

# Commercial Business Package Insurance Policy

## Product disclosure statement (PDS) and Policy Document

### IMPORTANT NOTICE TO THE INSURED

This insurance is a legal contract. Please read it carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. The Insurance Broker or other intermediary who arranged this insurance should be contacted immediately if any correction is necessary. Your attention is particularly drawn to the notice headed 'Commercial Business Package' that appears on page 1 of this document .

### Berkley Insurance Australia

Registered Office: Level 23, 31 Market St,  
Sydney, NSW, 2000

## Contents

Welcome to Berkley Insurance Australia.....	1
Commercial Business Package .....	1
Important Information.....	2
1. Entering into the Policy with Us.....	2
2. Cost of the insurance .....	2
About this Product Disclosure Statement and this Policy wording .....	3
Part 1 – Summary of the available covers under this Policy.....	4
Part 2 – Your rights and responsibilities .....	5
Your duty of disclosure .....	5
Other party’s interests.....	5
Cooling off.....	5
Paying Your premiums .....	5
Excess.....	6
Fraudulent claims.....	6
Code Of Practice.....	6
Complaints .....	6
Privacy.....	7
Goods And Services Tax (GST).....	9
Terrorism Insurance Act 2003 (Cth).....	10
Underinsurance.....	10
Financial Claims Scheme .....	11
Exclusions and Conditions.....	11
Updating the Product Disclosure Statement .....	11
Section 40 Insurance Contracts Act 1984 (Cth) .....	12
Part 3 – The terms and conditions of this Policy .....	12
GENERAL DEFINITIONS.....	13
GENERAL EXCLUSIONS .....	20
GENERAL CONDITIONS.....	22
SECTION 1 - BUSINESS PROPERTY .....	30
SECTION 2 - BUSINESS INTERRUPTION .....	49
SECTION 3 - THEFT .....	65
SECTION 4 - MONEY .....	74



SECTION 5 - MACHINERY BREAKDOWN AND ..... 81  
ELECTRONIC EQUIPMENT BREAKDOWN..... 81  
SECTION 6 - PUBLIC AND PRODUCTS LIABILITY ..... 95  
SECTION 7 - GLASS ..... 113  
SECTION 8 - GENERAL PROPERTY ..... 116  
SECTION 9 - EMPLOYEE DISHONESTY ..... 119  
SECTION 10 - TRANSIT..... 125  
SECTION 11 - TAX AUDIT ..... 131  
SECTION 12 - MANAGEMENT LIABILITY ..... 139



## Welcome to Berkley Insurance Australia

Berkley Insurance Australia ABN 81 126 483 681 is a leading insurer to a wide range of small to large companies offering them solutions and superior claims management with insurance products in property, small business, commercial motor, professional indemnity, liability. It has a proven track record of providing high quality solutions for its clients combined with a long term commitment to the Australian market.

Berkley Insurance Australia has the expertise and resources to utilise its strengths in the present environment and the flexibility to anticipate, innovate and respond to whatever opportunities and challenges the future may hold.

Berkley Insurance Australia is part of the Berkley Group of Companies. Founded in 1967 the Berkley Group of Companies is one of the USA's premier commercial lines property casualty insurance providers. Each of the operating units in the Berkley group participates in a niche market requiring specialised knowledge about a territory or product.

The Berkley Group's competitive advantage lies in its long-term strategy of decentralised operations, allowing each of our units to identify and respond quickly and effectively to changing market conditions and local customer needs. This decentralised structure provides financial accountability and incentives to local management and enables it to attract and retain the highest calibre professionals.

The Berkley Group of companies is led by Berkley Corporation, located in Greenwich, Connecticut, USA. It is listed on the New York Stock Exchange under the symbol BIA. Member companies of the Berkley Group have offices across the USA and in the United Kingdom, South America, Continental Europe, Australia, New Zealand, Singapore and Hong Kong.

## Commercial Business Package

This document contains important information about this insurance and how it works. Before making a decision to take up this insurance, please read this document carefully.

To determine if this insurance is appropriate for You, it is important that You read:

- this Introduction and the Important Information – it contains information on important matters You need to be aware of before applying for this product;
- the Policy, which explains the features, benefits, terms, conditions and exclusions of this product;
- any other documents We provide to you about this product which may change the features, benefits, terms, conditions and exclusions described in the Policy.

## Important Information

### 1. Entering into the Policy with Us

Where We have agreed to insure You, We confirm this by issuing You with a Schedule which provides details relevant to You, such as Insured Amounts, Limits of Liability, Premium and Excesses.

The Policy, which is Your contract with Us, is entered into on the basis of the information provided by You in the application process. Please ensure You have complied with Your Duty of Disclosure as this can affect Your ability to claim.

The Policy is entered into on the condition that You will pay the Premium required by Us by the agreed time (including any adjustments).

In order to calculate Your Premium, We take various factors into consideration, including the level of cover requested and the property to be insured.

The Policy is made up of:

- this Product Disclosure Document (PDS);
- the Schedule;
- any Endorsements to the Policy issued by Us.

You need to:

- read these documents together as they set out all of the terms and conditions of Your cover;
- check them to make sure that the cover given is what You want;
- keep them together in a safe place for future reference along with receipts, and other evidence of ownership and value of items You have specified on the proposal form, or any other application for insurance, and for any other items of significant value.

If You do not meet Your obligations under the Policy, We may cancel it and/or reduce Our liability in respect of a claim to the extent permitted by law.

If You need more information about the Policy please contact Your insurance adviser or Us.

### 2. Cost of the insurance

In order to calculate Your Premium, We take various factors into consideration, including the level of cover requested and the property to be insured.

Factors that increase the risk to Us generally increase the Premium (e.g. high claims experience or higher Insured Amounts) and factors that reduce the risk to Us generally reduce the premium (e.g., low claims experience or lower Insured Amounts).

Your Premium also includes amounts that take into account Our actual or estimated obligation to pay any relevant compulsory government charges, taxes or levies (for example Stamp Duty, GST and Fire Services Levy). Where We are required to pay an estimated amount (e.g. For Fire Services Levies) based on criteria set by the Government, We allocate to the Policy Our estimate of the amount We will be required to pay. We may under or over recover in any particular year but We will not adjust Your Premium because of this. You can ask Us for more details if You wish.

When You apply for this insurance, You will be advised of the total amount payable, when it needs to be paid and how it can be paid. This amount will be clearly set out in the Schedule, which will be sent to You within five (5) days of the issue of this product. If You fail to pay, We may reduce any claim payment by the amount of Premium owing and/or cancel the Policy.

You may also be required to pay an Excess in the event of a claim under this Policy. The amount of any Excess will be shown on the Schedule.

## **About this Product Disclosure Statement and this Policy wording**

We are required to give You a Product Disclosure Statement (PDS) if You are insuring a Home Building under Section 1 – Business Property, Section 3 - Theft or Section 7 - Glass and You are:

- An individual; or
- A small business, having:
  - In the case of a non-manufacturing business, less than 20 employees; or
  - In the case of a manufacturing business, less than 100 employees.

This PDS and this Policy wording consists of 4 parts:

- Part 1 contains a ‘Summary of the available covers under this Policy’. You can use this summary, together with Your insurance intermediary’s assistance, to decide which Policy sections You need for the Business.
- Part 2 contains information about Your rights and responsibilities, the General Insurance Code of Practice and how to contact Us if You have a question or complaint. Part II applies to all Policy Sections and should be read by all persons who take out this Policy.
- Part 3 contains information for certain persons insuring a Home Building. This part only applies to You if You are insuring a Home Building under Section 1 – Business Property, Section 3 - Theft or Section 7 - Glass and You are an individual or a small business.
- Part 4 comprises the Policy terms and conditions. It applies to all persons who take out this Policy.

To understand the full terms and conditions Your Policy, You must read Part 2 “Your Rights and Responsibilities” and Part 4 - the terms and conditions of this Policy.

If You are insuring a Home Building under Section 1 – Business Property, Section 3 - Theft or Section 7 – Glass and You are an individual or a small business, You should also read Part 3.

## Part 1 – Summary of the available covers under this Policy

This Policy has been designed to meet the specific needs of the Business. We set out below a summary of the available covers provided by each Section of the Berkley Commercial Business Insurance Policy.

Cover Section	Summary of covers – please refer to the relevant Sections for details, relevant limits, Excesses and specific terms, conditions and exclusions that apply.
<b>Section 1 – Business Property</b>	This section covers Loss of or Damage to the Business Property at the Business Premises caused by the events listed under 'Defined Events Cover' and 'Accidental Damage Cover' and provides a number of automatic Additional benefits and an Optional Flood Benefit.
<b>Section 2 - Business Interruption</b>	This section covers loss of Revenue or Gross Profit and/or additional / increase in cost of working resulting from interruption of or interference with the Business caused by events covered under certain other sections of Your Policy and also provides a number of automatic Additional benefits and Optional benefits.
<b>Section 3 - Theft</b>	This section covers Loss of or Damage to your Contents, Stock or Specified Items due to theft and it also provides a number of additional benefits.
<b>Section 4 - Money</b>	This section covers Loss of or Damage to the Business' Money whilst on the Business Premises in a Safe or Strongroom, in transit to or from the Premises, or in Your personal custody, or the custody of a trusted employee.
<b>Section 5 - Machinery and Electronic Breakdown</b>	This section covers Insured Damage to the Business' Machinery (including Boilers and Pressure Plant), Computer Equipment and Electronic Equipment caused by a Breakdown. It also provides a number of automatic Additional benefits and an Optional benefit for deterioration of stock which is kept in freezers or refrigerated units, if the fridge or freezer breaks down.
<b>Section 6 - Public &amp; Products Liability</b>	This section covers You for amounts You are legally liable to pay as Compensation in respect of Personal Injury and/or Property Damage and/or Advertising Injury as a result of an Occurrence in connection with Your Business. It also provides a number of automatic supplementary payments.
<b>Section 7 - Glass</b>	This section covers You for Accidental Breakage of Glass at the Business Premises and provides a number of additional benefits.
<b>Section 8 – General Property</b>	This section covers Loss of or Damage to portable items of property, which You usually carry around with You in the course of the Business anywhere in the world, which occurs anywhere in Australia or the rest of the world.
<b>Section 9 - Employee Dishonesty</b>	This section covers You against Loss of Money, negotiable instruments or goods due to any act(s) of fraud or dishonesty committed by an employee for their own gain or the financial benefit of any other person or organisation. It also provides a number of automatic additional benefits.
<b>Section 10 - Goods in Transit</b>	This section covers the Loss of or Damage to goods and stock (that the Business buys, sells or uses) whilst they are in transit.
<b>Section 11 – Tax Audit</b>	This section covers the professional fees incurred in connection with an audit or investigation of the Business tax affairs by any authority authorised to do so, for example the Australian Taxation office.
<b>Section 12 - Management Liability</b>	This section covers the management liability of You, Your directors, officers and employees.

## Part 2 – Your rights and responsibilities

### Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

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

### If you do not tell us something

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

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

### Other party's interests

We only cover persons specified in the Policy as entitled to cover for the relevant interest specified. If You want to cover a person's interest that is not specified You need to apply to Us for this.

### Cooling off

If You are not completely satisfied with the Policy You may cancel it by notifying Us in writing within thirty (30) days of cover having commenced. You will receive a refund of the amount You have paid unless You have made or are entitled to make a claim under the Policy. You still have cancellation rights after this Cooling Off period ends, which are set out in the General Conditions.

### Paying Your premiums

When You apply for this insurance, You will be advised of the total amount payable, when it needs to be paid and how it can be paid. This amount will be clearly set out in the Schedule, which will be sent to You within five (5) days of the issue of this product. If You fail to pay, We may reduce any claim payment by the amount of Premium owing and/or cancel the Policy.

## **Excess**

This is the amount You have to pay if You suffer Loss, Damage or liability which leads to a claim under this Policy.

The amount and type of Excess that applies to Your Policy is shown either in Part 4 of this PDS and Policy wording or in the Schedule.

If You claim under more than one section of Your Policy for one incident or event, then You only pay the highest Excess that applies unless expressly stated otherwise in this Policy. For example, Additional Benefits may have their own Excess which are in addition to any Excess that may apply to a claim.

## **Fraudulent claims**

If You or anyone acting on Your behalf or with Your knowledge makes a claim that is false or causes Loss or Damage deliberately, We may do one or more of the following:

- refuse to pay a claim.
- Cancel Your Policy.
- Take legal action against You.

## **Code Of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice, which is a self-regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the insurance industry.

We are a signatory to the Code. If You require further information about the General Insurance Code of Practice, please contact Us.

## **Complaints**

If You have a complaint, You may contact Us and request that We review the matter. If You are dissatisfied with Our decision, You may request it be reviewed by Our Internal Dispute Resolution (IDR) Committee.

If You are unhappy with Our decision You may refer Your dispute to the Financial Ombudsman Service (FOS).

The FOS is a free and independent external dispute resolution scheme for consumers approved by the Australian Securities and Investment Commission for disputes. The scheme applies to matters that are covered by the FOS' Terms of Reference. We are a member of this scheme and We agree to be bound by the FOS' determinations on disputes but You are not so bound. If You wish Your dispute to be determined by the FOS, You must refer Your dispute to the FOS within 2 years of the date of Our final IDR response. You may refer the matter to the FOS by contacting them at:

Financial Ombudsman Service

GPO Box 3

Melbourne Victoria 3001

Phone: 1300 78 08 08

Email: [info@fos.org.au](mailto:info@fos.org.au)

Website: [www.fos.org.au](http://www.fos.org.au)

## **Privacy**

Berkley Insurance Australia handles your personal information in a responsible manner and in accordance with the *Privacy Act 1988 (Cth)*.

### **Consent**

By requesting us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure of personal information you have provided to us for the purposes set out in our Privacy Policy.

### **How we collect your personal information**

Generally we collect personal information from you or your agents. Personal information may also be collected by us from our agents and service providers; other insurers and insurance reference bureaus; third parties who may claim under your policies; service providers who assist us in investigating, processing and settling claims; third parties who may be arranging cover for a group that you are part of; statutory, regulatory and law enforcement bodies and from publicly available sources.

### **Why we collect personal information**

The personal information we collect enables us to provide our products and services. This may include processing and settling claims; offering products and services that may be of interest to you and conducting market research for products and services that may be relevant to you.

You can choose not to receive product or service offering from us by calling (02) 92758500 Eastern Standard Time 9am to 5pm Monday to Friday inclusive. For further information, you can access our Privacy Policy at [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

### **Who we disclose your personal information to**

Your personal information may be disclosed to other parties with whom we have business arrangements for purposes set out in the paragraph above. These parties may include insurers, intermediaries, reinsurers, related companies, our advisers and parties involved in claims assessment, processing, investigation and settlement. Where required by law, we may also disclose information to government, law enforcement, dispute resolution and statutory or regulatory bodies.

### **Personal information about others**

Where you provide personal information about others, you represent to us that you have made them aware that you will do so, the types of third parties we may disclose it to together with the purposes we and our third parties use it for, how they can access such information and how complaints can be made.

Where you provide sensitive information about others, you represent to us that you have obtained their consent. If you have not, and will not do so, you must tell us before you provide the sensitive information.

### **Overseas Disclosure**

Your personal information may be disclosed to other companies in the Berkley group, reinsurers and service providers that may be located in Australia and overseas. The countries this information may be disclosed may vary from time to time but may include the United States of America and other countries where the Berkley group has a presence.

Any information disclosed may only be used for the purposes detailed above.

### **Accessing your personal information and dealing with complaints**

You may request access to the personal information we hold about you by calling us at any time.

Our Privacy Policy details how you can make a complaint about a breach of the privacy principles as set out in the *Privacy Act 1988 (Cth)* and our complaints process.

Our Privacy Policy is available at [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

When You give Us personal information about other individuals, We rely on You to have made, or make, them aware that You will, or may, provide their information to Us and the types of third parties We may provide it to; the relevant purposes We and the third parties will use it for; and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant information.

If You require a copy of Our Privacy Statement, the full Privacy Policy, or further information, please contact Your nearest Berkley Insurance Australia office and ask for the Compliance Manager.

### **Access**

You can request access to, and if applicable the correction of, the personal information We hold about You by contacting Us. A fee may be charged to cover the cost associated with providing access.

In some circumstances, We are able to deny Your request for access to personal information. If We deny Your request for access, We will tell You why.

### **Goods And Services Tax (GST)**

All amounts insured by the Policy are in accordance with the advice You have given to Us regarding Your GST status. Any claim settlements, up to the total of all amounts insured, will be calculated with reference to Your GST status and the GST status of the property which is the subject of the claim.

We will not be liable to pay any GST, or any fine, penalty or charge that You are liable for arising out of Your misrepresentation of, or failure to disclose, Your proper input tax credit entitlement on the Premium relating to the Policy.

When You are:

- a) not registered for GST, the amount We pay is the Insured Amount/Limit of Indemnity or other limits of insurance cover including GST.
- b) registered for GST, we will pay the Insured Amount/Limit of Indemnity 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 insured under the Policy) We will pay for the GST amount.

We will reduce the GST amount We pay for the amount or any Input Tax Credits to which You are or would be entitled if You made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through the Business Activity Statement (BAS).

You must advise Us of Your correct Australian Business Number and Taxable Percentage.

Where the settlement of Your claim is less than the Insured Amount/Limit of Indemnity or the other limits of insurance cover, We will only pay an amount for GST (less Your entitlement for Input Tax Credit) 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 which is relevant to Your claim.

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

Taxable Percentage is Your entitlement to an Input Tax Credit on Your premium as a percentage of the total GST on that premium.

### **Terrorism Insurance Act 2003 (Cth)**

Some sections of this Policy exclude cover for losses as a result of Terrorism.

In the event that Loss of or Damage to property occurs and the cause of the Loss or Damage is declared a terrorist incident by the responsible Minister, then You may be afforded protection within the Insured Amounts, Limits of Indemnity or other limits of this Policy by virtue of the Terrorism Insurance Act 2003. The operation of this Act may also serve to reduce the settlement of Your loss to a percentage of the otherwise recoverable loss. In the event that the settlement is reduced then this will be at the direction of the Minister.

A more detailed explanation of the operation of the Terrorism Insurance Act 2003 can be obtained at [www.arpc.gov.au](http://www.arpc.gov.au).

### **Underinsurance**

The following sections of this Policy:

- a) Section 1 – Business Property
- b) Section 2 - Business Interruption

contain underinsurance provisions which require You to insure for full value.

If You do not, We may pay You a lower amount after taking into account the proportion of the underinsurance or You may be required to pay a portion of the loss Yourself.

It is Your responsibility to ensure that the Insured Amounts of the property You want insured by this Policy are adequate. Insured Amounts should reflect:

- i) the new replacement value of any property to be insured under Section 1 – Business Property; and

- ii) the full insurable value of the basis of cover you have selected under Part A, B or C of Section 2 - Business Interruption.

If Insured Amounts are not adequate, claims may not be paid in full.

You should review the adequacy of Insured Amounts periodically during the Period of Insurance and prior to renewal each year. Inadequacy of Insured Amounts can present significant issues of financial hardship. If You are unable to establish the adequacy of Insured Amounts, You should seek assistance from Your insurance advisor.

### **Financial Claims Scheme**

This Policy may be a 'protected policy' under the Federal Government's Financial Claims Scheme (FCS) and only applies in the event of an insurer becoming insolvent and the Federal Treasurer declaring that the FCS will apply to that insurer.

Payment of a claim under the FCS is subject to the Scheme's eligibility criteria being met.

Information about the FCS can be obtained from the Australian Prudential Regulation Authority at [www.apra.gov.au](http://www.apra.gov.au) or by calling 1300 55 88 49.

### **Exclusions and Conditions**

Unless stated otherwise in the Policy, General Exclusions apply to all sections of this Policy. Each section also contains exclusions which apply specifically to that section. The exclusions explain the circumstances in which We will not cover You. Please refer to the General Exclusions and the exclusions in each section for full details.

General Conditions apply to all sections of this Policy. Each section also contains conditions which apply specifically to that section. The conditions explain the obligations which You must comply with to be able to make a valid claim. Please refer to the General Conditions and the conditions in each section for full details.

### **Updating the Product Disclosure Statement**

We may need to update this Product Disclosure Statement from time to time if certain changes occur where required and permitted by law. We will issue You with a new Product Disclosure Statement or a Supplementary Product Disclosure Statement or other compliant document to update the relevant information except in limited cases.

Where the information is not something that would be materially adverse from the point of view of a reasonable person considering whether to buy this insurance, We may issue You with notice of this information in other forms or keep an internal record of such changes (You can get a paper copy free of charge by calling Us).

Other documents may form part of Our Product Disclosure Statement and Policy. If they do, We will tell You in the relevant document.

### **Section 40 Insurance Contracts Act 1984 (Cth)**

The following only applies to Section 12 - Management Liability of this Policy:

Section 12 - Management Liability is issued on a “Claims made and notified basis”.

Sections 12 of this Policy does not provide any cover for events which occurred before the contract was entered into, unless the Schedule specifies otherwise.

Your Policy does not provide any cover for Claims made after the expiry of the Policy.

However, under s 40(3) of the Insurance Contracts Act 1984(Cth) (ICA), We are not relieved of liability by reason only that the Claim was made after the expiration of the insurance if:

- a) You give notice, before the Policy expires, to Us of facts which may give rise to a claim against You; and
- b) that notice is given to Us as soon as reasonably practicable after You became aware of those facts.

The above explanation of the operation of s 40(3) of the ICA does not form part of this Policy wording.

If You change your Policy you may be entitled to a partial refund of premium or be required to pay an additional premium.

## **Part 3 – The terms and conditions of this Policy**

Your insurance Policy is made up of this Policy wording, any Endorsements and the Schedule, which shows the Insured Amounts, Limits of Indemnity, or other limits of insurance cover, the premium and any relevant government charges.

You should read the Schedule and the Policy wording together to tell You what We cover, what we exclude, what We pay to settle Your claims and other important information.

Most sections of this Policy contains some exclusions, conditions and definitions. There are also some General Definitions, General Exclusions and General Conditions which are listed on pages 18 to 35 and which apply to the whole Policy unless it is expressly stated to the contrary in any particular section.

## GENERAL DEFINITIONS

Unless defined differently in individual sections, these definitions shall apply to all sections of this Policy.

**“Accidental”** means unexpected and unintended from Your standpoint.

**“Aircraft”** means any craft or object designed to travel through air or space, other than model Aircraft.

**“Australia”** means the Commonwealth of Australia including any of its dependencies and Territories.

**“Building(s)”** means all buildings and structural appurtenances at the Situation. Buildings includes:

- a) walls, foundations, roofs, gates, fences, exterior lights, floodlights and signs, letter boxes, lettering, communication masts, aerials, antennae and dishes.
- b) fixtures and fittings owned by the owner of the building, including lifts, elevators, escalators and equipment all permanently fixed and non-portable, fixed carpets, plumbing or wiring services that are within the building.
- c) exterior blinds, awnings, gangways, verandas, terraces, outbuildings, sheds, lean-tos, carports, car parks, paths and roadways.
- d) towers, flagpoles, power lines and their supports, permanently fixed water and fuel storage tanks, underground and above ground services, including aprons, supply mains and meters.
- e) external fixed items including swimming pools, saunas and spas, air conditioning units and associated piping and wiring.
- f) customized and modified shipping containers or transportable buildings permanently located at the Situation used as workshops, lunchrooms or storage which are permanently fixed to the ground with electrical or plumbing services as necessary at the Situation.
- g) shipping containers in which the Stock the Business distributes is delivered to the Situation and from which merchandise is either being loaded into, unloaded from or stored in before dispatch, provided the container doors are secured when unattended with padlocks with a security rating under AS 4145.4 (or any subsequent amendment) of 6 or above and the padlocked container is fully enclosed by a locked cyclone fenced area at the Situation after hours.
- h) materials and supplies intended for use in the construction, alteration, erection, addition or repair of the Building(s) to an amount not exceeding 10% of the total Insured Amount on Building(s) subject to a maximum of \$100,000.

