafter being payable to **you**.





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