‘Buildings’ does not include:

- i) plant and machinery.
- ii) Stock.
- iii) Contents.
- iv) Property undergoing erection, construction, alteration or addition (including the partial dismantlement of existing structures), where the total contract value of all work to be carried out at any one Business Premises exceeds \$500,000 or 20% of the total Insured Amounts on Buildings and Contents, whichever is the lesser; provided that this limit shall apply only to the portion of the Business Premises or Business Property which is the subject of any such work and not to any other portion of the Business Property.
- iv) land, unsealed driveways and paths, dams, bridges, canals, tunnels, railway tracks and roadways (not at the Situation), piers, jetties, wharves and docks.

This definition of 'Buildings' is subject to General Condition 8 'Designation of Property'.

**"Business"** means the business(es) shown and described in the Schedule, including the ownership of any premises shown 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).

**"Business Hours"** means when You or any of Your directors, officers, partners or employees are at the Business Premises for the purpose of conducting the Business.

**"Business Premises"** the buildings, outbuildings, yards and land used by You for the Business at the Situation.

**"Business Property"** means Buildings, Contents, Stock and items listed on the current Schedule and used in the Business.

**"Computer Virus"** means an executable program or computer code segment that is self-replicating, requires a host program or executable disc segment in which it can be contained and which destroys or alters the host program or other computer code or data causing undesired program or computer system operation.

**"Contents"** means all property at the Business Premises, belonging to You or for which You are responsible or have accepted responsibility to insure prior to the occurrence of any Loss or Damage.

Contents includes:

- a) unused stationery and printed books.
- b) where You are a tenant of a leased or rented premises:
  - i) fixtures and fittings, window blinds, floor coverings owned by Your landlord for which You are legally responsible and leasehold improvements.
  - ii) fixtures and fittings (including fixed carpets) installed by You for the Business; and

- iii) installed fixtures and fittings, window blinds, cool rooms, awnings, CCTV and other security systems, exterior lights, masts, antennae and aerials, fixed external signs and air conditioning units, including external compressors and pipes at the Situation.
- c) improvements, alterations, decorations, fittings and additions to leased Buildings which have been made by You and for which You are not entitled to be reimbursed by the lessor in the event of Loss or Damage.
- d) plant and machinery, unregistered forklifts and hoists, communications systems, fixtures and fittings (unless insured by You as part of Buildings).
- e) documents of title and any other documents of aesthetic, historic, scientific or social value for past, present or future generations.
- f) computers, word processors, printers, scanners and other peripheral equipment and other Electronic Equipment or electronic data processing systems.
- g) dialogue or analogue telecommunication and receiving equipment, lighting facilities, televisions, audio visual amplification or surveillance equipment and office machines.
- h) computer systems records, data, media, manuscripts, other documents, deeds, specifications, plans, drawings, designs, business books and other records of every description.
- i) paintings, works of art and curios.
- j) property of Your welfare, sports and social clubs.

‘Contents’ does not include:

- i) Stock, if it is shown as a separate item on the Schedule.
- ii) Buildings.
- iii) Specified Items.
- iv) Customers’ Goods other than customers’ records and documents held or created by You as part of the Business.
- v) growing crops, trees or plants other than pot-plants,
- vi) animals, livestock, fish, birds and any other living organism except laboratory cultures, Stocks of foodstuffs, Stocks of nursery plants, or Stocks of a pet shop,
- vii) motor Vehicles or trailers, caravans or motorcycles all while registered or licensed to travel on a public road, provided that this exclusion will not apply to:
  - 1) mobile plant and equipment (excluding cars, sedans, panel vans, and trucks) not otherwise insured,
  - 2) motor Vehicles or trailers, caravans or motorcycles that are Stock in trade of the Business,

- viii) jewellery, furs, bullion, articles containing gold and silver which are not Stock and which exceed \$5,000 any one item,
- ix) Contents undergoing erection, construction, alteration or addition (including the partial dismantlement of existing structures), where the total contract value of all work to be carried out at any one Situation exceeds \$500,000 or 20% of the total Insured Amount on Buildings and Contents, whichever is the lesser, provided that this limit shall apply only to the portion of the Business Premises or Business Property which is the subject of any such work and not to any other portion of the Business Property,
- x) land, dams, bridges, canals, roadways, tunnels, railway tracks (not at the Premises), wharves, docks and piers,
- xi) watercraft, Aircraft or any accessories, equipment or spare parts whilst contained in or on these items unless they are Stock and are on the Premises at the time of any Loss or Damage.

This definition of 'Contents' is subject to General Condition 8 - 'Designation of property'.

**"Customers' Goods"** means goods that do not belong to You, but:

- a) belong to Your customers and are in Your physical or legal control because the Business repairs, services, maintains, or stores those goods before or after it repairs, services or maintains the goods;
- b) have been purchased by Your customers and are in Your physical or legal control awaiting delivery [i.e., goods sold but not delivered]; or
- c) are items at the Situation that You have accepted responsibility to insure under a formal agreement.

**"Damage"** means physical damage or destruction (with 'Damaged' or 'Destroyed' or 'Destruction' having a corresponding meaning).

**"Data"** means facts, concepts and information converted to a form usable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

**“Employee”** means any person while employed by You in the Business who You compensate by salary, wages or commission and have the right at all times to govern, control and direct in the performance of their work.

Employee includes:

- a) volunteers, and
- b) students on work experience.

Employee does not include:

- i) any broker, factor, consignee or contractor,
- ii) any member of Your Family; or
- iii) any partner, director or trustee unless that person is also Your employee.

**“Endorsement”** means documentary evidence of an alteration to this Policy.

**“Excess”** means the amount, or the loss applicable to a specified period of time, expressed as an Excess on the current Schedule or elsewhere in the Policy. This is the first amount of any loss that You must pay before We pay Your claim.

**“Family”** means:

- a) Your spouse, Your partner or Your de facto who lives with You.
- b) Your parents and parents-in-law.
- c) Your children and children of Your spouse, partner or de facto (not being Your children) who live with You.
- d) Your brothers and sisters.

For the purpose of this definition ‘You’ and ‘Your’ refers to the directors, owners and officers of the Insured.

**“Flood”** means the inundation of normally dry land by water escaping or released from the normal confines of any natural watercourse or lake (whether or not they have been altered or modified) or from any dam, reservoir or canal.

**“Glass”**

- a) Fixed glass forming part of or fixed to the exterior of the Building including glass in fixed signs; or
- b) Fixed internal glass including fixed glass in furniture, counters, shelving and showcases, fixed and hanging mirrors, fixed washbasins, sinks, toilet pans and cisterns, contained within the Building.

**“Home Building”** means a building which is used or intended to be used, principally and primarily as a place of residence.

**“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.

**“Insured Amount”** means the maximum amount that will be paid under a section or part of a section of this Policy as specified in the Schedule.

**“Loss”** means physical loss (with ‘Lost’ having a corresponding meaning).

**“Media”** means material on which data is recorded or stored, such as magnetic tapes, hard drives, cartridges, dongles, CDs, DVDs, USBs, flash drives, memory cards or floppy disk, or other storage types, but media does not include paper records.

**“Money”** means current coin, bank notes, currency notes, cheques, travellers’ cheques, credit card sales vouchers, securities, postal orders, money orders, negotiable and nonnegotiable securities and other like documents of value, phone cards and/or stored value cards, unused postage and revenue stamps, public transport tickets, private transport tickets (excluding airline tickets), bridge or highway tokens, car wash tokens, lottery tickets, authorised gift vouchers, discount vouchers from external parties, contents of franking machines and includes cash boxes, alarm bags, or any other portable container used to convey Money all belonging to You or for which You are legally responsible or have assumed a responsibility to insure.

**“Period of Insurance”** means the time cover commences to the time cover expires. The dates are shown on the current Schedule. Unless stated otherwise, cover shall expire at 4.00 pm local time at the place where You arranged the cover.

**“Policy”** means this document, the Schedule and any Endorsement or memoranda affixed and any future documents issued to You which amends the Policy wording or Schedule. Together they form the insurance contract.

**“Pollutants”** means any solid, liquid, gaseous or thermal irritant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals or waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.

**“Rewriting of Records”** means the cost of restoration of computer records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description.

**“Safe”** means a burglar-resistant container which has been designed to resist fire and attack by hand-held or power-operated tools and has been specifically designed for the storage of Money and valuables.

**“Schedule”** means the most current Schedule of Insurance or any future renewal Schedule, including any Endorsements issued by Us in connection with this Policy.

**“Seasonal Increase Periods”** means any period of time during the Period of Insurance that has Stock levels or Money levels of up to fifty percent (50%) higher than Stock or Money levels at other times during the Period of Insurance.

For the purpose of this Policy, Seasonal Increase Periods include the following:

- a) eight weeks prior to and including Christmas Day;
- b) three weeks after and including 26 December;
- c) six weeks prior to and including Easter Tuesday;
- d) one week after but not including Easter Tuesday;
- e) six weeks prior to and including any celebrated event of a festive, religious or ethnic nature (other than Christmas or Easter) where you can reasonably demonstrate that the **stock** levels during that period have risen by more than 20% above standard levels; and that the increase has happened solely for the purpose of meeting additional customer demand associated with the happening of that festive, religious or ethnic event or celebration; and
- f) one week after the same festive, religious or ethnic event or celebration.

Any other period shown in the current Schedule, in lieu of the covers in clauses a) to f) above.

**“Situation”** means the Situation stated in the current Schedule.

**“Stock”** means the items belonging to You or for You are legally responsible or have assumed a responsibility to insure, described below:

- a) raw materials, components, supplies and merchandise not manufactured by You.
- b) materials in process of manufacture.
- c) finished goods manufactured by You.
- d) goods sold but not delivered and goods held by You on consignment or commission.
- e) Customers’ Goods for which You are responsible.
- f) tobacco, products containing tobacco, cigars, cigarettes or alcohol.
- g) consumable materials used in the operation of machinery.
- h) pallets, containers and packaging materials.

Under Section 3 - Theft, Stock does not include tobacco, products containing tobacco, cigars, cigarettes or alcohol unless they are specified on the current Schedule.

**“Strongroom”** means a burglar-resistant structure constructed of masonry and steel which has been designed to resist fire and attack by hand-held or power operated tools and has been specifically designed for the storage of Money and valuables.

**“Subsidiary Company”** means any company in which You have a controlling interest. For the purpose of this definition the term ‘controlling interest’ shall mean the beneficial ownership of shares carrying more than 50% of votes capable of being cast at a general meeting of all shareholders of the company.

**“Terrorism”** means an act including but not limited to the use or threat of force or violence 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) which from its nature or context is committed for or in connection with any 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.

**“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.

**“Watercraft”** means any vessel, craft or thing made or intended to float on or in or travel through water, other than model boats.

**“You”, “Your” or “Yours”** means the person(s), companies or firms named on the current Schedule as the ‘Insured’.

## GENERAL EXCLUSIONS

The following General exclusions apply to all sections of this Policy unless expressly stated otherwise.

### 1. WAR, TERRORISM, RADIOACTIVITY

#### a) War

We will not pay for any Loss or Damage arising directly or indirectly as a result of:

- i) war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not) and/ or civil war; and/or
- ii) rebellion, revolution, insurrection, military and/or usurped power.

However, this Exclusion 1 b) does not apply to Section 10 – Transit.

#### b) Terrorism

- i) We will not pay for any death, injury, illness, Loss, Damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any act of Terrorism regardless of any other contributing cause or event;
- ii) We will not pay for any death, injury, illness, Loss, Damage, liability, cost or expense of any nature directly or indirectly caused by, resulting from, or in connection with, any action taken in controlling, preventing, suppressing or in any way relating to the matters set out in paragraph b) i) of this Exclusion.

General Exclusion 1 b) does not apply to Section 3 - Theft, Section 4 - Money, Section 7 - Glass and Section 8 - Portable and Valuable Items.

#### c) Radioactive Contamination

We will not pay for any:

- i) Loss of or Damage to property eligible for insurance by the relevant Nuclear Insurance Pool and/or Association; or
- ii) Loss, cost, Damage, liability or expense directly or indirectly caused by or contributed to by or arising from:
  - 1) ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
  - 2) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
  - 3) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
  - 4) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

Provided that General Exclusion 1 c) ii) 1) 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.

## **2. BUSINESS IN LIQUIDATION OR CEASES TO TRADE**

If the Business is placed into liquidation or administration, a receiver is appointed or the business is wound up or is permanently discontinued, then unless otherwise agreed by Us in writing, all cover under this Policy ceases from the time Your interest is transferred or the Business ceases to trade.

## **3. GEOGRAPHICAL LIMITATIONS**

Unless We agree in writing to the contrary, We will not pay for any Loss of or Damage to property insured by this Policy that is outside the Commonwealth of Australia at the time of its Loss or Damage, except as specifically stated otherwise in the appropriate section.

## **4. UNOCCUPANCY**

Unless We otherwise agree in writing, We will not pay for any Loss of or Damage to the Business Property if the occurrence happens after the Premises has been unoccupied for more than ninety (90) consecutive days.

## **5. WILFUL ACTS**

Subject to the provisions of the Insurance Contracts Act 1984, We will not pay for any Loss or Damage caused by either Your wilful act or by the wilful act of another party committed with Your knowledge and consent, which You were capable of preventing.

## **6. ELECTRONIC DATA EXCLUSION**

We will not cover Electronic Data or the cost of rewriting records as a result of Loss of Electronic Data.

However, We will provide cover for Loss of Electronic Data and Rewriting of Records arising out of the following perils:

fire, lightning; thunderbolt, explosion, implosion, earthquake, subterranean fire, volcanic eruption, impact, Aircraft and/or other aerial device, breakage of Glass, the acts of persons taking part in riots or civil commotions or of strikers or of locked out workers or of persons taking part in labour disturbances which do not assume the proportions of or amount to an uprising, storm, tempest, rainwater, wind, hail, water and/or other liquids, substances discharged, overflowing and/or leaking from any apparatus, appliance or pipes.

If Section 3 - Theft is current We will also provide cover for Loss of Electronic Data arising out of theft of any computer and/or computer hardware, firmware, microchip, integrated circuit or device containing such Electronic Data.

If Section 5 (Part 2) - Electronic Equipment is current and Electronic Data and Electronic Data Media is insured, We will also provide cover for Loss of Electronic Data arising out of vibration, power surge, low voltage, mechanical, electrical and electronic breakdown, but not breakdown occurring as a result of any virus, worm, Trojan Horse, hacking, or any unauthorised access.

For the purposes of this exclusion Electronic Data means any facts, concepts and/or information converted to a form usable for communications, displays, distribution, processing by electronic and/or electromechanical data processing or electronically controlled equipment which includes but is not limited to programs, software or other coded instructions for such equipment.

## **GENERAL CONDITIONS**

The following general conditions apply to all sections of this Policy. You should also refer to each section to see whether any additional conditions apply.

### **1. BREACH OF CONDITION OR WARRANTY**

Breach of a condition or warranty without Your knowledge or consent or error in name, description or Situation of property will not prejudice Your rights under this Policy provided notice in writing is given to Us when such breach or error comes to Your knowledge. Reasonable extra premium shall be paid if required, from the date of such breach or error.

### **2. ACCOUNTANCY RECORDS**

You must provide to Us all books of account, business books and other documents as may be required to investigate or verify claims. If You do not, We may refuse to pay or may reduce the amount of a claim.

### **3. ACQUISITION OF COMPANIES**

Provided that You notify Us in writing within thirty (30) days of the acquisition of:

- a) Any company or other legal entity acquired during the Period of Insurance; or
- b) Any property or liability associated with such company or any other legal entity or business undertaking or operation;

and the business is of a similar occupation to that stated in the Schedule, We will provide cover subject to Your acceptance of Our terms and undertaking to pay the additional premium We may require.

Our liability shall not exceed the Insured Amount, Limit of Liability, or any sub-limit of liability applicable under the relevant section(s) of this Policy making up Your Policy for each category of property.

### **4. 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.

### **5. CANCELLATION**

#### **How You may cancel this Policy**

You may cancel this Policy or any section at any time by notifying Us in writing. You can do so by giving such notice through Your insurance broker.

Where “You” involves more than one person or party, We will only cancel this Policy when written agreement to cancel is received from all of such named persons or parties.

We subtract from any premium You have paid Us, an amount to cover the period that We have already insured You for. We will then return the rest of the premium to You (along with GST and any relevant government charges where this allowed).

#### **How We may cancel this Policy**

We may cancel this Policy or any section in any of the circumstances permitted by law by informing You in writing.

We will give You this notice in person or send it to Your address last known to Us.

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

- a) 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 or any section of this Policy, is entered into; or
- b) at 4.00 pm on the thirtieth (30th) business day after the day on which notification was given by Us to You.

We will refund the premium that You have paid for the rest of the Period of Insurance (along with GST and any other relevant government charges where this is allowed).

This Cancellation condition shall not apply with regard to Section 10 - Transit, in respect of any transits that have commenced during the Period of Insurance and prior to the date of cancellation by You or Us, unless We cancel Your Policy for non-payment of the premium.

#### **Premium funders**

If the premium has been funded by a premium funding company, which holds a legal right over the Policy by virtue of a notice of assignment and irrevocable power of attorney, the return of premium calculated on the basis set out above will be made to the premium funding company.

### **6. CLAIM PREPARATION EXPENSES**

We will pay for costs necessarily and reasonably incurred for the preparation of a claim for which We agree to indemnify You under this Policy. The most We will pay is \$25,000 in total for any one claim, unless a higher amount is included in the particular section of the Policy. This benefit is in addition to the Insured Amount.

### **7. CLAIMS**

#### **What You must do after Loss, Damage or accident:**

- a) protect Yourself from any danger present;
- b) assist other people within Your capabilities if required;
- c) take reasonable steps to prevent further Loss, Damage or liability;
- d) notify the police immediately if any of Your property is Lost, stolen, or maliciously Damaged and provide the police with all assistance to apprehend the offending party;
- e) advise Us of the claim as soon as practicable and then supply Us with full written details by completing Our claim form. You or someone acting on Your behalf must complete a claim form within a reasonable time of an occurrence. If You do not, We may reduce the amount We pay if the delay causes increased costs or prevents Us investigating the claim;
- f) any invoices, bills, demands letters or notices You receive from other people involved in the Loss, Damage or accident must be sent to Us as soon as possible.

#### **What You must not do after a Loss or accident:**

- i) You must not admit fault or agree to pay for Loss or Damage without Our consent. Do not make an offer, settle, or attempt to settle any claim against You. If You do We may not pay all or part of the claim;
- ii) You must not incur any costs or expenses or authorise repairs (other than necessary temporary repairs) without Our agreement.

## 8. CHANGE TO RISK

Our decision to insure You, and the premium that We charge You, is based on information provided by You about the Business, and the risks to be insured under this Policy. Your insurance, including the amount of premium, may be affected if any of the facts or circumstances that existed at the start of this Policy change during the Period of Insurance, including, for example:

- a) the nature of or type of business carried on by You or Your tenants;
- b) other circumstances that affect the Business Premises or the Business Property in such a way as to increase the risk of Loss or Damage;
- c) Your interest in this Policy ceases, including by operation of law;
- d) the Business is wound up or carried on by an insolvency practitioner or permanently discontinued;

You must notify us as soon as reasonably practicable of any changes as mentioned in clauses a), b), c) and d) above or any other changes that may increase the risk insured under Your Policy.

If You are a property owner insuring Buildings that You lease, our decision to insure You and the premium We charge You will take into account information about Your tenants and how the Building is used that You tell us when You apply for a policy with Us, during the Period of Insurance and at each renewal. For this reason it is important that You tell us as soon as these things change.

For example, if Your Building has three tenants (a solicitor's office, a menswear shop and a sandwich bar) We will calculate Your Section 1 - Business Property premium component on the sandwich bar, as it is more hazardous than either of the other two occupations. If during the Period of Insurance the sandwich bar closes down and a ladies wear shop opens, then You must notify Us of the change and We will re-calculate Your Section 1 - Business Property premium component either using the menswear or the ladies wear occupation.

If We agree to continue to insure You after You have told Us of the changes You tell Us about We will confirm this in writing. In some cases, We may only agree to continue to insure You under this Policy if You agree to pay Us additional premium.

## **9. DESIGNATION OF PROPERTY**

For the purpose of determining under which item any property is insured, We agree to accept the designation under which such property appears in Your books of account.

Provided always that this General Condition shall not apply to Section 3 - Theft with respect to tobacco, products containing tobacco, cigars, cigarettes and alcohol.

Furthermore, under Section 3 - Theft, Stock does not include tobacco, products containing tobacco, cigars, cigarettes or alcohol unless they are specified on the current Schedule.

## **10. EXCESS**

This is the amount You have to pay if You suffer loss, damage or liability which leads to a claim under this Policy.

The amount and type of Excess that applies to this Policy is shown either in the applicable section or on the Schedule.

If You claim under more than one section of this Policy for one incident or event, then You only pay the highest Excess that applies unless expressly stated otherwise in this Policy. For example, Additional Benefits may have their own Excess which may be in addition to any Excess that may apply to a claim.

## **11. INSPECTIONS**

We (or agents appointed by Us) have the right, but not the obligation, to inspect Your Business Premises and operations at any reasonable time. Neither our right to make an inspection nor the failure to make an inspection, nor the making of an inspection, nor any report of any inspection shall constitute an undertaking or representation by Us on Your behalf or for the benefit of You or others, to determine or warrant that such premises or operations are safe or healthful or fit for use, or fit for a particular purpose, or compliant with any law, rule or regulation.

## **12. INTERPRETATION OF WORDS**

Some of the words used in this Policy have special defined meanings. These words commence with capital letters and are listed under either the "General Definitions" section on pages 14 to 21 or in the definitions section in the applicable section of this Policy.

The headings in each section are not part of this Policy. Their purpose is to provide You with a general guide about the context of the text.

In this Policy, words importing the singular include the plural and the plural the singular, and any gender includes reference to all other genders unless the context requires an alternative construction.

### **13. JURISDICTION**

All disputes arising out of or under this Policy shall be subject to determination by any court of competent jurisdiction within Australia according to the law which applies to that jurisdiction.

### **14. NON-IMPUTATION**

Where this insurance is arranged in the joint names of more than one insured, as described in the definitions of You, it is hereby declared and agreed that:

- a) each insured shall be covered as if it made its own proposal for this insurance;
- b) any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each insured;
- c) any knowledge possessed by any insured shall not be imputed to the other insured(s).

### **15. OTHER PERSONS OR ORGANISATIONS**

If any person or entity shall have any interest in the Business Property, We shall protect that interest in the event of a claim, provided that interest is disclosed in Your business records and You shall have disclosed the nature and extent of that interest to Us at the time of notification of the claim.

Where the separate interests of more than one party in the Business Property are insured under this Policy, any act or neglect of one party will not prejudice the rights of the remaining party or parties provided that the remaining party or parties shall, within a reasonable time after becoming aware of any act or neglect whereby the risk of Loss or Damage has increased, give notice in writing to Us and shall on demand pay such reasonable additional premium as We may require.

You cannot transfer the Policy into someone else's name without Our written consent.

All persons entitled to claim under the Policy are bound by the terms and conditions of the Policy.

When a claim is paid under the Policy and is also recoverable under another policy or policies, You agree to permit Us to seek contribution from the other insurer or insurers.

### **16. OUR MAXIMUM LIABILITY**

Except as otherwise stated elsewhere in this Policy, the maximum amount We will pay will not exceed the amount stated in the Schedule as the Insured Amount or the Limit of Liability for those sections selected.

The applicable Insured Amount or the Limit of Liability shall apply in addition to, and shall not be reduced by, the amount of any applicable Excess.

## **17. PROGRESS PAYMENTS**

We will not unreasonably withhold progress payments. We will make progress payments on claims at intervals to be agreed by Us following receipt of an interim report from Our loss adjuster or representative.

## **18. REASONABLE CARE**

You must take reasonable precautions to prevent Personal Injury or Property Damage or Advertising Injury as if You were not covered by this Policy such as:

- a) if You discover Your Products may be defective and the defect may cause a claim under Section 6 - Public and Products Liability, at Your expense You must take reasonable steps to restrict, trace, recall, modify, replace or repair the products;
- b) maintain and look after other person's or organisation's property and buildings used or occupied by You, in accordance with Your agreement with them;
- c) if Your occupation includes digging below ground at sites away from the Business Premises You must obtain the location of underground services from the owners of the services;
- d) use and store all hazardous materials as required by law.

If You do not take reasonable precautions We may refuse to pay part or all of Your claim.

## **19. REINSTATEMENT OF INSURED AMOUNT OR LIMIT OF LIABILITY**

In the event of Loss or Damage insured under one or more of the Business Property, Business Interruption, Theft, Money and Glass sections of this Policy, the amount by which the Insured Amount or Limit of Indemnity is reduced as a consequence of the Loss or Damage will be automatically reinstated as from the date of Loss or Damage provided that:

- a) there is no written request from You or written notice by Us to the contrary;
- b) the section is an operative section of the Policy; and
- c) You pay the premium which We require for the reinstatement.

We will not reinstate the Insured Amount or Limit of Liability on the Business Property or Business Interruption sections if We have paid a total loss under either of these sections.

## **20. REWARDS**

We will pay You up to \$5,000 or any higher amount shown in the current Schedule for the reasonable cost of any reward paid by You to recover any property belonging to You or for which You are responsible that is Lost, Destroyed or Damaged and which is insured under the Business Property, Theft, Money or Glass sections of this Policy.

However:

- a) the terms of the reward must be agreed by Us before it is offered; and
- b) no such payment shall be made by You unless the value of the property recovered exceeds the reward.

We shall not unreasonably withhold or refuse consent to the terms of any reward payable under this General Condition.

## **21. SALE OF SALVAGE**

We will not sell or dispose of any salvage without giving You the opportunity to buy it at its salvage value, provided that this condition does not allow You to abandon the property to Us.

## **22. SINGLE OCCURRENCE**

We will not pay for Loss of or Damage to property covered by this Policy under more than one section of the Policy in respect of the same item and occurrence unless a relevant Insured Amount has been paid out in full and You have not been fully covered for the Loss or Damage.

## **23. WAIVER OF SUBROGATION RIGHTS**

**This condition does not apply to Additional Benefit 13 of Section 3 – Theft, Additional Benefit 8 of Section 4 - Moneys and Section 9 – Employee Dishonesty.**

We may not be liable to pay any benefits under this Policy for Loss, Damage or liability if You agree, or have agreed, to limit or exclude any right of recovery against any third party who would be liable to compensate You with respect to that Loss, Damage or liability however:

- a) We shall waive any rights and remedies or relief to which We are or may become entitled by subrogation against:
  - i) any co-insured (including directors, officers and Employees);
  - ii) any corporation or entity (including directors, officers and Employees) owned or controlled by any insured, or against, any co-owner of the property insured;
- b) You may without prejudicing Your position under this Policy:
  - i) release any statutory governmental, semi-governmental or municipal authority from any liability if required at law to do so;
  - ii) agree to enter into a contract for storage of goods or merchandise if the terms of the contract include a disclaimer clause;
  - iii) agree to enter into a lease for occupancy of any building or part of a building, or a lease, or hiring of property where the terms of the lease, or hiring, include a disclaimer clause in favour of the lessor or the owner.

## SECTION 1 - BUSINESS PROPERTY

This section only forms part of Your Policy when Section 1 - Business Property is shown as covered in the Schedule.

### COVER

The scope of cover provided is explained in the clauses 'Defined Events Cover' and 'Accidental Damage Cover'.

We will cover You for Loss or Damage caused by the events listed under 'Defined Events Cover' and 'Accidental Damage Cover' to the Business Property which occurs during the Period of Insurance.

We will pay up to the Limit of Liability in accordance with the Basis of Settlement for property that is Lost or Damaged at the Business Premises during the Period of Insurance.

The current Schedule shows what You have covered and the method of settlement.

### BASIS OF SETTLEMENT

When Business Property shown in the Schedule is Lost or Damaged during the Period of Insurance, the following Basis of Settlement will apply at each of Your Situations:

#### a) Business records

- i) for Loss of or Damage to business books, plans, computer records, patterns and other business records, We will pay the cost of re-creating the documents that are Lost or Damaged; and
- ii) for Loss of or Damage to business records of Your customers at the Situation or Your business records stored off-site, We will pay up to a maximum of \$25,000 any one Loss unless a higher amount is specified in the Schedule.

#### b) Old plant and equipment

Unless specifically insured otherwise:

- i) for those items kept as spare parts, We will pay the cost of repairs or the second hand replacement value of a similar part of the same age and condition, whichever is the lesser; and
- ii) for any old item kept for use as backup in an emergency, We will pay the cost of repairs or the second hand replacement value of a similar item of the same age and condition, whichever is the lesser.

**c) Stock and Customers' Goods**

If Stock or Customers' Goods are Lost or Damaged, We will:

- i) pay the replacement cost of raw materials, supplies and other merchandise not manufactured by You at the time and the place of replacement, provided that replacement shall have been carried out with reasonable dispatch or, if not replaced, the value of such property to You at the time and place of the Loss or Damage but not exceeding its original cost price to You.
- ii) pay the replacement cost of the raw materials and the cost of labour and other manufacturing charges expended on materials in process of manufacture, calculated at the time and place of the Loss or Damage.
- iii) pay the replacement cost of the raw materials and the cost of labour and other manufacturing charges expended on finished goods without any allowance for profit or the cost of re-stocking such goods, whichever is the lesser.
- iv) pay the market value of obsolete Stock at the time of the Loss or Damage or its purchase price (net of any input tax credit that You could claim), whichever is the lesser, but not exceeding its original cost to You.
- v) replace or repair the Stock or Customers' Goods with property or materials equal to or of a similar standard and specification as the stock or Customers' Goods at the time of the Loss or Damage; or
- vi) pay the cost of repair or replacement of the Lost or Damaged Stock or Customers' Goods.
- vii) in respect of goods sold but not delivered for which You are responsible (and with regard to which, under the conditions of sale or any statute or at common law, the contract of sale is cancelled either wholly or in part by reason of the Loss or Damage) pay the contract price, or in the case of a partial cancellation of the contract of sale, that part of the contract price which shall have been lost to You because of the partial cancellation.

**d) Branded goods**

Any salvage of branded goods and/or merchandise owned by You or for which You are legally liable and/or goods sold but not delivered shall not be disposed of by sale without Your consent. If such salvage is not disposed of by sale then the Loss or Damage will be assessed at the market value of the goods after brands, labels or names have been removed by You or on Your behalf.

**e) Buildings, Contents or Specified Items**

For Buildings, Contents or Specified Items, that are Lost or Damaged, there are two methods of paying Your claims. They are 'Reinstatement or replacement value' and 'Indemnity value'.

The claim payment method You are covered for is shown in the current Schedule.

**1. Reinstatement or replacement value**

Unless the Schedule shows You are insured for 'Indemnity Value', when Buildings, Contents or Specified Items are Lost or Damaged, We will pay the cost of:

- a) rebuilding, repairing or restoring the Buildings at the Situation shown on the Schedule or at another site.
- b) replacing, repairing or restoring the Contents or Specified Items with similar property.
- c) pay You the amount shown on the proof of purchase for Specified Items.
- d) pay You the amount of a valuation by the Auctioneers and Valuers Association of Australia for Specified Items of works of art, antiques and curios.

Reinstatement or replacement is subject to the following conditions:

- a) the work of rebuilding, replacing or repairing must be commenced and completed by You within a reasonable time of the Loss or Damage, after Our consent has been obtained, otherwise the amount We pay will be no more than the cost that would have been incurred if the work of rebuilding, replacing or reinstatement had been commenced and carried out with reasonable dispatch.
- b) when rebuilding at another site, We will not pay more than We would pay to rebuild at the Situation.
- c) when any property is Damaged, but not Destroyed, We will not pay more than the amount that We could have been called upon to pay for if that property had been Destroyed.
- d) We will only pay to return the property to a condition substantially the same as, but not better or more extensive than, its condition when new, using building materials readily available and in common use in Australia.

**2. Indemnity value**

(Optional reduction in cover)

If the basis of settlement is shown in the Schedule as 'Indemnity value', then, for the purpose of calculating any loss settlement, "Indemnity value" means:

- a) the cost to reinstate, replace or repair the Business Property to a condition substantially the same as but not better or more extensive than its condition at the time that the Loss or Damage occurred, taking into consideration its age, general condition and remaining useful life.

Or, where such property is not to be reinstated, replaced or repaired:

- b) the value of such Business Property to You at the time that the Loss or Damage occurred, taking into consideration market value (if any), age, condition and remaining useful life having regard to the nature and location of such property and the purposes for which it is owned, maintained or used by You.

We will also pay, in accordance with the 'Extra Cost of Reinstatement' clause, the additional costs incurred to comply with the requirements of any statutory authority or by-laws, provided You were not required to comply with any of the by-laws prior to the Loss or Damage occurring.

### **Extra cost of reinstatement**

(Applicable to Buildings, machinery and plant)

We will also pay the additional costs incurred by You to reinstate the Business Property (including undamaged portions thereof) in complying with the requirements of any Act of Parliament or regulations or any by-law or regulation of any Municipal or other statutory authority, other than relating to the heritage status of a Building.

Provided that We will not pay for any costs that would have been incurred when complying with the requirements of any lawful authority that applied to the Business Property or Business Premises prior to the Loss or Damage.

### **Extra cost of reinstatement: Heritage building**

If You are insured under this section on a 'Reinstatement or replacement value' basis for Loss of or Damage to any Building that is subject to any heritage listing or protection and You choose to rebuild, replace or repair the Building at the same location, We will pay the extra costs of repairing, replacing, or reinstating the Building, that are related to obtaining special materials or employing specialised labour to match up or reproduce unique or distinctive ornamental or architectural features of the Building to comply with standards imposed by any lawful heritage protection authority.

We will not pay more than the cost to rebuild, replace or repair any such heritage listed Building to a reasonably equivalent appearance and capacity using original design and suitable modern equivalent materials, if the original materials are not available.

### **Conditions which apply to Extra cost of reinstatement and Extra cost of reinstatement: Heritage Building**

The following conditions apply:

- a) The work of reinstatement must be commenced and carried out within a reasonable time of the Loss or Damage, after Our consent has been obtained, failing which We will not pay more than the amount which would have been payable under this Policy if the work of reinstatement had been commenced and carried out with reasonable dispatch.

- b) The work of reinstatement may be carried out wholly or partially upon any other site, if the requirements of the Act, Regulation or By-law necessitate it, subject to Our liability not being increased.
- c) The amount recoverable shall not include the additional costs incurred with complying with any such Act, Regulation or By-law or requirement with which You have been required to comply prior to the happening of the Damage.
- d) Our total liability for Extra cost of reinstatement will be limited to:
  - i) the sub limit of liability shown in the Schedule for 'Extra cost of reinstatement', which shall be in addition to the Insured Amount; or
  - ii) ten percent (10%) of the Limit of Liability for this section; or
  - iii) the balance of the Limit of Liability for this section,whichever is the greater.
- e) The underinsurance condition of the Business Property section of the Policy will not be applied to the amount payable under this clause.

### **Output replacement**

Where any Business Property consists of equipment, machinery or plant having a measurable function, capability or output and if it is necessary to replace such property with a new item or items which perform a similar function or functions, then the basis of settlement for such property shall be:

- a) Where any Damaged Business Property is to be replaced with any item or items which have the same or a lesser total function, capability or output, then, the basis of settlement is the new installed cost of such replacement item or items as would give the same total function, capability or output as the Damaged Business Property.
- b) Where any Damaged Business Property is to be replaced with an item or items which have a greater total function, capability or output and the new installed cost of such replacement property is no greater than the replacement value of that Business Property being replaced, then, the basis of settlement is the new installed cost of the item or items so replaced.
- c) Where any Damaged Business Property is to be replaced by an item or items which have a greater total function, capability or output and the new installed cost of such replacement property is greater than the replacement value of the Business Property being replaced, then, the basis of settlement shall be the proportion of the new installed cost of the replacement item or items which the output of the Damaged Business Property bears to the output of the replacement item or items. If the reinstatement value of the Damaged Business Property is not ascertainable then the basis of settlement is the new installed cost of the replacement item or items.

Provided always that where any Damaged Business Property may be properly repaired, then, We shall pay the cost of restoration of such Damaged Business Property to a condition substantially the same as (but not better or more extensive than) its condition when new and Our liability shall not exceed the sum representing the cost which We could have been called upon to pay if such Business Property had been totally Destroyed.

### **Floor space ratio index (Plot ratio)**

Where Buildings are Damaged and reinstatement of such Damage is limited or restricted by:

- a) any Act of Parliament or regulation thereunder; or
- b) any by-law or regulation of any Municipal or other Statutory Authority,

resulting in either case in the reduction of the floor space ratio index (plot ratio) of the site, then We shall pay, in addition to the amount payable on reinstatement of such Buildings, the difference between:

- i) the actual costs incurred in reinstatement subject to the reduced floor space ratio index (plot ratio), and
- ii) the estimated cost of reinstatement at the time of Damage had the reduced floor space ratio index (plot ratio) not applied.

For example: a Building with a reinstatement value of \$2,000,000 suffers \$1,000,000 worth of damage by an insured event. Reinstatement of the Building is subject to a reduced floor space ratio, which reduces the cost of reinstatement to \$700,000. Therefore, We will also pay You \$300,000 in addition the \$700,000 cost of reinstatement incurred, assuming that there are no extra costs of reinstatement.

### **DEFINED EVENTS COVER**

We cover You for Loss or Damage to the Business Property at the Business Premises caused by the following defined events:

- 1) Bursting, leaking, discharging or overflowing of fixed apparatus, fixed tanks, fixed appliances, fixed pipes or other systems used to hold or carry liquid (including the reasonable cost of identifying and locating the cause of Damage) but We will not cover the repair or replacement of such apparatus, appliances, tanks, pipes or other systems which give rise to the Damage.
- 2) Earthquake, volcanic eruption, subterranean fire or tsunami.

We will not pay for the first \$20,000 or 1% of the Insured Amount at the Damaged Business Premises (whichever is the lower amount) of each claim caused by earthquake, volcanic eruption, subterranean fire or tsunami.

You only have to pay one Excess if further Damage occurs within seventy-two (72) hours of an occurrence.

Damage arising from an insured event that occurs more than seventy-two (72) hours after the event will be considered to be a separate event in which case an additional Excess will be required.

- 3) Fire, lightning or thunderbolt.
- 4) Explosion or implosion but We will not cover Loss of or Damage to any pressure vessel (including a boiler) which is not used solely for domestic purposes or that has a value of more than \$200,000, and where the Damage is directly caused by the explosion or implosion of such pressure vessel.
- 5) Impact by:
  - a) a Vehicle designed primarily for use on land or its load.
  - b) an animal;
  - c) falling trees or branches of trees, masts, satellite dishes, antennae and aerials. This cover includes the reasonable costs associated with the removal and disposal of the tree or branches, which caused the Damage.
  - d) Watercraft or Hovercraft.
  - f) Aircraft or other aerial devices or articles dropped or falling therefrom.
  - g) meteorites or debris from a rocket or satellite.
  - h) a falling building or other structure or part thereof.
- 5) Malicious Damage, including Damage by burglars or thieves, other than Damage caused by You or anyone who permanently or temporarily lives with You.
- 6) The acts of:
  - a) persons taking part in riots, civil commotions, strikes or labour disturbances, locked out workers, or persons of malicious intent acting on behalf of or in connection with any political organisation;
  - b) any lawfully constituted authority in connection with any strike, lockout, labour disturbances or political violence.
- 7) Storm, tempest, wind, cyclone or tornado, rainwater, snow, sleet, hail and run-off rainwater that accumulates directly on and flows across normally dry ground or that overflows from public roadside gutters, channels and drains that are normally dry or swimming pools, spas or saunas; but not:
  - a) Flood, however caused, unless Optional Extension 1 – 'Flood' is shown as covered in the current Schedule.

- b) by water from or action of the sea, tidal wave, storm surge or high water, unless it is caused by or arises out of an earthquake or tsunami.
  - c) to gates, fences, retaining walls, shade cloth, exterior textile awnings or blinds which exceeds \$25,000 in respect of any one occurrence for Loss or Damage.
  - d) to property in the open air unless such property is a permanent structure designed to function without the protection of walls or roof.
  - e) erosion, subsidence, landslide, collapse or any other movement of earth, unless it is caused by or arises out of, and occurs within seventy-two (72) hours of, a storm, earthquake, subterranean fire, volcanic eruption or water escaping from a water main owned by a water supply authority.
  - f) caused by water entering the Buildings through an opening in the wall or roof made for the purpose of alterations, additions, renovations, or repairs.
- 8) Escape of molten material from its intended confines on or about the Business Premises but excluding:
- a) the cost of repairing any fault which permitted such escape,
  - b) the cost of retrieving or removing escaped material from any escape channel or catchment area designed for the purpose,
  - c) Loss of or Damage to such escaped material,
  - d) Loss or Destruction of or Damage to furnace linings, crucibles, moulds, other containers or ladles from which molten material escapes.

### **ACCIDENTAL DAMAGE COVER**

We will cover You for Accidental Loss of or Damage to the Business Property at the Business Premises other than by any of the events or items listed in 'What You are not covered for under Accidental Damage cover.

#### **What You are not covered for under Accidental Damage cover**

We will not pay for claims under 'Accidental Damage cover' for:

- a) Loss or Damage caused by any of the events as described under the Defined Events cover in this section. For the avoidance of doubt, this includes any of the Defined Events' related exclusions.
- b) Loss or Damage caused by events or to the items listed under the General Exclusions of this Policy.
- c) Loss or Damage insurable under any other section or sections of this Policy but this exclusion does not apply to any Loss or Damage which would only be insurable under any other Policy section or sections because it fell within an Extra Cover or Additional Benefit in that section.

- d) Business Property to the extent insurable under Section 8 - Portable and Valuable Items.
- e) unexplained disappearance or unexplained inventory shortage, whether resulting from clerical or accounting errors or shortages in supply or delivery of materials to or by You.
- f) Loss or Damage caused by demolition, other than demolition by or ordered by a public authority, if the value of the demolition work exceeds \$500,000 or 20% of the total Insured Amount on Buildings and Contents, whichever is the lesser, unless We have agreed otherwise.
- h) pollution or contamination of Business Property unless caused by a Defined Event which is insured under this section.
- i) theft, except where the Business Premises 'Buildings' insured by the owner under this section are tenanted under a lease agreement by another party, person or entity not named in the Policy, in which case, the insured owner will be entitled to be indemnified against Loss by theft of their Business Property (as defined in this section for 'Buildings') at the Business Premises in accordance with the terms and conditions of the 'Theft cover section' of this Policy regardless of whether it is selected in this Policy or otherwise.

The maximum We will pay in respect to any Loss under this additional protection provided under this section in relation to theft shall be limited to \$20,000 in total any one occurrence happening during the currency of this Policy.

- j) Loss or Damage following breakage of external Glass, to signwriting or ornamentation affixed to the Glass, except where You are a tenant of a building and not required by lease to insure Glass.

### **ADDITIONAL BENEFITS**

We also provide the following Additional Benefits, subject to the exclusions and conditions of this Policy, unless provided otherwise.

Unless stated otherwise below, any amounts payable under these Additional Benefits apply in addition to the Limit of Liability.

#### **1. Capital additions**

We cover additions to Your Buildings, Contents and Specified Items obtained or built during the Period of Insurance to an amount not exceeding twenty percent (20%) of the total Insured Amount on Buildings, Contents and Specified Items or \$500,000 whichever is the lesser, in respect of property insured at any one Situation. This Additional Benefit is in addition to Your Insured Amount.

For example:

If the Business is retail and the Contents of Your rented shop are insured for \$200,000 and You are refitting the shop shelving and service counters, We will not pay more than \$40,000 (20% of \$200,000), as this amount is less than \$500,000.

## **2. Catastrophe escalation cost**

If any of Your Buildings is Destroyed or Damaged by any event insured against by this section and We classify such Destruction or Damage as a major loss and the event giving rise to the Destruction or Damage has resulted in any competent authority declaring a state of emergency affecting the area in which Your Building is situated;

We will:

- a) increase the Limit of Liability under this section by up to twenty-five percent (25%) of the Insured Amount for the Building(s) provided that Your Building(s) is/are rebuilt, and
- b) increase the amounts payable under the 'Capital additions' (relating to Buildings only) and 'Temporary protection and security guards' Additional benefits of this cover section by twenty-five percent (25%);

to cover any Increase in building costs for labour and materials and any other additional costs which may apply after the event.

Provided that:

- i) We shall not pay more than the increased building costs which are actually incurred by You.
- ii) We will not pay any amount under this Additional benefit until You have incurred costs exceeding the Limit of Liability applicable to this section.

'increase in building costs' means the difference between the cost of reinstatement actually incurred in accordance with the Basis of Settlement provisions of this section and the cost of reinstatement that would have applied had the event not occurred.

## **3. Directors and employees personal property**

Cover is extended to include tools of trade and personal property of directors and employees whilst at the Business Premises provided not otherwise insured. If such tools of trade or personal property are covered under another insurance policy, We will only pay for Loss or Damage not otherwise covered by that other policy.

Cover is limited to \$5,000 for any one director or employee.

## **4. Discharge of mortgages**

If Business Property has been Damaged and the Damage is covered by the Business Property section, where the Insured Amount is not otherwise exhausted, We will pay up to the balance of the Insured Amount, for the reasonable legal costs to discharge a mortgage or mortgages on

Buildings or Contents following settlement of a claim on the basis of a total loss whether actual or constructive.

Where the Insured Amount is exhausted, in respect of the discharge of a mortgage on Buildings only, We will pay up to an additional ten percent (10%) of the total Insured Amount on Buildings, for the reasonable legal costs to discharge a mortgage or mortgages following settlement of a claim on the basis of a total loss whether actual or constructive.

#### **5. Environmental upgrade**

If You elect to repair or replace any Business Property (including any part of the Business Property) that is Lost, Destroyed or Damaged in the Period of Insurance, using, or with, more environmentally friendly technology, products or materials, that improve the energy and water efficiency of the Business Property, We will pay you up to ten percent (10%) more than the amount We would otherwise have paid to repair or replace the property that is being upgraded.

Any amount We pay for this Additional Benefit is in addition to the Insured Amount.

#### **6. Fire brigade attendance fees**

We will pay up to \$100,000 any one event for any statutory charges payable by You to a fire brigade or firefighting authority for attendance at a fire or chemical emergency involving property insured and for the cost of refilling Your fire fighting appliances used in putting out a fire at or adjoining the Business Premises and threatening the Business Property during the Period of Insurance. .

#### **7. Floating stock**

Where We pay a claim for Loss of or Damage to Stock at the Business Premises, We will pay more than the Stock Insured Amount at that Business Premises to account for the temporary transfer of Stock between Business Premises provided that:

- (a) there are at least two Business Premises specified in the Schedule and an Insured Amount has been separately specified in the Schedule for Stock at each Business Premises insured under this section, including the affected Situation; and
- (b) You transfer the Stock between Business Premises as a usual business practice.

We will not pay a claim under this Additional Benefit where Stock levels in excess of the Insured Amount at a Business Premises have been temporarily located at that Business Premises for a period exceeding ninety (90) days and where We have not agreed in writing to an extended period.

We will not pay more than the total of the Stock Insured Amounts for all Business Premises.

#### **8. Government fees**

We will pay any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority where payment of the fee, contribution or impost is

necessary to the obtaining of consent to reinstate any Business Property; provided that We will not be liable for payment of any fines and/or penalties imposed upon You by any such authorities.

The cost of government fees is included in the Insured Amount for Business Property.

#### **9. Landscaping**

We will pay for Loss, Damage or Destruction by the defined events (other than storm, tempest or rainwater) to growing plants, shrubs, garden plots and lawns (including rock work, retaining walls, ornamentation and edging pertaining thereto) at the Business Premises. We will also pay resultant expenses necessarily incurred in cleaning, clearing and/or repairing drains, gutters, sewers and the like, all contained in or on or forming part of or implicitly pertaining to the Buildings insured.

We will not pay more than \$50,000 or twenty percent (20%) of the Insured Amount on Building(s) at the Business Premises specified in the Schedule in respect of any one loss. This additional benefit is included in the Insured Amount of the Buildings covered by this section.

#### **10. Limited transit**

Business Property is covered, up to the lesser of \$50,000 or twenty percent (20%) of the Insured Amount for Contents including Stock, if it is in transit in or on any Vehicle owned or operated by You anywhere in Australia away from the Business Premises, including storage during the transit, but only for Damage caused by fire or explosion, wind or earthquake, acts of malicious persons or by collision or overturning of the conveying Vehicle.

We will not cover You for any claims under this Additional Benefit if You have selected Section 10 – 'Transit'.

#### **11. Loss of land value**

If We pay for a claim for Loss of or Damage to a Building at the Business Premises, We will also pay up to \$100,000 for the reduction in land value, which shall be the value certified by the Valuer General or other competent person or authority selected by Us, that results from the requirements of any Statutory Authority that does not allow rebuilding (or only partial rebuilding) at the Business Premises following Loss or Damage covered by this section.

Provided that:

- 1) this shall be calculated by subtracting the land value after rebuilding or after We have agreed that rebuilding is not possible, from the land value before the Damage, and
- 2) We will not pay more than twenty percent (20%) of the Insured Amount for Buildings at the Business Premises where the Loss or Damage happened.

The underinsurance condition does not apply to this additional benefit.

## **12. New premises – temporary cover**

We will temporarily extend cover provided by this section to property at any new Business Premises first occupied by You during the Period of Insurance provided that:

- a) this temporary cover period is limited to the lesser of:
  - i) sixty (60) days from the date You acquire or commence using the premises; or
  - ii) the expiry date of the current Period of Insurance; or
  - iii) the date on which the property ceases to belong to You.
- b) the property is used for the Business described in the Schedule;
- c) the property is of similar type to that already insured under this section;
- d) the new premises comprise Buildings of similar construction, fire and burglary protection as featured in any Business Premises currently described in the Schedule.
- e) You must provide to Us full details of the new premises within sixty (60) days of the commencement of this temporary cover. If We agree to continue the cover You must pay any additional premium that We may require.

The maximum We will pay for this additional benefit is fifty percent (50%) of the highest Insured Amount shown on the Schedule for each item of Business Property.

## **13. Professional fees**

If Business Property has been Damaged and the Damage is covered by the Business Property section, We will pay the reasonable professional fees incurred to rebuild, replace or repair Your Buildings and Contents. The cost of professional fees and legal costs are included in the Insured Amount of the property Lost or Damaged.

## **14. Playing surfaces**

We will pay, up to the greater of \$50,000 or the Insured Amount shown in the current Schedule for playing surfaces, for the cost of repairing Damage to outdoor playing surfaces at the Situation, caused by:

- a) vandals or malicious persons, other than You or Your guests, director's partners, officers, Employees or members, or their guests;
- b) fire occurring to Business Property at the Situation for which We have admitted liability under this section, or
- c) the action of the firefighting services, police or other emergency services in attending to their duties at the Situation.

## **15. Prevention of imminent Damage**

We will pay up to \$100,000 for necessary costs You incur to extinguish a fire on or in the vicinity of the Business Premises which causes or threatens to cause Damage to Business Property or for necessary costs to prevent or diminish imminent Damage to the Business Property by any other insured peril.

We will not pay under this additional benefit for:

- a) any fines, penalties or liability incurred by You,
- b) any Loss or Damage to Your Business Property.

## **16. Removal of debris**

If Business Property has been Destroyed or Damaged and is covered by this section, We will pay the reasonable costs incurred for the demolition, dismantling, necessary temporary repairs, cleaning up and/or removal, storage and disposal of debris from the Business Premises.

We will also:

- a) pay for Your legal liability for the cost of removal of debris from adjoining premises, property, services, roadways and waterways as well as on the site.
- b) pay You up to \$100,000 or 20% of the total Insured Amount on Buildings and Contents shown on the Schedule for the Damaged Business Premises whichever is the lesser (in addition to the Insured Amount); or
- c) pay the higher amount shown in the current Schedule for removal of debris; or,
- d) if the cover provided by clause b) or c) above is insufficient and You have not exhausted Your Insured Amount on the Damaged Business Property requiring demolition and/or removal of debris, We will pay up to the remaining balance of the Insured Amount.

## **17. Rewriting of records**

We will pay You, in addition to Your Insured Amount, up to \$25,000 or any higher amount shown in the current Schedule for 'Rewriting of Records', for clerical and professional costs incurred by You to re-write Your necessary business records if they are Lost, Destroyed or Damaged, whilst located at the Business Premises or offsite anywhere in Australia, by an occurrence which You are covered for in this section. We will not pay You for any financial loss, caused by the Loss or Destruction of Your business records, under this additional benefit.

## **18. Seasonal increase in Stock**

If You have insured Stock as a separate item to Your Contents, the Insured Amount on Stock is increased by 50% or such other amount as is specified in the current Schedule during a Seasonal Increase Period.

You can nominate different Seasonal Increase Periods or higher percentage increases of Stock. If You do, they will be shown in the Schedule and You must pay any reasonable additional premium that applies.

If Your Insured Amount for Stock is included in Your Insured Amount for Contents on the current Schedule, We will only apply the increase to that portion of the Insured Amount for Contents which relates to Stock.

## **19. Temporary protection and security guards**

If Business Property has been Lost or Damaged and is covered by the Business Property cover section, We will pay for the cost of temporary protection, including employment of security guards, to safeguard the Business Property insured:

- a) where the Insured Amount is not otherwise exhausted, We will pay the reasonable costs and expenses reasonably incurred, and
- b) when the Insured Amount becomes exhausted, We will pay an additional amount of up to \$30,000, pending repair or replacement, consequent upon Damage for which a claim is payable.

If an occurrence results in a claim being paid under this section and another section of this Policy, the highest single limit under the relevant section applies. The benefit of Temporary Protection and Security Guards shall not be cumulative under this Policy.

## **20. Temporary removal**

We also cover Your insured Business Property while temporarily removed to any other Situation within Australia.

Provided that:

- a) We will not cover motor Vehicles or trailers, Watercraft, caravans or motorcycles unless they are:
  - i) Stock in trade of the Business, or
  - ii) forklift trucks or similar appliances that are normally used for hauling or lifting goods at the Business Premises.
- b) We will not cover Stock in trade that is on consignment to other parties unless it is owned by You or is property for which You are responsible.

- c) The maximum amount We will pay for this additional benefit will be twenty percent (20%) of the Insured Amount of the applicable Business Property for any insured event.
- d) This additional benefit will not apply to any Business Property, which has been removed for a period greater than ninety (90) days without Our prior written consent.

## **21. Undamaged foundations and/or undamaged buildings**

If the Building foundations at the Business Premises are either undamaged or are not Destroyed following an insured event that causes other Damage to the Building but a Government or Statutory Authority requires reinstatement of the Building to be carried out on another site, then the foundations will be considered as Destroyed.

Where any Building(s) at the Situation are Damaged and (due to the exercising of any statutory powers and/or delegated legislation and/or authority by any Government or Statutory Authority) reinstatement of such Building(s) has to be carried out on another site or sites, then, the abandoned portion(s) of such Building(s) will be considered as Destroyed.

Provided that if the resale value of the original building site is increased due to the presence of the abandoned foundations or undamaged portion(s) of such Building(s), then, the increase in resale value will be paid to Us upon completion of the sale of the site or shall be deducted from the final amount of any monies payable to Us, whichever shall occur later.

## **OPTIONAL EXTENSIONS**

### **1. Flood**

When 'Flood' is shown as covered in the current Schedule, We will cover Loss of or Damage to Business Property caused by Flood.

### **2. Strata title mortgagee(s) interest**

This cover applies only if You have arranged this Policy to insure only the interest of a mortgagee in a strata title unit.

This cover only applies when You own part of a Building that has been subdivided into strata, community or similar title units and You have a mortgage on that part of the Building.

We will pay the mortgagee the lowest of:

- a) the Insured Amount shown on the Schedule,
- b) the amount to repair the Damage to a condition similar to but no better than when new,
- c) if the body corporate (or similar) partially covers the loss, then the difference between what the body corporate's insurance pays and the cost of the Damage, or
- d) the amount sufficient to discharge the mortgage held by You over the unit at the date of the Damage.

We pay only that part of the claim that applies to the interest of the mortgagee.

We only pay a claim if:

- a) a claim would be payable under Defined Events 1 to 8 of the Business Property section (and not subject to any exclusions or other limitation in the Policy),
- b) the Policy of the body corporate or similar does not apply or only partially covers the loss, and
- c) the mortgagee requires You to discharge Your mortgage.

If You have arranged this Policy to insure only the interest of a mortgagee in a strata title unit no additional benefits are payable under this Policy.

### 3. Environmental upgrade

The percentage shown in Additional Benefit 5 – Environmental upgrade is deleted and replaced with the percentage (%) amount shown in the Schedule.

## EXCLUSIONS

What You are not covered for under this section.

- 1) We will not pay for Loss or Damage under this section caused by:
  - a) tenants –  
intentional Loss or Damage caused by Your tenants other than Damage caused by fire or explosion.
  - b) wear and tear –
    - i) birds, insects, mice, rats or other vermin;
    - ii) rust, corrosion, or oxidation;
    - iii) mildew, mould, rotting, disease, contamination, pollutants, or industrial fallout;
    - iv) inherent vice, change of colour, loss of weight, loss of volume, change in flavour, change in texture;
    - v) variation in temperature, variation in humidity, variation in controlled atmosphere;
    - vi) wear, tear, fading or gradual deterioration,provided that this Exclusion 1 b) shall not apply to subsequent Loss or Damage to the Business Property occasioned by a peril or event (not otherwise excluded) resulting from any event referred to in this Exclusion.

- c) movement of foundations
  - i) vibration, heaving, creeping, shrinking, settling, or expansion of foundations or supports of Business Property.
  - ii) erosion, subsidence or earth movement unless caused suddenly by a defined event.
  - iii) collapse of Business Property unless caused suddenly by a defined event.
- d) faulty work
  - i) error in, omission of or wrong design;
  - ii) faulty materials or faulty workmanship,

provided that this Exclusion 1 d) shall not apply to subsequent Loss or Damage to the Business Property occasioned by a peril (not otherwise excluded) resulting from any event referred to in this Exclusion.
- e) cessation of work – partial or complete cessation of work, process, operation or activity caused by strikes, labour disputes or locked out workers except as a result of Loss or Damage to the Business Property committed by persons taking part in strikes or labour disputes, or by locked out workers.
- f) incorrect siting of Business Property.
- g) heat – spontaneous combustion, fermentation, heating or any process involving the direct application of heat. Provided that this Exclusion 1 g) shall be limited to the item or items of the Business Property immediately affected and shall not extend to other Business Property Damaged as a result of such spontaneous combustion, fermentation or heating or process involving the direct application of heat.
- h) Flood, unless Optional Extension 1 – ‘Flood’ is shown as covered in the current Schedule.
- i) the sea – the action of water from the sea, tidal wave or high water, unless it is caused by or arises out of an earthquake or tsunami.
- j) self-explosion of boilers or other pressure vessels. We do not cover Damage to the boiler or pressure vessel where the boiler or pressure vessel:
  - i) is not solely used for domestic purposes; or
  - ii) has a value of more than \$200,000.

However We do cover resultant Damage to other Business Property.

2) We will not pay under the this section for:

- a) legal liability – any legal liability You incur to pay compensation, damages, fines, or penalties.

- b) breakdown – cost to repair or replace Business Property due to:
  - i) mechanical, hydraulic, electrical or electronic breakdown, malfunction, breakage or failure unless caused by an insured occurrence.
  - ii) Computer Virus.
  - iii) access to Your computer systems and records by any person not on the Business Premises.
- 3) We will not pay for Loss or Damage under this section arising from demolition ordered by Government or Public or Local Authorities due to failure by You or Your agents to obtain the necessary permits.

## **CONDITIONS**

### **1. Tenants actions**

If a tenant of Yours or a tenant of Your landlord (but not You) without Your consent, causes or contributes to any Loss or Damage covered by this section which is in breach of any terms or conditions, We will cover You for Your Loss or Damage as per this section, provided:

- a) You have taken all reasonable actions, as soon as You become aware of conditions causing the breach, to have the tenant comply with the terms;
- b) You notify Us within a reasonable amount of time of becoming aware of the breach,
- c) You agree to pay a reasonable increase in premium for the additional risk.

### **2. Underinsurance/average**

For each occurrence under this section, We will not be liable for more than that proportion of the Loss or Damage which; in respect of Buildings, Contents, Stock and Specified Items the Insured Amount on the total amount for Buildings, Contents, Stock and Specified Items at the Situation, at the time of the commencement of each Period of Insurance bears to eighty percent (80%) of the full insurable value of such Buildings, Contents, Stock and Specified Items.

Conditions:

- a) Our liability is limited to the Insured Amount at the Situation as shown in the Policy Schedule.
- b) This clause will not apply if the amount of any damage does not exceed ten percent (10%) of the Insured Amount at the Situation.

Any additional costs incurred to comply with the requirements of any statutory authority, by-laws or regulations shall be omitted from the calculation of Our proportion.

### **3. Release**

Without prejudicing Your position under this cover section, You may release any railways, other transportation companies, statutory governmental, semi-governmental or municipal authority from any liability if required by any contract to do so.

#### 4. **Leased building clause**

Without prejudicing Your position under this cover section, You may agree to enter into a lease for occupancy of any building or a lease for hiring of property where the terms of the lease include a disclaimer clause in favour of the lessor to the owner.

#### 5. **Storage premises**

Without prejudicing Your position under this cover section, You may enter into a contract which includes a disclaimer clause in relation to the storage of goods or merchandise.

### **DEFINITIONS**

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

**“Limit of liability”** means 125% of the total of the Insured Amounts shown in the Schedule for a specific premises, or the amount shown in the Schedule, whichever is the lesser. Provided the Limit of Liability is the maximum amount that We will pay for all Loss or Damage that arises out of any one source or original cause at such premises, unless it is specifically stated in this cover section that payments are made in addition to this amount.

(For example, if the Building Insured Amount is \$2,000,000, the Contents Insured Amount \$800,000 and the Stock Insured Amount \$1,000,000 [as shown on the Schedule] the total Insured Amount is \$3,800,000 and therefore the Limit of Liability for that premises is \$4,760,000 [125% of \$3,800,000])

**“Market Value”** means the estimated amount for which the Business Property should exchange immediately before the Loss or Damage, between a willing buyer and a willing seller in an arms-length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion.

**“Specified Items”** means each item of property that is specifically described in the Schedule for Section 1 – ‘Property Cover’.

## **SECTION 2 - BUSINESS INTERRUPTION**

**This section only forms part of Your Policy when Section 2 - Business Interruption Cover is shown as covered in the Schedule**

## **COVER**

There are three Parts available in this section:

- Part A – Annual Revenue basis
- Part B – Weekly Revenue basis
- Part C – Insurable Gross Profit basis

The Schedule indicates which Part has been selected by You.

### **PART A – ANNUAL REVENUE BASIS**

In the event of interruption of or interference with the Business in consequence of Damage to any building or any other property or any part thereof used by You at the Business Premises for the purpose of the Business, We will pay You in respect of each item selected by You and shown in the current Schedule, the amount of the loss resulting from such interruption or interference.

Provided that:

- a) the payment is in accordance with the basis of settlement provision for the item;
- b) We have paid for or admitted liability in respect of such Damage under the relevant section of Your Policy, or another insurer has paid for or admitted liability in respect of such Damage, unless no such payment shall have been made or liability shall not have been admitted for such Damage (by Us or another insurer) solely due to the application of an Excess; and
- c) Our liability in no case will exceed in respect of each item the Insured Amount shown in the current Schedule for that item.

The insurance under this section provides protection with regard to loss under:

Item 1) Revenue (if selected)

Item 2) Additional increase in cost of working (if selected)

Item 3) Accounts receivable (if selected)

Item 4) Claim preparation expenses (if selected)

## **BASIS OF SETTLEMENT**

### **Item No:**

#### **1. Revenue**

This item is limited to the loss of Revenue and Increase in the cost of working.

The amount payable as indemnity under Item 1 will be:

- a) **in respect of the loss of Revenue**, the amount by which the Revenue earned during the Indemnity Period falls short of the Standard Revenue, in consequence of the Damage; and/or
- b) **in respect of the Increase in cost of working**, the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of Revenue which, but for the additional expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the amount of reduction in Revenue thereby avoided;

less any sum saved during the Indemnity Period in respect of such charges and expenses of the Business payable out of Revenue as may cease or be reduced in consequence of the Damage.

Provided that if the Insured Amount for this item is less than eighty percent (80%) of the Annual Revenue, the amount payable will be reduced so that We will be liable for no greater proportion of the loss under this item than that which the Insured Amount bears to eighty percent (80%) of the Annual Revenue.

This provision will not apply if Your claim is for less than ten percent (10%) of the Insured Amount for this item.

#### **2. Additional increase in cost of working**

See 'Common Clauses to Parts A, B and C'.

#### **3. Accounts receivable**

See 'Common Clauses to Parts A, B and C'.

#### **4. Claim preparation expenses**

See 'Common Clauses to Parts A, B and C'.

## **PART B – WEEKLY REVENUE BASIS**

In the event of interruption of or interference with the Business in consequence of Damage to any building or any other property or any part thereof used by You at the Business Premises for the purpose of the Business, We will pay You in respect of each item selected by You and shown in the current Schedule, the amount of the loss resulting from such interruption or interference.

Provided that:

- a) the payment is in accordance with the basis of settlement provision for the item;
- b) We have paid for or admitted liability in respect of such Damage under the relevant section of Your Policy, or another insurer has paid for or admitted liability in respect of such Damage, unless no such payment shall have been made or liability shall not have been admitted for such Damage (by Us or another insurer) solely due to the application of an Excess; and
- c) Our liability in no case will exceed in respect of each item the Insured Amount shown in the current Schedule for that item.

We will not pay any claim under this Part where the interference or interruption to the Business is for a period of less than three days.

The insurance under this Part provides protection with regard to loss under:

### **Item No:**

1. Weekly Revenue (if selected)
2. Additional increase in cost of working (if selected)
3. Accounts receivable (if selected)
4. Claim preparation expenses (if selected)

## **BASIS OF SETTLEMENT**

### **Item No:**

#### **1. Weekly Revenue**

This item is limited to the loss of Weekly Revenue and the amount payable as compensation under this item will be the amount by which the Weekly Revenue during the Indemnity Period falls short of the Standard Weekly Revenue in consequence of the Damage.

#### **2. Additional increase in cost of working**

See 'Common Clauses to Parts A, B and C'.

#### **3. Accounts receivable**

See 'Common Clauses to Parts A, B and C'.

#### 4. Claim preparation expenses

See 'Common Clauses to Parts A, B and C'.

### **PART C – INSURABLE GROSS PROFIT BASIS**

In the event of interruption of or interference with the Business in consequence of Damage to any building or any other property or any part thereof used by You at the Business Premises for the purpose of the Business, We will pay You in respect of each item selected by You and shown in the current Schedule, the amount of the loss resulting from such interruption or interference.

Provided that:

- a) the payment is in accordance with the basis of settlement provision for the item,
- b) We have paid for or admitted liability in respect of such Damage under the relevant section of Your Policy, or another insurer has paid for or admitted liability in respect of such Damage, unless no such payment shall have been made or liability shall not have been admitted for such Damage (by Us or another insurer) solely due to the application of an Excess, and
- c) Our liability in no case will exceed in respect of each item the Insured Amount shown in the current Schedule for that item.

The insurance under this Part provides protection with regard to loss under:

#### **Item No.**

1. Gross Profit (if selected)
2. Additional increase in cost of working (if selected)
3. Accounts receivable (if selected)
4. Claim preparation expenses (if selected)
5. Rent Receivable (if selected)

### **BASIS OF SETTLEMENT**

#### **Item No:**

#### 1. **Gross profit**

This item is limited to the loss of Gross Profit due to a reduction in Turnover and the increase in cost of working.

The amount payable as indemnity under this item will be:

- a) **in respect of reduction in Turnover**, the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period falls short of the Standard Turnover in consequence of the Damage; and/or

- b) **in respect of the increase in cost of working**, the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for the additional expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of reduction in Turnover thereby avoided;

less any sum saved during the Indemnity Period in respect of such charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Underinsurance Provision:

Provided that if the Insured Amount for this item at the commencement of each Period of Insurance is less than the sum produced by applying the Rate of Gross Profit to eighty percent (80%) of the Annual Turnover (or its proportionately increased multiple where the Indemnity Period exceeds twelve months), the amount payable will be reduced so that We will be liable for no greater proportion of the loss under this item than that which the Insured Amount bears to eighty percent (80%) of the sum produced by applying the Rate of Gross Profit to the Annual Turnover (or its proportionately increased multiple, if appropriate).

This underinsurance provision will not apply if Your claim is for less than ten percent (10%) of the Insured Amount for this item.

2. **Additional increase in cost of working**

See 'Common Clauses to Parts A, B and C'.

3. **Accounts receivable**

See 'Common Clauses to Parts A, B and C'.

4. **Claim preparation expenses**

See 'Common Clauses to Parts A, B and C'.

5. **Rent Receivable**

This item is limited to loss of Rent Receivable and additional expenditure.

The amount payable will be:

- a) **in respect of loss of Rent Receivable**, the amount by which the Rent Receivable during the Indemnity Period falls short of the Standard Rent Receivable, in consequence of the Damage; and

- b) **in respect of additional expenditure**, the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of Rent Receivable which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the amount of the reduction in Rent Receivable thereby avoided,

less any sum saved during the Indemnity Period in respect of such of the expenses and charges payable out of the Rent Receivable as may cease or be reduced in consequence of the Damage.

Underinsurance Provision:

Provided that if the Insured Amount for this item is less than eighty percent (80%) of the Annual Rent Receivable (or its proportionately increased multiple where the Indemnity Period exceeds twelve months), the amount payable will be reduced so that We will be liable for no greater proportion of the loss under this item than that which the Insured Amount bears to eighty percent (80%) of the Annual Rent Receivable (or its proportionately increased multiple, if appropriate).

This provision will not apply if Your claim is for less than ten percent (10%) of the Insured Amount for this item.

## **COMMON CLAUSES TO PARTS A, B AND C**

### **1. Departmental clause**

If the Business is conducted in departments or business units the independent trading results of which are ascertainable, the provisions of Item 1 will apply separately to each department affected by the Damage. For the purposes of this clause, the Rent Receivable from letting of property at the Business Premises will be regarded as the proceeds of one such department.

### **2. Insured Amount**

Our liability to You will in no case exceed in respect of each item the Insured Amount expressed against that item in the current Schedule. 'Additional Benefits' are within the total Insured Amount of this section and not additional to the total Insured Amount.

### **3. Additional increase in cost of working**

Where an Insured Amount has been specified in the Schedule for 'Additional Increase in Cost of Working', then, We shall extend this section to cover you for additional/increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction in Revenue or Weekly Revenue or Turnover or Rent Receivable and/or resuming and/or maintaining normal business operations and/or services.

#### 4. **Accounts receivable**

Under this item We will pay You up to the Insured Amount shown in the current Schedule for all sums due to You from debtors that You are unable to collect because of Damage to records of accounts receivable. We will also pay collection expenses in excess of normal collection costs made necessary because of the Damage as well as interest charges at the ruling rate of Your bank on any loan to offset impaired collections pending repayment of such sums made uncollectible by such Damage. If You cannot accurately establish the total amount of accounts receivable outstanding as at the date of the Damage, the amount will be computed as follows:

- a) determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the Damage occurs;
- b) calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the year immediately preceding the month in which the Damage occurs, as compared with such average for the same months of the preceding year;
- c) the amount determined under a), increased or decreased by the percentage calculated under b) above, will be the agreed total amount of accounts receivable as of the last day of the fiscal month in which said Damage occurs;
- d) the amount determined under c) above will be increased or decreased in conformity with the normal fluctuation in the amount of accounts receivable during the fiscal month involved, consideration being given to the experience of the Business since the last day of the last fiscal month for which statements have been rendered less:
  - i) the amounts of such accounts evidenced by records not suffering Damage or otherwise established or collected by You,
  - ii) an amount to allow for probable bad debts that would normally have been uncollectible by You,
  - iii) all unearned interest and service charges, and
  - iv) settlement or term discounts normally allowed.

#### 5. **Claim preparation expenses**

In addition to the amount payable under General Condition 6 - 'Claim preparation expenses' of this Policy, We will pay You up to the Insured Amount shown in the current Schedule for the costs of such reasonable professional fees as may be payable by You and other such reasonable expenses necessarily incurred by You and not otherwise recoverable, for preparation and negotiation of claims under this section.

## 6. **Accumulated Stocks**

In adjusting any loss, account will be taken and equitable allowance made if any reduction in Turnover or loss of Revenue or Weekly Revenue in consequence of the Damage is postponed by reason of the Turnover or Revenue or Weekly Revenue (as the case may be) being temporarily maintained from accumulated stocks of finished goods.

## 7. **Alternative trading**

If during the Indemnity Period, goods are sold, work is performed or services are rendered elsewhere than at the Business Premises for the benefit of the Business either by You or by others acting on Your behalf, the money paid or payable in respect of such sales, work or services will be brought into account in arriving at the Annual Revenue, Weekly Revenue or Turnover (as the case may be) during the Indemnity Period.

## 8. **New business**

In the event of Damage occurring at the Business Premises before the completion of the first year's trading of the Business, the defined terms "Standard Revenue", "Annual Revenue", "Standard Weekly Revenue", "Rate of Gross Profit", "Standard Turnover" and "Annual Turnover" shall instead have the following meanings wherever they appear in this section:

**"Standard Revenue"** means the Revenue achieved between the date of commencement of the Business and the date of the Damage, converted to the selected Indemnity Period.

**"Annual Revenue"** means the actual Revenue achieved during Your first year of operations, from the commencement of the Business to the date of the Damage, converted to a 12-month equivalent figure.

**"Standard Weekly Revenue"** means the amount calculated by averaging the Weekly Revenues obtained during the period from the date of the commencement of the Business to the date of the Damage.

**"Rate of Gross Profit"** means the proportion that the Gross Profit bears to the Turnover during the period between the date of commencement of the Business and the date of the Damage.

**"Annual Turnover"** means the actual Turnover achieved during Your first year of operations, from the commencement of the Business to the date of the Damage, converted to a 12-month equivalent figure.

**"Standard Turnover"** means the Turnover achieved between the date of commencement of the Business and the date of the Damage, converted to the selected Indemnity Period.

The above definitions may be used as necessary to calculate the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the result which but for the Damage would have been obtained during the relative period after the Damage.

## **ADDITIONAL BENEFITS**

This section is extended to include the following Additional Benefits. Additional Benefits 1 to 11 inclusive are payable provided that the Insured Amount expressed against the relevant item(s) in the Schedule is not otherwise exhausted.

We will pay You (depending on the Part of this section which is applicable to You) for:

- a) loss of Revenue;
- b) loss of Weekly Revenue; or
- c) loss of Gross Profit;

resulting from interruption of or interference with the Business as a result of Damage occurring during the Period of Insurance to:

### **1. Customers and suppliers – unspecified**

Unspecified property at the premises of Your suppliers or customers of goods or materials or services (other than those services provided by any Public utilities as described under Additional Benefit 3 of this section) or at storage premises neither owned nor operated by You where You store goods or materials, all within Australia, provided that Our liability will not exceed twenty percent (20%) or the percentage shown in the Schedule of the Insured Amount applicable to this section.

### **2. Prevention of access**

- a) property, or intervention of any lawful authority resulting from threat of Damage to property within a 50-kilometre radius of the Business Premises, which prevents access to or hinders the use of the Business Premises.
- b) property forming part of or contained in a complex of which the location forms part, whether the Business Premises or property of the Insured forming part of or contained in the complex shall be Damaged or not.

### **3. Public utilities**

any land-based telecommunications system or any electricity, gas or water supply systems within Australia, provided that where public supply is not at or immediately adjacent to the Business Premises the interruption of supply extends for greater than 48 hours.

### **4. Computer facilities**

computer installations, including ancillary equipment and data processing media, utilised by You in the Commonwealth of Australia other than at the Business Premises.

5. **Roads, bridges and railway lines**

roads, bridges and/or railway lines within Australia over which raw materials and other Stock are conveyed to or from the Business Premises.

6. **Storage sites/temporary removal**

Your property stored or being processed at any premises in Australia not occupied by You. Our total liability under this additional benefit will not exceed twenty percent (20%) of the Insured Amount in respect of any one occurrence.

7. **Transit**

Your property while in transit by road, rail, sea or air within Australia and outside of the Business Premises occupied by You, up to an amount not exceeding twenty percent (20%) of the Insured Amount in respect of any one occurrence.

8. **Explosion of pressure vessels**

Damage to pressure vessels including boilers, compressors or economisers by self-explosion or collapse.

9. **Documents**

Damage to documents and electronic data files belonging to or held in trust by You, while in transit or while at the premises not occupied by You but limited to twenty percent (20%) of the Insured Amount or the amount shown in the Schedule, whichever is the greater.

10. **Motor vehicles owned or operated by You**

Damage during the Period of Insurance to any registered Vehicles or trailers owned or operated by You, while such Vehicles are at the Business Premises or at other premises in Australia but not on a public thoroughfare.

11. **Infectious disease, etc.**

We will also pay You for interruption of or interference with the Business due to closure or evacuation of the whole or part of the Business Premises during the Period of Insurance by order of a competent Government, Public or Statutory Authority as a result of:

- a) bomb threat, vermin or pests or defects in the drains or other sanitary arrangements, occurring at the Business Premises;
- b) an outbreak of an infectious or contagious human disease occurring within a 20-kilometre radius of the Business Premises, however there is no cover for highly pathogenic Avian Influenza or any disease declared to be a quarantinable disease under the Quarantine Act 1908 (as amended) irrespective of whether discovered at the location of Your premises, or out-breaking elsewhere;

- c) injury, illness or disease caused by the consumption of food or drink supplied at or from the Business Premises during the Period of Insurance;
- d) murder or suicide occurring at the Business Premises; or
- e) shark or crocodile attack occurring within a twenty (20) kilometre radius of the Business Premises during the Period of Insurance.

**12. Salvage sale**

If, following Damage giving rise to a claim under this section, You hold a salvage sale during the Indemnity Period:

- a) Clause a) of Item 1 – ‘Gross Profit’ of this section shall, for the purpose of such claim, read as follows: In respect of reduction in Turnover: the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale.

**13. Turnover / Output alternative**

In the event of Damage giving rise to a claim under this section, at Your option, the term ‘Output’ may be substituted for the term ‘Turnover’ wherever appearing in this section. Provided that only one such term will operate in connection with any one occurrence involving Damage.

For the purpose of this section, ‘Output’ shall mean the sale and/or invoice value of goods manufactured and/or processed by You in the course of the Business at the Business Premises.

If You select the cover available under this clause, the clause headed ‘Alternative Trading’ shall be altered to read as follows:

“If, during the Indemnity Period, goods are sold, work is performed or services are rendered elsewhere than at the Business Premises for the benefit of the Business either by You or by others acting on Your behalf, the money paid or payable in respect of such sales, work or services will be brought into account in arriving at the Output during the Indemnity Period.

**14. Government incentives**

If We pay a claim for reduction in Your Revenue, Weekly Revenue or Gross Profit, We will also pay for the reduction in Your Revenue, Weekly Revenue or Gross Profit in relation to the Business where such reduction results from the loss of Government approved incentives, subsidies or market development allowances to which You would have been entitled but for the occurrence of the Damage.

## 15. Contractual fines and penalties

Following a claim under Part C – Insurable Gross Profit, Item 1 Gross Profit, We will also pay:

- a) for fines or damages, other than aggravated, punitive or exemplary damages, for breach of contract resulting from non-completion or late completion of orders; or
- b) in discharge of contract purchases, cancellation charges, fines or damages for breach of contracts for the purchase of goods or services which cannot be utilised by You during the Indemnity Period, less any value to You for such goods or the amount received from sale.

The amount payable shall not exceed twenty percent (20%) of the total Insured Amount for Gross Profit.

## OPTIONAL EXTENSION

The following Optional Extension does not apply automatically. It will apply when You have requested its inclusion in this section, and the current Schedule has been endorsed by Us noting the inclusion.

### 1. Goodwill

Following Damage to any building at the Business Premises We will pay, up to the sub-limit of liability shown in the current Schedule for 'Goodwill', for the actual cost of goodwill incurred by You when purchasing a business in order to maintain the Business activities. Provided that:

- a) We will only pay these goodwill costs when the building that is Damaged cannot or will not be repaired or rebuilt due to any refusal by any owner or lessor other than You to repair or rebuild; and any restrictions imposed by any legal authority; and
- b) the purchase of the business is incurred because You were unable to continue the Business at the Business Premises as a result of the Damage to the buildings not being repaired; and
- c) the cause of the Damage to the buildings would have been covered by Section 1 – 'Business Property' had that building been insured under that section; and
- d) the business that is purchased is similar to the Business.

## CONDITIONS

### 1. Adjustment of premium

We will reduce Your premium for Part A – Revenue or Part C – Insurable Gross Profit cover at the end of each Period of Insurance if the Revenue or Gross Profit (as the case may be) earned during the previous 12 months accounting period is less than the Insured Amount. The adjustment rate is 50% of the difference between the premium payable for the Revenue or Gross Profit Insured Amount and for the Revenue or Gross Profit earned.

Any payment made by Us for a claim under Part A – Revenue or Part C – Insurable Gross Profit is to be included in the Revenue or Gross Profit earned for the purpose of this adjustment.

## 2. Books of account

Any particulars or details contained in Your books of account or other business books or documents that may be required by Us for investigating or verifying any claim made under this section may be produced and certified by Your auditors and their certificate will be prima facie evidence of the particulars and details to which the certificate relates.

### **DEFINITIONS**

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

**“Annual Rent Receivable”** means the Rent Receivable during the twelve months immediately before the date of the Damage.\*

**“Annual Revenue”** means the Revenue earned during the twelve months immediately before the date of the Damage.\*

**“Annual Turnover”** means the Turnover during the twelve months immediately before the date of the Damage.\*

**“Damage”** means physical loss, destruction or damage (occurring during the Period of Insurance) from the operation of a peril or event insured against under:

1. a) Section 1 - ‘Business Property’;
- b) Section 3 - ‘Theft’;
- c) Section 4 - ‘Money’;
- d) Section 7 - ‘Glass’; or
- e) Section 8 - ‘Portable and Valuable Items’

for which You are covered (or would have been covered but for the application of an Excess) by this Policy.

2. Any other policy insuring the events described in a) to e) above and for which the insurer has admitted liability, or would have admitted liability if it was not for the application of an Excess.

**“Gross Profit”** means the amount by which the sum of the Turnover and the amount of the closing stock and work in progress exceeds the sum of the opening stock and work in progress and the amount of the Uninsured Working Expenses.

**Note:** The amount of the opening and closing stocks will be arrived at in accordance with Your normal accounting methods, due provision being made for depreciation.

**“Indemnity Period”** means the period beginning with the occurrence of the Damage during which the results of the Business are affected by the Damage and ending at the expiration of the maximum period specified in the current Schedule or, in the case of Weekly Revenue, ending at the earliest of

either the expiration of the maximum period specified in the Schedule or when Weekly Revenue during that period equals or exceeds 95% of Standard Weekly Revenue.

**“Rate of Gross Profit”** means the Rate of Gross Profit, expressed as a percentage, earned on the Turnover during the financial year immediately before the date of the Damage.\*

**“Rent Receivable”** the amount of the rent received or receivable (including base rental, Turnover rental and contributions to outgoings) from the letting of property at the Business Premises.

**“Revenue”** means the money paid or payable to You as a:

- a) Wholesaler or retailer of goods – for goods sold and delivered in the course of the Business less the cost of any related purchases (after any discounts).
- b) Professional practitioner or consumer services provider – for services rendered and work performed in connection with the Business.
- c) Property owner – by tenants (being Rent Receivable).

**“Standard Rent Receivable”** means the Rent Receivable during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.\*

**“Standard Revenue”** means the Revenue earned within that period during the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.\*

**“Standard Turnover”** means the Turnover during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.\*

**“Standard Weekly Revenue”** means the average of the Weekly Revenues in that period during the fifty two (52) weeks immediately before the date of the Damage which corresponds with the Indemnity Period.\*

**“Turnover”** means the amount (less discounts allowed) paid or payable to You for goods sold and delivered and for services rendered in the course of the Business at the Premises.

**“Uninsured Working Expenses”** the working expenses of the Business which You have elected not to insure under this section, and which are specified in the current Schedule.

**“Weekly Revenue”** means the Money paid or payable to You each week as a:

- a) Wholesaler or retailer of goods – for goods sold and delivered in the course of the Business less the cost of any related purchases (after any discounts).
- b) Motel operator – in respect of facilities, accommodation, food and drink made available and services rendered in connection with the Business, less the cost of any related purchases (after any discounts) and laundering and cleaning expenses.
- c) Professional practitioner or consumer services provider – for services rendered and work performed in connection with the Business.

d) Property owner – by tenants (being Rent Receivable).

**\* Other circumstances and trends of the Business**

We shall adjust Your Annual Rent Receivable, Annual Revenue, Annual Turnover, Standard Rent Receivable, Standard Revenue, Standard Weekly Revenue, Standard Turnover and Rate of Gross Profit as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not occurred, so that the adjusted figures will represent as nearly as may be reasonably practicable the results which, but for the Damage, would have been obtained during the relative period after the Damage.

## SECTION 3 - THEFT

**This section only forms part of Your Policy when Section 3 - Theft is shown as covered in the Schedule**

Under this section, 'Stock' does not include tobacco, products containing tobacco, cigars, cigarettes or alcohol unless they are specified on the current Schedule.

### COVER

We cover You for Loss of or Damage to the Categories of property shown under the Theft item in the current Schedule caused by:

- a) any person who forcibly and violently enters or attempts to enter or exit from the Business Premises.
- b) any person unlawfully concealed on the Business Premises.
- c) any person who threatens or commits physical violence to You, Your Employees or other persons.
- d) an actual, attempted or threatened armed hold-up.
- e) any person who breaks into any locked cabinet and/or counter and/or showcase which is located on the Business Premises.

The Loss or Damage must occur during the Period of Insurance.

### BASIS OF SETTLEMENT

There are two methods for paying Your claims. They are 'Reinstatement or replacement value' and 'Indemnity value'.

The claim payment method You are covered for is shown in the current Schedule.

We will not pay more than the Insured Amount shown in the current Schedule for Section 3 – 'Theft', except to the extent stated under the heading 'Additional benefits in addition to Your Insured Amount'.

#### 1. Reinstatement or replacement value

We will pay Your cost to:

- a) replace the Lost property insured if such property is not found within a reasonable time after the Loss, or
- b) replace the Damaged property insured if such property cannot be economically repaired, or
- c) repair the Damaged property insured if such property can be economically repaired.

#### 2. Indemnity

We will pay You the replacement cost of the property insured less an equitable amount for age, wear, tear, depreciation and will make an adjustment for the general condition and remaining useful life of the individual item or components that are Damaged:

- a) if You do not replace the property insured which is Lost or Destroyed, or
- b) if the property insured can be repaired for less than the cost to replace but You choose not to replace that property.

#### **ADDITIONAL BENEFITS**

If We agree to pay a claim under this section for Loss or Damage caused by theft, We will also pay or provide the additional covers set out below.

Unless stated to the contrary, any amounts payable under these Additional Benefits are included in the Insured Amount specified in the Schedule.

##### **1. Theft (limited) without forcible and violent entry**

- a) Loss or Damage, limited to \$10,000 for any one occurrence, by theft or attempted theft of property insured other than Electronic Equipment, Stock or Customers' Goods,
- b) Loss or Damage, limited to \$20,000 (unless a higher amount applicable to this paragraph b) is shown in the current Schedule against the above heading) for any one occurrence, by theft or attempted theft of Your Electronic Equipment which is not Stock,
- c) Damage to the Buildings at the Business Premises if caused by theft, limited to \$10,000 for any one occurrence, occurring during the Period of Insurance from the Business Premises without forcible and violent entry but excluding theft or attempted theft from any open-sided structure such as, but not limited to verandas or yards or other open spaces even if they are partially or fully enclosed. This additional benefit does not cover loss as a result of unexplained disappearance, unexplained or inventory shortage, clerical or accounting errors or shortage in supply or delivery to or from the Business Premises.

##### **2. Damage to Business Premises**

The cost to repair Your Business Premises where an Insured Amount is shown on the Schedule for Contents or total Contents and where that Insured Amount has not been otherwise exhausted, cover is extended to include the repair of Your Business Premises and property contained inside. The maximum amount We will pay for this additional benefit is the total of:

- a) the remaining Insured Amount for each item covered after payment of a claim; and
- b) the sub-limit (if any) shown in the current Schedule for this additional benefit.

### 3. **Permanently fixed (non-portable) apparatus**

Where an Insured Amount is shown in the Schedule for Contents or total Contents and where that Insured Amount has not been otherwise exhausted, cover is extended to include theft, whether following forcible and violent entry or otherwise, of permanently fixed (non-portable) apparatus or appliances, owned by You or for which You are legally responsible or have assumed a responsibility to insure, attached to the Building other than by means of a flexible or tensile cord to a power point but limited to an amount not exceeding:

- a) \$10,000, or
- b) the balance of the Insured Amount(s) on either Contents or total Contents whichever is the lesser.

### 4. **Seasonal increase of cover**

We will automatically increase the Insured Amount in respect of Stock by fifty percent (50%) or such other amount as is specified in the Schedule during a Seasonal Increase Period.

You can nominate different Seasonal Increase Period(s) or higher percentage increases of Stock. If You do they will be shown in the Schedule and You must pay any reasonable additional premium that applies.

### 5. **Temporary protection and security guards**

We will pay You the cost of necessary temporary protection and repairs and the employment of guards/watchmen to protect property insured following an occurrence covered by this cover section. The maximum amount We will pay for each occurrence is \$10,000. If an occurrence results in a claim being paid under this section and another section of this Policy, then, the highest single limit under the relevant section applies. The Additional Benefit of Temporary Protection and Security Guards shall not be cumulative under this Policy.

### 6. **Illegal use of corporate financial transaction card**

If this Policy covers Your Contents, and any corporate credit and/or debit card used by the Business is Lost or stolen during the Period of Insurance, We will pay any financial loss sustained by You arising from the illegal use of the card by an unauthorised person.

Provided that We will not pay:

- (a) any financial loss arising from the misuse or illegal use of corporate credit cards by Your Employees or any other person acting in collusion with Your Employee or by any member of Your Family.
- (b) more than \$5,000 in total for any one loss or event.

## 7. **Illegal electronic funds transfer**

If the Policy covers Contents, following entry into the Business Premises arising from one of the events listed under the heading 'COVER' under this section, We will pay any financial loss sustained by You during the Period of Insurance arising from the electronic transfer of funds from Your bank account to a bank account not controlled by You.

We will not pay for:

- a) any financial loss arising from the misuse or illegal use of corporate credit cards or financial transaction cards by any of Your Employees or any other person acting in collusion with any of Your Employees or by any member of Your Family;
- b) transfer of money via electronic funds transfer which was enabled by:
  - (i) a key; or
  - (ii) use of details of a combination, code or password;that are left in the Building outside Business Hours;
- (c) more than \$5,000 in total for any one event.

## 8. **Replacement of locks and keys**

We will pay the reasonable cost of replacing locks, keys, magnetic keys or cards or similar devices or to change the sequence of numbers or letters used in a Safe or Strongroom if during the Period of Insurance:

- a) as a result of theft covered under this section, keys or combinations are stolen, or if there are reasonable grounds to believe that keys have been duplicated;
- b) keys, magnetic keys or cards or similar devices are accidentally lost;
- c) the sequence of numbers or letters become known by any unauthorised person or are accidentally lost;
- d) circumstances have allowed the unauthorised duplication of keys, magnetic keys or cards or similar devices.

We will also pay the reasonable cost of:

- e) opening Safes and Strongrooms because of the theft of keys or combinations during a theft covered under this section;
- f)
  - i) developing images stored on Media from security cameras following a theft or attempted theft covered under this section; and
  - ii) replacing and developing security film exposed because of theft or attempted theft.

We will not pay more than \$10,000 for any one event.

If You are also insured under Section 4 – ‘Money’, then the Additional Benefit payable for ‘Replacement of locks and keys’ shall not be cumulative and shall be limited to \$10,000 in the aggregate.

**9. Business Records**

Following a theft which is covered by this section, We will pay, in addition to the Amount Insured, the costs necessarily incurred by You to re-create business books, plans, computer system records, patterns and other business records.

Provided that the maximum amount We will pay is limited to \$25,000 any one occurrence or as noted in the Schedule.

**10. Property of directors and Employees**

Following a theft which is covered by this section, cover is extended to include tools of trade and personal property of directors and Employees whilst at the Business Premises provided such property is not otherwise insured.

Cover is limited to \$5,000 any one item and \$10,000 in total for each event. This additional benefit provides cover to You. It does not provide any insurance cover to any director or Employee. There is no cover for You or any person named as the Insured on the Schedule

**11. Temporary removal**

We also cover Your insured Business Property while temporarily removed to any other premises within the Commonwealth of Australia.

Provided that:

- a) We will not cover tobacco, tobacco products, cigars, cigarettes or alcoholic beverages,
- b) We will not cover Stock in trade that is on consignment to other parties unless it is owned by You or is property for which You are responsible,
- c) The maximum amount We will pay for this additional benefit will be twenty percent (20%) of the Insured Amount.
- d) This additional benefit will not apply to any property insured, which has been removed for a period greater than ninety (90) days without Our prior written consent.

**12. Death following assault**

If any person is injured while protecting or attempting to protect the Property Insured from theft and death results from that injury within twelve (12) months, We will pay \$10,000 to the estate of that person. If You are also insured under the Money cover section, the benefits payable for death following assault shall not be cumulative and shall be limited to \$10,000 in the aggregate.

### 13. **Employee dishonesty**

We will pay You for Loss of Stock, Contents or Electronic Equipment as a direct result of Employee dishonesty occurring during the Period of Insurance, which is discovered within forty five (45) days of the Employee dishonesty occurring.

Exclusion 3, of this section, so far as it relates to Loss or Damage due to theft or attempted theft committed by an Employee, does not apply to this additional benefit.

However, We will not pay for:

- a) any Loss arising from the conduct of an Employee after You have knowledge of or information about any prior act of fraud or dishonesty by the Employee.
- b) any Loss arising from the conduct of an Employee outside Australia;
- c) any Loss where You are unable to identify which Employee is responsible.
- d) any Loss or part of a Loss arising from the conduct of an Employee, where the proof of the Loss, either as to its occurrence or as to its amount, is dependent upon an inventory stock take or a profit and loss calculation;
- e) fraud or dishonesty committed by Your family; or
- f) fraud or dishonesty committed by any of Your Employees committed with Your connivance.

We will not cover You for more than:

- i) \$5,000 for any one act or series of acts of Employee dishonesty; and
- ii) \$5,000 in total for all claims for Employee dishonesty occurring during any one Period of Insurance.

However, We will not pay any claims under this additional benefit if You are insured under Section 9 - Employee Dishonesty and any cover given under this additional benefit shall not accumulate with any similar cover that may be given under Additional Benefit 8 of Section 4 - Money.

### 14. **Tenanted premises**

We will pay the cost of repairing Damage to Premises in which You are a tenant and for which You are legally liable to pay in accordance with the terms of Your lease, provided such Damage occurs as a result of theft or attempted theft of Business Property occurring during the Period of Insurance. The limit of Our liability under this additional benefit is \$10,000 for any one occurrence.

#### 15. **Additional premises – provisional cover**

Cover is extended to include all property within Australia that becomes Yours after the commencement of the Period of Insurance, for 30 days from first being used by You (unless the Period of Insurance ends sooner or the property ceases to be Yours, whichever shall first occur), but the cover is limited to:

- a) the business described in the Schedule, and
- b) property insured described in the Schedule.

Our maximum liability under this additional benefit is limited to twenty percent (20%) of the highest Insured Amount shown in the Schedule in relation to each item of Property Insured.

Full details of such additional property are to be supplied to Us within thirty (30) days of Your commencement of the use of the property. We may require an additional premium before We will insure such property.

#### **OPTIONAL EXTENSION**

The current Schedule will show if the following optional benefit, which is in addition to the 'Theft (limited) without forcible and violent entry' Additional Benefit, is covered.

##### 1. **Theft of property insured in the open air**

Theft of property insured in the open air but within the boundaries of the Situation or contained in an unlocked building, up to the amount shown in the current Schedule for 'theft without forcible and violent entry'.

##### 2. **Additional Damage to Business Premises cover**

If 'Additional Damage to Business Premises' is shown in the Schedule, then, in addition to the cover provided under Additional Benefit 2 – 'Damage to Business Premises', We will pay up to the amount shown in the Schedule for the cost of repairing Buildings at the Business Premises that Damaged during a theft.

##### 3. **Additional theft without forcible entry cover**

If, 'Theft (limited) without forcible and violent entry' is shown in the Schedule, then, in addition to the cover provided under Additional Benefit 1 – 'Theft (limited) without forcible and violent entry', We will pay an increased amount up to the amount shown in the Schedule, for Damage to property insured caused by theft from the Business Premises where there is no visible forcible and violent entry.,

## EXCLUSIONS

- 1) We will not pay under the Theft cover section for Loss of or Damage to:
  - a) Money and negotiable instruments in excess of \$500,
  - b) jewellery, furs, bullion, property made of gold or silver or precious stones exceeding \$10,000 any one loss and \$2,000 any one item unless they are Stock,
  - c) motor vehicles unless they are:
    - i) Stock; or
    - ii) fork lift trucks and similar appliances that are used for hauling or conveying goods at the Business Premises.
  - d) Glass unless it is Stock.
  - e) property not contained in a locked building, unless insured under Additional Benefit 1 - 'Theft (limited) without forcible and violent entry' and Additional Benefit 3 - 'Permanently fixed (non-portable) apparatus'.
- 2) We will not pay under this section for Loss of or Damage to property caused by:
  - a) any person lawfully on the Business Premises;;
  - b) any person who does not steal or intend to steal property.
- 3) We will not pay under this section for Loss of or Damage to property caused by or in any way contributed to by dishonest acts by You, Your directors, partners, Employees or any members of Your Family, other than by an Employee following forcible and violent entry.
- 4) Loss from a Safe, Strongroom or security enclosure opened by a key or by the use of details of a combination, either of which has been left on the Business Premises while closed for business, is not covered for more than the Insured Amount on Business Property anywhere on the Business Premises outside Business Hours.
- 5) We will not pay under this section for unexplained disappearances or unexplained shortages, whether resulting from clerical or accounting errors or shortages in supply or delivery of materials to or by You.

## DEFINITIONS

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

**“Category or Categories”** means the category into which property insured can be designated from the following:

1. all Contents including Stock.
2. all Contents excluding Stock.
3. Stock including goods for which You are responsible but excluding tobacco, products containing tobacco, cigars, cigarettes or alcohol.
4. Specified Items listed in the Schedule.

**“Specified Items”** means each item of property that is specifically described in the Schedule for Section 3 – ‘Theft’.

**“Tobacco, products containing tobacco, cigars, cigarettes or alcohol”** means: tobacco, products containing tobacco, cigars, cigarettes or alcohol sold by You in the Business.

## SECTION 4 - MONEY

This section only forms part of Your Policy when Section 4 - Money is shown as covered in the Schedule

### COVER

We cover You for Loss of or Damage to Money which occurs during the Period of Insurance as a result of the Defined events shown in the current Schedule.

### DEFINED EVENTS

#### 1. Money in transit

Money in Your personal custody or in the custody of persons authorised by You whilst in transit within Australia but not Money in a private residence or any Vehicle left unattended.

Money in transit includes Money whilst contained in the night safe, night depository chute, or automatic teller machine of any financial services provider. Our liability ceases at the time Your Financial Services Provider ceases trading on the next business day following deposit therein.

#### 2. Money on business premises

Money contained in the Business Premises:

- a) during Business Hours;
- b) outside Business Hours;
- c) any time while contained in a locked Safe or Strongroom.

#### 3. Money in private residence

Money contained in:

- a) Your home; or
- b) in the home of a person authorised by You when it has been taken home for safe keeping from the Business Premises or the place of collection until the time Your Financial Service Provider ceases trading on its next full trading day.

## **BASIS OF SETTLEMENT**

We will pay You up to the Insured Amount shown on the current Schedule for each of the Defined events.

In the case of securities (which shall mean certificates of stock, bonds, coupons and all other types of securities), the basis of valuation shall be:

- a) if the securities can with Our approval be replaced, the cost of replacement paid or payable by You; or
- b) if the securities cannot or are not to be replaced by You, the greater of:
  - i) the price for which You purchased them; or
  - ii) the closing market value on the last business day prior to the date of discovery by You of the Loss or Destruction of the securities, or if the time of discovery by You is after the close of the market, their closing market value on the day of discovery by You of the Loss or Destruction of the securities;
- c) in the case of a loss of subscription, conversion or redemption privileges through the loss of any security, the value of such privileges immediately preceding the expiration thereof, such valuation being in the currency in which the loss was sustained. Losses sustained in currencies other than Australian dollars shall be settled by converting the amount of loss to Australian dollars at the market rate at the time of settlement of the loss or such other rates as may have been expressly agreed with Us. If there is no market price or value on the relevant day stated herein, then the value shall be agreed between You and Us, or in default thereof, We and You shall submit to arbitration and be bound by the decision of the umpire.

In the case of travellers' cheques, discount house vouchers or lottery tickets, the basis of valuation shall be the original purchase price incurred by You.

## **ADDITIONAL BENEFITS**

The following additional benefits shall apply only following Loss of or Damage to Money or any attempt thereat, insured by this section.

### **1. Counterfeit currency**

Provided that Insured Amount has not been otherwise exhausted, We will pay for losses sustained by You due to the acceptance in good faith in exchange for merchandise, Money or services, of counterfeit Australian currency notes up to an amount not exceeding \$500 in any one Period of Insurance.

## 2. Replacement of **locks and keys**

We will pay the reasonable cost of replacing locks, keys, magnetic keys or cards or similar devices or to change the sequence of numbers or letters used in a Safe or Strongroom if during the Period of Insurance:

- a) as a result of theft of Money covered under this section, keys or combinations are stolen, or if there are reasonable grounds to believe that keys have been duplicated;
- b) keys, magnetic keys or cards or similar devices are accidentally lost;
- c) the sequence of numbers or letters become known by any unauthorised person or are accidentally lost;
- d) circumstances have allowed the unauthorised duplication of keys, magnetic keys or cards or similar devices.

We will also pay the reasonable cost of:

- e) opening Safes and Strongrooms because of the theft of keys or combinations during a theft of Money covered under this section;
- f)
  - i) developing security images stored on Media from security cameras following a theft or attempted theft of Money covered under this section; and
  - ii) replacing and developing security film exposed because of theft or attempted theft of Money.

We will not pay more than \$10,000 for any one event. additional benefit.

If You are also insured under Section 3 – ‘Theft’ then, the Additional Benefit payable for ‘Replacement of locks and keys’ shall not be cumulative and shall be limited to \$10,000 in the aggregate.

## 3. **Loss of or damage to Safes, Strongrooms and cash carrying bags**

If Money is stolen or there is an attempt at stealing Your Money from Your Safe or Strongroom, We will pay You:

- a) the cost of opening the Safe or Strongroom and to repair or replace any Loss of or Damage to the Safe or Strongroom that was caused by the theft or attempted theft;
- b) if Money is stolen or if there is an attempt at stealing Your Money, We will pay for Loss of or Damage to Your cash carrying bag that was caused by the theft or attempted theft.

A sub-limit of \$10,000 any one occurrence applies to this additional benefit.

## 4. **Temporary protection and security guards**

We will pay You the costs necessarily and reasonably incurred by You in effecting temporary protection and the employment of guards/watchmen to safeguard the property insured as a result of theft or attempted theft of Money occurring during the Period of Insurance and that is insured under this section. The maximum amount We will pay for each occurrence is \$10,000. If an occurrence results in a claim being paid under this section and another section of this Policy, then, the highest single limit under the relevant section applies. The Additional Benefit of 'Temporary protection and security guards' shall not be cumulative under this Policy.

**5. Seasonal increase of cover**

We will automatically increase the Insured Amount in respect of Money by fifty percent (50%) or such other amount as is specified in the Schedule during a Seasonal Increase Period.

You can nominate different Seasonal Increase Period(s) or higher percentage increases of Money. If You do they will be shown in the Schedule and You must pay any reasonable additional premium that applies.

**6. Bank and public holidays extension**

The Insured Amounts for Money cover are automatically increased by 100% or \$75,000 whichever is the lesser on days that are gazetted bank or public holidays. This increase shall apply up until bank closing time on the next business day after such holiday. This additional benefit does not apply to damage to 'Safes and Strongrooms' and 'Seasonal increases'.

**7. Death following assault**

If any person is injured while protecting or attempting to protect Money from theft or attempted theft and death results from that injury within twelve months, We will pay the estate of that person \$10,000. This amount is in addition to any amount We pay for loss of Money. If You are also insured under Section 3 - 'Theft', the benefits payable for death following assault shall not be cumulative and shall be limited to \$10,000 in the aggregate.

**8. Employee dishonesty**

We will pay You for Loss of Money as a direct result of Employee dishonesty occurring during the Period of Insurance, which is discovered within forty-five (45) days of the Employee dishonesty occurring.

Exclusion 1 c), of this section, so far as it relates to Loss or Damage due to theft or attempted theft committed by an Employee, does not apply to this additional benefit.

However, this additional benefit does not cover:

- a) any Loss arising from the conduct of an Employee after You have knowledge of or information about any prior act of fraud or dishonesty by the Employee;
- b) any Loss arising from the conduct of an Employee outside Australia;

- c) any Loss where You are unable to identify which Employee is responsible;
- d) any Loss or part of a Loss arising from the conduct of an Employee, where the proof of the Loss, either as to its occurrence or as to its amount, is dependent upon an inventory stock take or a profit and loss calculation;
- e) fraud or dishonesty committed by Your Family; or
- f) fraud or dishonest committed by any of Your Employees committed with Your connivance.

We will not cover You for more than:

- i) \$5,000 for any one act or series of acts of Employee dishonesty; and
- ii) \$5,000 in total for all claims for Employee dishonesty occurring during any one Period of Insurance.

However, We will not pay any claims under this additional benefit if You are insured under Section 9 - Employee Dishonesty and any cover given under this additional benefit shall not accumulate with any similar cover that may be given under Additional Benefit 13 of Section 3 - Theft.

#### 9. **Traveller's money**

Cover under this part is extended to include Loss of Money belonging to You, occurring while such Money is in Your personal custody, or in the custody of Your employee, up to the lesser of \$10,000 or the amount specified on the Schedule for Defined event 'Money in transit', while travelling outside of Australia in connection with the Business.

#### 10. **Additional premises - provisional cover**

Cover is extended to include Money at, or in transit to or from any new Business Premises occupied by You after the commencement of the Period of Insurance, within Australia, for thirty (30) days from first being used by You (unless the Period of Insurance or Your occupancy of such premises ends sooner, whichever shall first occur), but the cover is limited to:

- a) the Business described in the Schedule, and
- b) the Money insured described in the Schedule.

Our maximum liability under this additional benefit is limited to twenty percent (20%) of the Insured Amount shown in the Schedule in relation to each item of Money covered under this section.

Full details of such additional property are to be supplied to Us within thirty (30) days of Your commencement to use the property. If We agree to cover Money at the additional location, We may require payment of an additional premium.

## 11. Property of directors, and employees

If clothing or personal effects are Lost or Damaged during a theft or attempted theft of Money, We will pay in addition to the sum insured the cost of repairing or replacing these items.

Cover is limited to \$5,000 any one person and \$10,000 overall in respect of any one event. This additional benefit provides cover to You. It does not provide any insurance cover to any director or Employee. There is no cover for You or any person named as the Insured on the Schedule.

### EXCLUSIONS

- 1) We will not pay for Loss or Damage caused by:
  - a) clerical or accounting errors;
  - b) errors in receiving or paying out Money;
  - c) dishonest acts of Your directors, partners, Employees or any member of Your Family other than theft by an Employee following visible forcible and violent entry.
- 2) We will not pay for Loss of or Damage to:
  - a) Money which was not discovered missing within ten working days of the Loss or Damage occurring;
  - b) Money whilst contained in an unlocked and unattended Vehicle;
  - c) Money from a Safe or Strongroom opened by a key or by use of a combination which has been left on the Business Premises outside Business Hours;
  - d) Money, except as provided under Additional Benefit 9 - 'Traveller's Money', whilst it is outside Australia.
- 3) We will not pay for Loss of or Damage to Money while being carried by professional money carriers, which is more specifically insured by such carriers, and which insurance responds in the event of a claim to the amount of the claim, excepting the excess amount over and above such more specific insurance which excess is held to be covered hereunder.

Provided that where in the ordinary course of Business you enter into an agreement with such carriers and such agreement provides that You shall indemnify and/or hold harmless and/or release from liability such carriers in respect of Loss or Damage which may occur as a result of any cause or event insured against under this section, then this Exclusion 3 shall not apply.

## DEFINITION

The following words have the following meaning for this section only. You should also refer to the General Definitions section starting on page 14.

**“Financial Service Provider”** means a bank, building society or credit union or an agency for any of these.

## **SECTION 5 - MACHINERY BREAKDOWN AND ELECTRONIC EQUIPMENT BREAKDOWN**

**This section only forms part of Your Policy when Section 5 - Machinery Breakdown and Electronic Equipment Breakdown is shown as covered in the Schedule.**

### **IMPORTANT INFORMATION**

Section 5 – Machinery Breakdown and Electronic Equipment Breakdown cover is divided into two parts, each with optional extensions for Your convenience. This insurance and the Schedule are to be read together.

### **PART 1 - MACHINERY BREAKDOWN**

#### **PART 1 - COVER**

If any Insured Item of Plant and Machinery or any part of an Insured Item of Plant and Machinery specified in the Schedule suffers Insured Damage We will indemnify You in respect of such Insured Damage as provided in the basis of settlement clause. This insurance applies whilst the Insured Item is within the Situation and working or at rest or being dismantled, moved, reassembled or reinstalled for the purpose of cleaning, adjustment, inspection, repair, overhaul or relocation but only after completion of successful initial commissioning at the Situation.

#### **PART 1 - BASIS OF SETTLEMENT**

- 1) In the event of Insured Damage under this part We will at Our option pay You, up to the Insured Amount or Limit Any One Loss (whichever is selected) less the applicable Excess, the reasonable cost of repair or replacement necessary to return the Insured Item to its former state of operation including:
  - a) the cost of dismantling, re-erection, cleaning up and removal of debris;
  - b) the cost of replacement of refrigerant, lubricating or insulating oil lost from an Insured Item as a direct result of Insured Damage;
  - c) the extra cost of expediting permanent repairs including:
    - i) charges for overtime and work on public holidays where necessarily and reasonably incurred;
    - ii) the cost of freight within Australia by any recognised scheduled service;
    - iii) the cost of overseas air freight by any recognised scheduled service and/or overseas labour;
  - d) the cost of temporary repairs and/or hire of a temporary replacement item during the time taken to repair Insured Damage to any Insured Item;
  - e) consultants fees and

- g) Your liability for customs, excise and/or other duties which You may become liable to pay consequent upon Insured Damage to any Insured Item and/or Your liability to compensate others who may become liable for such customs, excise and/or other duties as a result of the Insured Damage.

Provided the total of all these extra costs in clauses 1 c) and 1 d) are limited to fifty percent (50%) of the normal cost of repair payable under this Part 1 and shall be payable in addition to the Insured Amount or Limit Any One Loss (whichever is selected).

- 2) All Insured Damage which can be repaired must be repaired, however should the item be uneconomical to repair due solely to the nature of the Insured Damage, settlement will be as follows:
  - a) The cost of replacement of the Insured Item by an item of similar function, type, capacity and quality in a condition equal to, but not better than, the condition of the Insured Item when new;
  - b) The Insured Amount for the Insured Item.

We will pay the lesser of 2 a) or 2 b).

- 3) We shall not be required to replace the Insured Item exactly, but only as circumstances permit.
- 4) The value of any salvage will be subtracted from any amount payable under this part.
- 5) The amount of each claim otherwise payable shall be reduced by the amount of the Excess shown in the Schedule.
- 6) Where components or manufacturer's specifications are no longer available due to obsolescence, the basis of settlement will be the cost which would have been incurred if the components or specifications had still been available.
- 7) Notwithstanding any other clause in this part Our liability under this Part 1 shall not exceed the Insured Amount in respect of the Insured Item which has suffered Insured Damage.

#### **PART 1 - EXCLUSIONS**

We will not pay for:

- 1) The cost of:
  - a) replacement of expendable items such as belts, filters, fuses, electric heating elements, electrical contacts, thermostats, Thermal expansion valves, cutting blades, crushing surfaces, parts made of glass, porcelain or ceramics, chains, seals, links, dies and moulds, conveyor belting, lubricants, fuel and any transfer media;
  - b) replacement of unserviceable component parts worn through normal machine operation;

- c) adjustment, cleaning, purging or recharging of refrigeration or air conditioning equipment;
- d) replacement of refractory or brickwork forming part of an Insured Item;

unless necessary as part of the rectification of Insured Damage not otherwise excluded under this Part 1.

2) The cost of:

- a) maintenance work including but not limited to the tightening of loose parts, recalibration or adjustments;
- b) alterations, additions, improvements or overhauls whether carried out in the course of indemnifiable repairs or as a separate operation;
- c) modification or alteration of Insured Item to enable it to operate with a more ozone-friendly refrigerant gas as required by the UNEP (United Nations Environmental Protection) Montreal Protocol with respect to substances which deplete the ozone layer, unless conversion is necessitated by Insured Damage;
- d) replacement or repair, caused by gradual deterioration (including rust, corrosion, erosion, oxidation or scale formation);
- e) replacement of lighting equipment, reticulated electrical wiring, reticulated liquid and gas piping and ducting;
- f) repair of scratches chipping or discolouration to painted or polished surfaces, unless resulting from Insured Damage;
- g) repair of slowly developing deformation, distortion or fatigue of any part;
- h) repair of blisters, laminations, flaws or grooving even when accompanied by leakage;
- i) repairs to valves, fittings, glands, joints, gaskets, pipes, lines and connections which are defective or leaking;
- j) repairs to shaft keys requiring tightening, fitting or renewal;
- k) damage caused by the movement of foundations, masonry or brick work; or
- l) removal or installation of underground pumps and well casings. Unless specifically noted on the Schedule, this exclusion does not apply to submersible pumps.

3) Consequential loss of any kind or description whatsoever.

4) Insured Damage to any item being moved, if caused by dual lifting unless We have agreed to cover such additional risk in writing prior to the occurrence of any such event.

- 5) Anything to the extent You are entitled to recover the costs of labour or parts under a maintenance agreement, warranty, guarantee or indemnity in Your favour by the manufacturer of the relevant item or any other person. However, We shall be liable for Insured Damage (not otherwise excluded by this section) which is not recoverable under such agreement, warranty, guarantee or indemnity by reason of a specific exclusion contained in that agreement, warranty, guarantee or indemnity.

## **PART 1 - OPTIONAL EXTENSIONS**

### **1. Deterioration of Stock in cold storage**

(Applies where indicated in the Schedule as being operative.)

We will indemnify You up to the Insured Amount for Loss of or Damage to the Stock as specified whilst contained in the cold storage spaces cooled by the Insured Items nominated in the Schedule and caused by deterioration or putrefaction as a result of:

- a) Insured Damage to the refrigeration machinery;
- b) operation of or failure to operate controls or protective devices within the refrigeration machinery; but this does not include Loss caused by the manual operation or manual setting of controls or protective devices;
- c) contamination of the stored Stock by the accidental escape of refrigerant into the cold chamber;
- d) sudden leakage of refrigerant from the refrigeration machinery or pipe systems forming part of the refrigeration machinery occurring during the Period of Insurance at the Situation; or
- e) sudden and unforeseen failure of the public power supply.

If deterioration occurs or is likely to occur to such Stock by any of the above causes 1 a), 1 b), 1 c), 1 d) or 1 e), We will pay any reasonable expenses incurred by You to prevent or minimise the Loss of Stock.

#### **Basis of settlement**

- a) We will pay the cost of replacement of the Lost or Damaged Stock calculated immediately prior to the Loss or Damage occurring or the contracted price from Your usual customer, whichever is the higher. We will not pay more than the Insured Amount stated in the Schedule for the Stock.
- b) The amount of each claim otherwise payable shall be reduced by the amount of the Excess shown in the Schedule.

### **Exclusions applicable to Part 1 - Optional Extension 1**

In addition to the exclusions contained in Part 1, We will not pay for:

- a) any Loss or Damage due to shrinkage, inherent defects or diseases;
- b) Loss or Damage caused by improper storage, collapse of the packing material or storage structure;
- c) penalties or delay or detention or consequential loss or damage or liability of any nature whatsoever; and
- d) Loss or Damage following loss of public power supply due to:
  - i) the deliberate act of any public power supply authority unless performed for the sole purpose of safeguarding life or protecting a part of the supply system;
  - ii) the decision by any public power supply authority to restrict or withhold supply excepting a scheme of rationing necessitated by damage to any part of the supply system;
  - iii) shortage of power generation fuel or water.

### **Seasonal increase**

We will automatically increase the Insured Amount by fifty percent (50%) during a Seasonal Increase Period.

You can nominate different Seasonal Increase Period(s) or higher percentage increases of the Insured Amount. If You do they will be shown in the Schedule and You must pay any reasonable additional premium that applies.

## **PART 2 - ELECTRONIC EQUIPMENT BREAKDOWN**

### **PART 2 - COVER**

If any Insured Item of Electronic Equipment or any part of an Insured Item of Electronic Equipment specified in the Schedule suffers Insured Damage, We will indemnify You, as provided in the basis of settlement clause, in respect of the Insured Damage indicated by the terms of cover You have selected as stated on the Schedule.

This insurance applies while the Insured Item is:

- a) within the Situation and is working or at rest; and/or
- b) being dismantled or moved for the purpose of cleaning, inspection, overhaul, repair or relocation or during such operations themselves or whilst being subsequently re-erected at the Situation; or
- c) being moved to or from any service contractor away from the Situation but within Australia;

but only after completion of successful initial commissioning of the Insured Item at the Situation.

## **PART 2 - BASIS OF SETTLEMENT**

- 1) In the event of Insured Damage to an Insured Item of Electronic Plant We will pay the cost of replacement or repairs necessary to return the Insured Item to its former state of operation including:
  - a) cost of dismantling, re-erection, cleaning up and removal of debris;
  - b) charges for overtime and work on public holidays where necessarily and reasonably incurred;
  - c) freight within Australia by any recognised scheduled service;
  - d) overseas air freight by any recognised scheduled service or overseas labour;
  - e) the cost of temporary repairs and/or hire of a temporary replacement item during the time taken to repair Insured Damage to any Insured Item;

provided that the costs in clauses 1 b), 1 c) 1 d) and 1 e) are limited to fifty percent (50%) of the normal cost of repair payable under this Part and shall be payable in addition to the Insured Amount or Limit Any One Loss (whichever is selected).

  - f) Your liability for any customs, excise and/or other duties which You may become liable to pay consequent upon Insured Damage to any Insured Item and/or Your liability to compensate others who may become liable for such customs, excise and/or other duties as a result of the Insured Damage.
- 2) No deduction will be made for depreciation of parts replaced except for valves, tubes (including picture and x-ray tubes) and light sources. We will deduct a proportion of the replacement cost of these items being the proportion which the period of use up to the time of failure bears to the normal service life expected by the manufacturer or supplier.
- 3) All Insured Damage which can be repaired, must be repaired, however, should the item be uneconomical to repair due solely to the nature of the Insured Damage, settlement will be the lesser of the Insured Amount for the Insured Item as stated in the Schedule or the cost of replacement of the Insured Item by an item of similar function, type, capacity and quality and in a condition equal to but not better than the condition of the Insured Item when new.
- 4) The value of any salvage will be subtracted from the amount payable under this clause.
- 5) If more than one Insured Item is Lost or Damaged in one occurrence, We will apply only the highest of the Excesses applicable to such Insured Items.
- 6) The amount of each claim otherwise payable shall be reduced by the amount of the Excess shown in the Schedule.

## PART 2 - EXCLUSIONS

We will not pay for:

- 1) Insured Damage to Electronic Data and Electronic Data Media, but subject to any extension selected by You.
- 2) Insured Damage caused by atmospheric conditions, moisture or change in temperature unless directly resulting from Insured Damage to or malfunction of air conditioning equipment.
- 3) the cost of:
  - a) replacement of expendable items such as batteries, valves, x-ray and picture tubes, belts, chains, tapes, cards, ribbons, filters, tubes, electric heating elements or electrical contacts; or
  - b) replacement of component parts worn through normal use or operation;unless necessary as part of the rectification of Insured Damage not otherwise excluded under this Part.
- 4) the cost of:
  - a) maintenance work;
  - b) alterations, additions, improvements or overhauls whether carried out in the course of indemnifiable repairs or as a separate operation;
  - c) replacement or repair following gradual deterioration (including rust, corrosion, erosion, oxidation or scale formation);
  - d) repairs of scratches to painted or polished surfaces unless resulting from Insured Damage; or
- 5) anything to the extent You are entitled to recover the costs of labour or parts under a maintenance agreement or warranty, guarantee or indemnity in Your favour by the manufacturer of the relevant Insured Item or any other person. However, We shall be liable for Insured Damage (not otherwise excluded by this section) which is not recoverable under such agreement, warranty, guarantee or indemnity by reason of a specific exclusion contained in that agreement, warranty, guarantee or indemnity.
- 6) Loss or Damage caused by Computer viruses or other disruptive programming techniques.
- 7) Consequential loss of any kind or description whatsoever.

## **PART 2 - OPTIONAL EXTENSIONS**

### **1. Electronic Data and Electronic Data Media**

(Applies where indicated in the Schedule as being operative.)

#### **Cover**

We will indemnify You for Insured Damage to the Electronic Data and Electronic Data Media insured under this extension as specified in the Schedule caused solely as the result of Insured Damage covered under Part 2 to an Insured Item which is specified in the Schedule.

We will extend cover under this Part 2 to include restoration of lost information which results from Loss of or Damage to an Electronic Data processing system which is not owned by You and which You are not responsible to insure but which is being used by You at the time the Loss or Damage to that system occurs in circumstances which would give rise to indemnity under Part 2 if it was insured under Part 2.

#### **Basis of settlement**

We will pay You for such Insured Damage up to the Insured Amount less the applicable Excess specified in the Schedule including:

- a) the actual cost of replacement of Lost or Damaged Software and Electronic Data Media by new unused materials;
- b) any expenses which can be proved to have been incurred by You only for the purpose of restoring the Electronic Data by reproduction of data or information in a condition equivalent to that existing prior to Insured Damage and necessary to allow operation of the Insured Item to continue in the normal manner. Lost Electronic Data may be reproduced in an updated form if the cost of doing so is no greater than that of reinstatement in the original form.

Provided that:

- i) We shall only be liable for costs and expenses incurred within a period of twelve (12) months following the date of the Insured Damage.
- ii) this extension only applies whilst the insured Electronic Data Media is:
  - 1) at the Situation;
  - 2) at a media storage situation; or
  - 3) temporarily at an alternative situation for processing purposes or in transit between any of these situations.
- iii) The amount of each claim otherwise payable shall be reduced by the amount of the Excess shown in the Schedule.

### **Exclusions applicable to Part 2 – Optional Extension 1**

In addition to the exclusions contained in Part 2, We will not pay for:

- a) Loss or distortion of Electronic Data contained on the Electronic Data Media while mounted in or on any machine for use or processing unless such loss or distortion occurs:
  - i) at the Situation, due to Insured Damage to an Insured Item which is specified in the Schedule; or
  - ii) at another situation temporarily used for processing purposes, due to Insured Damage to an item of electronic plant which would be indemnifiable if that item of plant were insured under this Part 2.
- b) Loss or distortion caused by Computer Virus.
- c) Wasting or wearing away or wearing out caused by or naturally resulting from ordinary use or working or gradual deterioration.
- d) Loss or Damage caused by atmospheric conditions, moisture or changes in temperature unless directly resulting from Insured Damage to air-conditioning equipment which would be indemnifiable if the equipment were insured under Part 2.
- e) Consequential loss of any kind or description whatsoever.
- f) Work undertaken without Our approval other than for minor temporary or provisional repairs. There is no cover under this extension with respect to any Insured Item which has been operated without being satisfactorily repaired following Insured Damage.

### **Condition applicable to Part 2 – Optional Extension 1**

It is a condition precedent to indemnity under this extension that You must have duplicate copies of updated file media stored off site at alternative premises.

## **2. Increase in cost of working**

(Applies where indicated in the Schedule as being operative.)

### **Cover**

We will indemnify You as set out in Basis of Settlement below up to the Insured Amount for any additional costs of operating the Business directly resulting from interruption of or interference with the Business as defined in the Schedule, but only if:

- a) the interruption or interference is as a result of Insured Damage to an insured computer or word processor covered under Part 2; and
- b) the interruption or interference is caused solely as a result of Insured Damage.

To the extent that the Insured Amount by this extension is not otherwise exhausted, We will also pay for reasonable professional fees of accountants or auditors and any necessary and

reasonable expenses payable by You for preparation and proving of valid claims under Section 5 -Parts 1 and 2.

#### **Basis of settlement**

- a) We will pay You for the additional expenditure incurred, over and above the normal expenses which would have been incurred by You for the operation of Your insured computer or word processor, by the use of substitute equipment to maintain normal business operations during the interruption up to the Insured Amount specified in the Schedule, less the applicable Excess including:
  - i) the actual hire charges incurred for the rental of substitute equipment, and
  - ii) the cost of additional personnel and transport expenses incurred with the use of the substitute equipment.
- b) The Indemnity Period and the Time Excess shall commence upon the commencement of use of a substitute insured computer or word processor.
- c) We shall be liable for additional expenditure incurred during the actual period of the interruption but not exceeding the period specified in the Schedule as the Indemnity Period.
- d) We will not be liable for loss, damage or costs incurred by You during the Time Excess.
- e) The amount of each claim otherwise payable shall be reduced by the amount of the Excess shown in the Schedule.

#### **Exclusions applicable to Part 2 – Optional Extension 2**

In addition to the exclusions contained in Part 2, We will not pay for:

- a) the costs incurred during:
  - i) interruption due to the carrying out of alterations, additions or improvements to the insured computer or word processor;
  - ii) interruption due to the carrying out of cleaning, adjustment, inspection or maintenance of the insured computer or word processor; or
  - iii) the extension of any interruption due to any measure, restriction or regulation imposed by any government, public or local authority.
- b) additional costs incurred where the period of interruption otherwise applicable is increased beyond four (4) weeks due to delay in the repair or replacement of items manufactured outside Australia where such delay results from:
  - i) measures, restrictions or regulations imposed by any government, public or local authority;

- ii) the time required to procure replacement parts or complete items in overseas markets;
- iii) the time required to transport or ship component parts or complete items between the Situation and any overseas place of repair or replacement;
- iv) the time required to engage and transport overseas specialists or consultants to assist in or supervise local repairs.

**Condition applicable to Part 2 – Optional Extension 2**

For the purpose of this extension only, Exclusion 7 of Part 2 does not apply.

**PARTS 1 AND 2 - EXCLUSIONS**

We will not pay for Loss or Damage caused by or arising from:

- a) fire, smoke or soot;
- b) extinguishing a fire including subsequent demolition or repair work;
- c) lightning;
- d) chemical explosion (other than explosion of flue gas in Boilers);
- e) impact by:
  - i) land-borne Vehicles,
  - ii) Aircraft; or
  - iii) Watercraft;
- f) earthquake, tsunami, subterranean fire or volcanic eruption;
- g) landslip, subsidence or earth movement;
- h) storm, tempest, Flood, windstorm or cyclone;
- i) water escaping, discharged or leaking from any source which is external to the Insured Plant and Machinery;
- j) theft or burglary;
- k) intentional or malicious Damage; or
- l) the carrying out of tests involving abnormal stresses, including the intentional overloading of any Insured Item. The checking of the correct working of any Insured Item or of its safety installations is not considered to be testing or overloading within the context of this exclusion.

**PARTS 1 AND 2 - ADDITIONAL BENEFITS**

## 1. **Additional items**

If You hire or purchase and commission at the Business Premises any items similar to items already insured under this section, We will consider these items to be added to the insurance by this section, giving the same cover as for similar items already insured. Provided that:

- a) cover for additional items shall not exceed the total Insured Amount for the items already insured under this section;
- b) You give Us written notice within ninety (90) days of the hire or purchase and commissioning of the item(s) and pay the appropriate extra premium on a pro rata basis together with any applicable statutory charges;
- c) the items are, as far as You are aware, suitable for service, free from material defect and in sound working condition;
- d) the items shall not be insured until successfully commissioned and all relevant statutory provisions for inspection and certification have been fulfilled;
- e) the limits and Excess as shown in the Schedule shall be the same as for similar items already insured.

## 2. **Repair costs**

The cost of consulting engineers' fees (excluding fees for preparing a claim) necessarily incurred with Our written consent, in the reinstatement of Plant and Machinery and Electronic Plant. Provided that where the Insured Amount is exhausted We will pay an additional amount of up to \$5,000 in respect of this Additional benefit.

## 3. **Inflation protection**

The Insured Amounts on items of Plant and Machinery and Electronic Equipment shall at the time of loss be increased according to the consumer price index by the proportion which the number of days since the commencement of the Period of Insurance shall bear to the whole of such period.

## **PARTS 1 AND 2 - CONDITIONS**

### 1. **Newly installed items**

At the end of each Period of Insurance You shall furnish Us with details of any items newly installed or which have been deleted during the Period of Insurance. Additional or return premiums shall be calculated corresponding to the type and value of the items and the Period of Insurance from the time of completion of the successful commissioning of the items. Provided that Our liability for all additional items will not exceed fifty percent (50%) of the total Insured Amounts or Limit of Liability as stated in the Schedule.

### 2. **Inspection**

You shall permit Us or Our representative at all reasonable times the right to inspect and examine any items insured by this insurance.

3. **Claims and repair procedure** (See also General Condition 7 - 'Claims')

In the event of any Insured Damage which might give rise to a claim under this insurance You must preserve the parts affected and make them available for inspection by Us or Our representative.

Upon notification of any Insured Damage being given to Us, You may carry out repairs or make good any minor Insured Damage, but in all other cases You must give Us or Our representative an opportunity to inspect the Insured Damage before any repairs or alterations are effected. If no inspection is carried out by Us or on Our behalf within a period of time which is reasonable having regard to the location of the risk, weather conditions and/or other relevant factors, You may proceed with such repairs or replacement.

4. **Due care**

Nothing contained in this section or in any other condition of this insurance will relieve You of any obligation to take such steps as are necessary to ensure that the operation of the Insured Items is at all times carried out so as to minimise the risk of any claim being made under this Section 5.

Insurance cover will cease for any Insured Item which has sustained damage and is operated unless it has been repaired properly and without delay.

5. **Alteration**

You shall notify Us in writing of any intended alterations of or departure from normal working conditions which You know (or a reasonable person in the circumstances could be expected to know) would materially increase the risk.

**DEFINITIONS APPLICABLE TO PARTS 1 AND 2 OF SECTION 5**

**The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.**

**"Boilers, Pressure Vessels and Pressure Pipe Systems"** means the permanent structure of those Insured Items which are subject to internal steam, gas or fluid pressure (other than atmospheric pressure) including all direct attachments connected to the permanent structure and includes with respect to Boilers the rotating, reciprocating or electrical apparatus attached to them.

**"Dollar Excess"** means the amount specified in the Schedule that You shall first contribute towards each claim, arising out of the one occurrence.

**"Electronic Data"** means the information stored on the Electronic Data Media.

**"Electronic Data Media"** means the discs or tapes used in the computer to store the information.

**“Electronic Plant”** means all computers, word processors including all ancillary equipment attached thereto, Software, other electronic equipment and associated air conditioning equipment as specified in the Schedule as Insured Items.

**“Excess”** for the purposes of this section, the Excess may be a Dollar Excess or a Time Excess. We will subtract the applicable Excess from the claim otherwise payable and We will then pay to You the amount of loss or damage up to the applicable Insured Amount or Limit Any One Loss.

**“Indemnity Period”** means the period beginning with the occurrence of the Insured Damage and ending no later than the number of months specified in the Schedule during which the results of the Business shall be affected in consequence of the Insured Damage.

**“Insured Amount”** the relevant sum stated opposite each Insured Item as specified in the Schedule and applies where ‘Specified Items’ cover has been selected.

**“Insured Damage”** means sudden and unforeseen physical loss and/or physical damage to an Insured Item necessitating repair to allow continuation of use.

**“Insured Item”** means any item specified in the current Schedule.

**“Limit Any One Loss”** means the maximum amount We will pay for any one claim as specified in the Schedule and applies where blanket cover has been selected.

**“Plant and Machinery”** means electrical and mechanical items including electronic and other integral parts of the Insured Items including Boilers, Pressure Vessels and Pressure Pipe Systems as defined above.

**“Situation”** the Situation specified in the Schedule.

**“Software”** means the collection of programs which cause a computer to perform a desired operation or series of operations.

**“Time Excess”** the number of operating days specified in the Schedule during which You must bear the loss.

## SECTION 6 - PUBLIC AND PRODUCTS LIABILITY

This section only forms part of Your Policy when Section 6 - Public and Products Liability is shown as covered in the Schedule

### COVER

We agree (subject to the terms, Claims conditions, General Policy 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:

- 1) Personal Injury; and/or
- 2) Property Damage; and/or
- 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 Your Business.

### DEFENCE COSTS AND SUPPLEMENTARY PAYMENTS

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

- 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) pay all charges, expenses and legal costs incurred by Us and/or by You with Our written consent:
  - a) 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
  - b) in bringing or defending appeals in connection with such claim or suit;
- 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;
- 4) pay expenses incurred by You for:
  - a) 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);
  - b) temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof;

- c) 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;
- 5) pay all legal costs incurred by You with Our written consent for representation of You at:
- a) any Coronial inquest or Inquiry;
  - b) 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, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all defence costs and supplementary payments.

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.

#### **LIMITS OF LIABILITY AND EXCESS**

Subject to:

- a) the 'Claim preparation expenses' provision under 'General Policy conditions';
- b) the 'Defence costs and supplementary payments' clause above;
- c) item 4 of Additional Benefit 'Property in Your physical and legal control' below;

for General Liability 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 arising out of any one Occurrence.

For Products Liability 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 arising out of any one Occurrence, and in the aggregate during any one Period of Insurance.

The applicable limit of liability will not be reduced by the amount of any Excess payable by You.

## **ADDITIONAL BENEFIT APPLICABLE TO SECTION 6**

### **1. Property in Your physical and legal control**

Exclusion 20 will not apply to the following property:

- 1) premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of Your Business, but no cover is provided by this Policy if You have assumed the responsibility to insure such premises;
- 2)
  - a) premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with Your Business; or
  - b) 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) 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;
- 4) any property (except property that You own) not mentioned in clauses 1), 2), 3) and 5) of this additional benefit 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 4) shall not exceed \$250,000 or the amount stated in the Schedule, in respect of any one claim or series of claims arising out of any one Occurrence;
- 5) 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.

## **OPTIONAL EXTENSIONS APPLICABLE TO SECTION 6**

Where indicated on the Schedule as applying

### **1. Motor trade, excluding testing and delivery**

Additional benefit (Property in Your physical or legal control) of the Public and Products Liability cover section of this Policy includes:

- a) Vehicles for repairs, servicing, maintenance or storage whilst within the confines of Your premises; or

- b) whilst left stationary in the immediate vicinity of Your premises in any public or private road or thoroughfare subject to a maximum indemnity of \$100,000 any one Occurrence and an Excess of \$500.

Exclusion 23 (Vehicles) of the Public and Products Liability cover section of this Policy does not apply to Property Damage arising from any Vehicle (not owned by or leased to You) whilst within the confines of Your premises.

## 2. **Motor trade, including testing and delivery**

Additional benefit (Property in Your physical or legal control) of the Public and Products Liability cover section of this Policy includes:

- a) Vehicles for repairs, servicing, maintenance or storage whilst within the confines of Your premises or whilst left stationary in the immediate vicinity of Your premises in any public or private road or thoroughfare subject to a maximum indemnity of \$100,000 any one Occurrence and an Excess of \$500;
- b) Property Damage to any registered Vehicle not owned or leased by You but in Your physical or legal control for the purpose of repairs, servicing or garaging whilst such Vehicle is on any public roadway or thoroughfare whilst being tested and/or collected and/or delivered subject to a maximum indemnity of \$100,000 any one Occurrence and an Excess of \$500.

Exclusion 23 (Vehicles) of the Public and Products Liability cover section of this Policy does not apply to:

- c) Property Damage arising from any Vehicle (not owned by or leased to You) whilst within the confines of Your premises;
- d) Property Damage to any other property not being Your own or used by You or on Your behalf caused by the Vehicle as described and used in item b) of this clause. The maximum amount We will pay for Property Damage under this clause is \$100,000 any one Occurrence.

The indemnity provided by Optional extensions 1. and 2. above shall not apply to any Property Damage arising from:

- e) the use of any unsafe or unroadworthy Vehicle unless such condition could not reasonably be detected by You. This exclusion shall not apply if such Property Damage was not caused or contributed to by such unsafe or unroadworthy condition;
- f) the use of a Vehicle by:
  - i) any person with Your consent who is not licensed under any relevant law to drive such a Vehicle; or

- ii) anyone whose faculties are impaired by any drug or intoxicating liquor or by any person who is convicted of driving at the time of the Property Damage being under the influence of intoxicating liquor; or
- iii) anyone whose blood alcohol reading exceeds the legal limit (subject to any laws to the contrary); or
- iv) anyone who refuses to provide or allow the taking of a sample of breath, blood or urine for testing or analysis as required by the law of any State or Territory where the Property Damage occurred.

However We will cover You if You have allowed a person to drive a Vehicle in Your physical or legal control and You can prove that You were not aware that the Vehicle was being driven by or in charge of that person when they were so affected or unlicensed.

## **EXCLUSIONS APPLICABLE TO SECTION 6**

We do not cover any liability:

### **1. Advertising Injury**

for Advertising Injury:

- a) resulting from statements made at Your direction with knowledge that such statements are false;
- b) 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;
- c) resulting from any incorrect description of Products or services;
- d) resulting from any mistake in advertised price of Products or services;
- e) resulting from failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability; or
- f) incurred by any Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

### **3. Aircraft or Hovercraft**

for Personal Injury and/or Property Damage arising from:

- a) the ownership, maintenance, operation, or use by You of any Aircraft or Hovercraft;
- b) any property used for the purpose of an airport or any Aircraft landing strip.

4. **Aircraft Products**

arising out of any Products which an insured person knew or has reasonable cause to believe would be or is intended for incorporation into any critical part, the structure, machinery or controls of any Aircraft.

5. **Asbestos**

for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by, arising from or in any way connected to asbestos.

6. **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 for Personal Injury and/or Property Damage:

- a) 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;
- b) arising out of advice which is given by You for no fee;
- c) arising out of advice given in respect of the use or storage of Your Products.

7. **Contractual Liability**

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

- a) effect insurance over property, either real or personal;
- b) assume liability for Personal Injury and/or Property Damage and/or Advertising Injury regardless of fault; provided that this exclusion shall not apply with regard to:
  - i) liabilities which would have been implied by law in the absence of such contract or agreement; or
  - ii) liabilities assumed under Incidental Contracts; or
  - iii) terms regarding merchantability, quality, fitness or care of Your Products which are implied by law or statute; or
  - iv) liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

## 8. **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 the specific part and only that part of such product to which the damage is directly attributable.

## 9. **Employers Liability**

a) 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.

b) Imposed by:

i) 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;

ii) any law relating to Employment Practices.

c) For the purpose of exclusions 9 a) and 9 b):

i) the term 'Worker' means any person who is employed by You or who is 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.

ii) 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.

## 10. **Faulty Workmanship**

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

## 11. **Fines, Penalties, Punitive, Exemplary or Aggravated Damages**

for any fines, penalties, punitive, exemplary or aggravated damages.

12. **Genetically Modified or Engineered Organisms (GMO)**

for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by or arising out of the manufacture, importing, growing, blending, mixing or distributing of Genetically Modified or Engineered Organisms (GMO).

For the purpose of this exclusion, a Genetically Modified or Engineered Organism is defined to be a living plant, animal or microbe that has been altered by the addition or modification of a gene through the process of genetic engineering and contains genes or portions of genes from unrelated organisms.

13. **Information Technology Hazards**

caused or contributed by or arising directly or indirectly out of or in connection with:

- a) total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of electronic data and/or software;
- b) error in creating, amending, entering, directing, deleting or using electronic data and/or Software; or
- c) total or partial inability or failure to receive, send, access or use electronic data and/or Software for any time or at all, from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

14. **Libel and Slander**

for libel and slander:

- a) resulting from statements made prior to the commencement of the Period of Insurance;
- b) resulting from statements made at Your direction with knowledge that such statements are false;
- c) incurred by You if Your Business is advertising, broadcasting, publishing or telecasting.

15. **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.

**16. Loss of Use**

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

- a) a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- b) 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 16 b) 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.

**17. Pollutants**

- a) 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 watercourse or body of water;
- b) 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 17 a) and 17 b) 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.

**18. 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.

**19. 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.

**20. Property in Your Physical or Legal Control**

for damage to property not belonging to You but in Your physical and legal control other than the property described in 'Additional benefit 1 - Property in Your physical and legal control'.

**21. Property Owned by You**

for Property Damage to property owned by You.

**22. TSE**

for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by or arising out of Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new Variant Creutzfeldt-Jakob Disease (vCJD).

This Exclusion applies regardless of any other contributing or aggravating cause or event.

**23. Vehicles**

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

- a) which is registered or which is required under any legislation to be registered; or
- b) 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 a) and b) shall not apply where:

- i) that compulsory liability insurance or statutory indemnity does not provide indemnity, and
- ii) 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;
- iii) 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 Work Site;
- iv) the delivery or collection of goods to or from any Vehicle;
- v) the loading or unloading of any Vehicle;
- vi) any Vehicle temporarily in Your custody or control for the purpose of parking.

## 24. **Watercraft**

for Personal Injury and/or Property Damage arising from the ownership, maintenance, operation or use by You of any Watercraft exceeding eight (8) metres in length, whilst such Watercraft is on, in or under water.

Provided that exclusion 24 shall not apply with regard to claims arising out of:

- a) Watercraft used in operations carried out by any independent contractors for whose conduct You may be held liable;
- b) Watercraft owned by others and used by You for business entertainment.

### **CONDITIONS APPLICABLE TO SECTION 6**

These conditions apply to this section.

#### **1. Notification of occurrence, claim or suit**

You shall give:

- a) written notice (including facsimile transmission) via Your BIA broker, 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;
- b) 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.

#### **2. Your duties in the event of an occurrence, claim or suit**

- a) You shall not, without Our written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim;
- b) 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;
- c) 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.

### 3. **Our rights regarding claims**

- a) We have full discretion in the conduct of any legal proceedings and in the settlement of any claim. You must co-operate by giving Us any statements, documents or assistance We require. This may include giving evidence in any legal proceedings.
- b) 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:
  - i) 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
  - ii) any lesser sum for which the claim(s) can be settled.
- c) 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:
  - i) 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
  - ii) incurred by Us, or by You with Our written consent, prior to the date of such payment.

### 4. **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. **Cross liabilities**

This insurance extends to indemnify:

- a) each of the parties comprising the Named Insured; and
- b) 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 1 and 2 of 'Cross liabilities' in respect of claims made by any other of such parties.

Provided always that:

- c) each of such parties shall be separately subject to the terms, claims conditions, General Policy conditions, exclusions and definitions of this Policy in the same manner and to a like extent as though separate policies had been issued; and
- d) 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.

## 6. **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 any 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.

## 7. **Release**

Where You are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority 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 'Subrogation rights' of this Policy, We agree to waive all Our rights of subrogation against any such Authority in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

## **DEFINITIONS APPLICABLE TO SECTION 6**

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

**"Advertising Injury"** means injury arising out of:

- a) libel, slander or defamation; or
- b) any infringement of copyright or passing off of title or slogan; or
- c) unfair competition, piracy, misappropriation of advertising ideas or style of doing business; or
- d) 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.

**“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.

**“Electronic Data”** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic or electromechanical data processing or electronically-controlled equipment.

**“Employee”** means any person who is employed by You and/or in respect of whom You are required to have cover for workers Compensation or similar cover by any workers Compensation legislation.

**“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 or any prospective employee.

**“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 Defence Costs and Supplementary Payments.

**“General Liability”** means Your legal liability in respect of Personal Injury, Property Damage or Advertising Injury caused by or arising out of an Occurrence happening in connection with Your Business other than Products Liability.

**“Geographical Limit”** means:

Anywhere in the world, except North America where this section of this Policy will only apply in respect of:

- a) Products exported to North America without Your knowledge; and/or
- b) travelling directors, partners, officers, executives or Employees of the Insured whose normal place of residence is outside North America and who are not undertaking manual work or supervision of work in North America.

**“Incidental Contracts”** means:

- a) 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;
- b) 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;

- c) 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;
- d) those contracts designated in the Schedule.

**“Medical Persons”** means includes but is not limited to medical practitioners, medical nurses, dentists and first aid attendants.

**“Named Insured”** means:

- a) the person(s), corporations and/or other organisations specified in the Schedule;
- b) all existing subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured incorporated in Australia and/or any other organisations under the control of the Named Insured;
- c) 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 Australia and which are constituted or acquired by the Insured after the commencement of the Period of Insurance;
- d) 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 or controlled corporation or organisation caused by or arising out of Occurrences insured against by this Policy, which occurred prior to the divestment.

**“North America”** means:

- a) the United States of America and the Dominion of Canada;
- b) any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada; and
- c) any country or territory subject to the laws of the United States of America or the Dominion of Canada.

**“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 item e) of the definition of ‘Personal Injury’) 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.

**“Personal Injury”** means:

- a) bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and mental injury, including loss of consortium or services resulting therefrom;
- b) false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- c) wrongful entry or wrongful eviction;
- d) libel, slander or defamation of character or invasion of privacy, unless arising out of Advertising Injury;
- e) 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.

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

**“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 Your 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 Your Business including discontinued Products.

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

- a) food and beverages supplied by You or on Your behalf primarily to Your Employees as a staff benefit;
- b) 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.

**“Products Liability”** means Your legal liability in respect of 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.

**“Property Damage”** means:

- a) physical loss, destruction of or damage to tangible property, including the loss of use thereof at any time resulting therefrom; and/or
- b) 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.

**“Software”** means programs, procedures and routines associated with the operation of electronic or electromechanical data processing or electronically controlled equipment, including any operating system.

**“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 Work Site. Tool of Trade does not include any Vehicle whilst travelling to or from a Work Site or Vehicles that are used to carry goods to or from any premises.

**“Work Site”** means any premises or site where any work is performed for and/or in connection with Your 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.

**“You”, “Your” and “Insured”**

Each of the following is an Insured to the extent specified below:

- a) the Named Insured;
- b) every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive or 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 Your Business), or work experience persons or volunteers while such persons are acting for or on behalf of the Named Insured and/or within the scope of their duties in such capacities;
- c) 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;
- d) every principal in respect of the principal’s liability arising out of:
  - i) 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;
  - ii) 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;

- e) 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;
- f) 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;
- g) 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;
- h) the estates, legal representatives, heirs or assigns of:
  - i) any deceased or insolvent persons; or
  - ii) 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 h i) and h ii) above,

- i) 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.

**"Your 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:

- a) the ownership of premises and/or the tenancy thereof by You;
- b) the provision of any sponsorships, charities, galas, first aid, medical, ambulance or fire fighting service by You or on Your behalf;
- c) private work undertaken by Your Employees for any of Your directors, partners, proprietors, officers or executives;
- d) 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.

## SECTION 7 - GLASS

This section only forms part of Your Policy when Section 7 - Glass is shown in the Schedule.

### COVER

We cover You under the Glass section for Breakage at the Situation of the Glass shown on the current Schedule which occurs during the Period of Insurance.

### BASIS OF SETTLEMENT

We will at Our option either pay the cost to repair or replace broken Glass with Glass of similar or higher quality to comply with the requirements of The Standards Association of Australia, any statute or regulation.

### ADDITIONAL BENEFITS APPLICABLE TO SECTION 7

If a claim is payable by Us under the Glass cover section, We will also pay up to the greater of the limit defined below or the Insured Amount shown on the current Schedule for the reasonable cost to replace or repair the following additional items:

a) **External Glass –**

In the event of Breakage of External Glass, We will indemnify You for each of the following:

- i) replacing sign writing or ornamentation affixed to the broken Glass;
- ii) replacing burglar tape or wiring affixed to the broken Glass;
- iii) replacing shatter resistant or reflective film affixed to the broken Glass;
- iv) temporary shuttering, boarding up or other protection reasonably necessary for the safeguarding of the Business Premises or Contents therein, pending replacement of the broken Glass;
- v) replacing Damaged window frames and tiled shop fronts,

Our liability under this additional benefit during any one Period of Insurance is limited to \$8,000.

b) **Stock or contents**

We will pay for Destruction of, or Damage to Your Stock or Contents, caused by broken Glass following the Breakage of Glass where such Breakage constitutes an admissible claim under this section.

Our liability under this additional benefit during any one Period of Insurance is limited to:

- i) the value at cost, of the Stock or Contents Destroyed or Damaged, less any amount realised from the sale or salvage or;
- ii) the sum of \$8,000, whichever is the lesser.

c) **Signs**

Glass or plastic which forms part of an illuminated Sign and which is damaged during the Period of Insurance. This additional benefit is subject to a sub-limit of liability of \$8,000 or any higher sub-limit stated in the current Schedule for 'Signs'. The admissibility of claims for damage to Signs shall not be contingent upon other damage to Glass.

d) **Overtime**

We will pay the reasonable costs for after-hours service by repairers, express delivery and overtime charges to repair or replace broken Glass.

e) **Malicious damage**

Malicious damage to External Glass. This additional benefit is payable even where there is no Breakage of External Glass.

#### **EXCLUSIONS APPLICABLE TO SECTION 7**

Under the Glass cover section We will not pay the cost to repair or replace broken Glass:

- a) which is Stock;
- b) which is chipped or in poor condition when the Period of Insurance commences;
- c) which is part of any glasshouse, conservatory, radio, television screen, computer screen, vase, picture, crystal, crockery, china, or Glass item normally carried by hand.

## DEFINITIONS APPLICABLE TO SECTION 7

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

**“Breakage”** means:

- a) for plate or sheet Glass or porcelain, a fracture extending through the entire thickness of the Glass or porcelain;
- b) for laminated Glass, a fracture extending through the entire thickness of a lamination but not any other damage or disfiguration.

**“External Glass”** means:

- a) Glass, or plastic material used as Glass fixed in external windows, doors, showcases or skylights forming part of the Business Premises.
- b) ceramic tiled shop fronts.
- c) frames of showcases, display cabinets and counters containing the broken Glass.

**“Glass”** means ‘Internal Glass’, ‘External Glass’ and ‘Specified Glass’

**“Internal Glass”** means:

- a) Glass or plastic material used as Glass in internal partitions, windows and doors, Glass forming shelves and/or stock restraints, interior showcases, fixed mirrors and other fixed internal Glass including ceramic vitreous china urinals, toilet pans and hand basins; and
- b) showcase frames, display cabinets and counter frames.

**“Premises”** means the buildings at the Situation.

**“Sign”** means Glass or plastic that forms part of a Sign.

**“Specified Glass”** means Glass specifically designated in the Schedule under Specified Glass.

## SECTION 8 - GENERAL PROPERTY

**This section only forms part of Your Policy when Section 8 – General Property is shown as covered in the Schedule.**

The current Schedule will show which of the cover options A, B and/or C applies to Your Policy.

### **COVER A - Accidental Loss or Damage**

We cover You for Accidental Loss of or Damage to the General Property items listed on the current Schedule, up to the Insured Amount, which occurs during the Period of Insurance subject to the General Exclusions of this Policy and the Specific Exclusions of this section.

### **COVER B – Fire, theft, collision and other expressed perils**

We cover You for Loss or Damage to the General Property, up to the Insured Amount, which occurs during the Period of Insurance subject to the General Exclusions and the Specific Exclusions of this Section where the Loss or Damage is caused by:

- a) Fire lighting, explosion, malicious damage or vandalism;
- b) Theft following forcible and violent entry which causes visible Damage to a locked Vehicle or building;
- c) Theft of equipment securely attached to a Vehicle through use of locks or padlocks, which results in visible Damage to the securing devices;
- d) Collision or overturning of the conveying Vehicle.

### **BASIS OF SETTLEMENT – Covers A and B**

We will at Our option either:

- a) pay You the replacement cost of the General Property at the time of Loss or Damage; or
- b) repair the General Property to a condition equal to but not better or more extensive than its condition when new; or
- c) replace the General Property with a new item that has the same features that are nearly the same as (but not less than) the item being replaced.

### **COVER C – Goods in transit**

When the Goods in transit cover option is stated on the Schedule, We will cover You up to the limit specified in the Schedule for this cover option, less the Excess, for Loss of or Damage to goods belonging to You or for which You are legally responsible, whilst in the normal course of transit by road Vehicle owned or operated by you anywhere in Australia, caused by the following insured events:

- a) Collision or overturning of the conveying Vehicle;
- b) Fire, lightning or explosion;
- c) Theft resulting from forcible and violent entry evidenced by visible Damage to the securely locked portion of a Vehicle containing Your item.

**Basis of settlement – Cover C**

In the event of a claim the value of goods Lost or Damaged shall be taken as:

- a) for goods sold – Your invoice value;
- b) for goods purchased – the purchase price as shown on the invoice;
- c) all other goods including plant transfers – market value.

**Exclusions – Cover C**

We will not be liable under this cover option for Loss of or Damage to:

- a) Money;
- b) jewellery, watches, furs, antiques, paintings, works of art, precious metals or precious stones or articles composed of any of them;
- c) explosives, petroleum products in bulk or gas in bulk;
- d) livestock;
- e) cigarettes, tobacco, wines, spirits or other alcoholic beverages unless specified in the Schedule

We will not be liable for Loss or Damage as a result of:

- f) delay, loss of market, consequential loss of any kind, depreciation or deterioration;
- g) collision or contact by the conveying Vehicle with the kerb or uneven road surface;
- h) theft by any of Your employees whether acting alone or in collusion with others;
- i) electrical or mechanical derangement unless Damage is visible to the exterior of the machine.

**Exclusions – Covers A, B and C**

What You are not covered for under this section.

- 1) We will not cover Loss of or Damage to General Property under the General Property cover section which is:
  - a) covered under any other section of this Policy.
  - b) being constructed, erected, altered, manufactured, cleaned or repaired.

2) We will not cover Loss or Damage caused by:

- a) wear and tear, fading, scratching or marring, rust, corrosion, mildew, mould, contamination or pollution, wet or dry rot, change of colour, flavour, texture or finish, dampness of atmosphere, variations in temperature, evaporation, disease, inherent vice, latent defect, loss of weight, depreciation, gradual deterioration or developing flaws, normal upkeep or making good, smut or smoke from industrial operations (other than sudden or unforeseen Damage resulting therefrom);
- b) insects or vermin such as rats, mice, rabbits, possums and birds;
- c) faulty materials;
- d) faulty workmanship;
- e) mechanical, electrical or electronic breakdown.

Exclusion 2 applies to the part first and immediately affected and does not extend to subsequent Damage to other parts of the property occasioned by a peril which is not otherwise excluded.

3) We will not cover:

- a) General Property not being used by You in accordance with the manufacturer's instructions;
- b) any legal liability of whatsoever nature;
- c) consequential loss of any kind.

#### **DEFINITION APPLICABLE TO SECTION 8**

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

“General Property” means the property listed on the current Schedule under the General Property cover section.

## SECTION 9 - EMPLOYEE DISHONESTY

This section only forms part of Your Policy when Section 9 - Employee Dishonesty is shown as covered in the Schedule.

### COVER

1. After You have:
  - a) provided to Us the Claim Documents; and
  - b) made available to Us for interview all persons nominated by Us who in Our opinion will be helpful to assist Us to investigate Your claim or a Loss;

We will indemnify You against Loss.

2. The amount of the indemnity will be determined in accordance with the clauses under the heading Basis of Settlement.

### BASIS OF SETTLEMENT

- a) Our total liability for all Losses and Claims Preparation Fees during the Period of Insurance shall not exceed the Limit of Indemnity shown on the Schedule.
- b) Our liability for all Losses relating to acts of fraud or dishonesty committed by one Employee, or any Group of Employees, or any number of Groups of Employees that contain one common Employee, will not exceed the Limit per Employee shown on the Schedule.
- c) Our liability will be reduced by the sum of all moneys to which an Employee who caused a Loss would have been entitled, but which are retained by You or which You are entitled to retain.
- d) We will be liable only for that part of the Loss that exceeds the Excess shown on the Schedule or on any endorsement to this Section

### ADDITIONAL BENEFITS APPLICABLE TO SECTION 9

#### 1. Automatic reinstatement

When the Limit of Indemnity is reduced following the discovery of Employee fraud covered by this section, We will automatically increase the reduced amount to the Limit of Indemnity shown in the Schedule.

Provided that:

- a) You pay the additional premium that We require.
- b) The maximum amount We will pay for all acts of Employee fraud involving a specific Employee remains limited in the aggregate to the Limit of Indemnity; and
- c) Such reinstatement shall occur only once.

## 2. **Claims preparation fees**

If We are liable to indemnify You against a Loss and where the Limit per Employee and the Limit of Indemnity are not otherwise exhausted, the cover is extended to indemnify You against:

- a) the fees payable by You to Your auditors; and
- b) all other costs, charges and expenses; reasonably and necessarily incurred by You with Our consent in the preparation of a claim; but the most We will pay under this Additional Benefit is ten per cent (10%) of the Limit per Employee or \$25,000, whichever is the lesser.

## 3. **Retroactive cover**

The insurance provided under this section also applies to any Loss by fraud or dishonesty committed during the currency any previous policy provided that:

- a) the discovery period in such previous policy has expired,
- b) the fraud or dishonesty is discovered within:
  - i) the period of this Policy; or
  - ii) twelve (12) months of the termination of this Policy; or
  - iii) twelve (12) months after the termination of the employment of the Employee concerned;whichever shall first occur.
- c) The cover We provide will fall within and not be in addition to the Insured Amount shown in the Current Schedule.

## 4. **Superannuation funds**

The Definition of You, Your, includes any superannuation or pension scheme formed by You and exclusively for the benefit of Employees, but does not include any scheme that is administered by a professional funds manager.

## 5. **Welfare, social or sporting club**

The Definition of You, Your, includes any welfare, social or sporting club formed with Your knowledge and consent exclusively for the benefit of Employees and their families.

## EXCLUSIONS

This section does not cover Loss arising from an act committed by an Employee after You have knowledge of, or reasonable cause to suspect, the commission by the Employee of an act of fraud or dishonesty, unless if, when You first obtained the knowledge or reasonable cause for suspicion:

- a) the Money negotiable instruments or goods that are the subject of the Loss were in the possession of the Employee; and
- b) You immediately took all reasonable action to regain possession of the Money, negotiable instruments or goods.

## CONDITIONS

### 1. Notification of loss

You must:

- a) notify Us in writing within 28 days after discovery by You of Loss, or any act of fraud or dishonesty that may give rise to a Loss or after You first have reasonable cause for suspicion thereof; and
- b) deliver to Us as soon as practicable, after the notice in a), the Claim Documents and full details in writing of the Loss and of Your claim under this Section.

### 2. Observance of system of audit, supervision and checks

You must observe the system of audit, supervision and checks which, in connection with this Section, You stated to Us that You observe.

### 3. Notification of alteration of risk

You must as soon as practicable notify Us in writing of any change that will or might increase the risk, including:

- a) a change in the nature of the Business;
- b) Your non-observance of the system of audit, supervision and checks which, in connection with this Section, You stated to Us that You observe; so that We may either cancel the Section or agree to the variation of its terms and conditions.

### 4. Prevention of further loss after discovery

You must, immediately when You discover Loss, take all reasonable steps to regain possession of the Money or goods and take all reasonable steps to prevent further Loss occurring.

## 5. **Unidentifiable employees**

Where a Loss is caused by an unidentifiable Employee, cover is subject to You proving that the Loss was caused by fraud or dishonesty of an Employee and any cost incurred in proving this will be at Your expense and will not be payable under Additional Benefit Claims Preparation Fees.

## 6. **Our rights of conduct and recovery**

- a) We will, upon Your notice to Us of a Loss, have the right to recover the Loss and We will have full discretion in the recovery of the Loss;
- b) You must not in any way prejudice Our right or ability to recover a Loss;
- c) You must co-operate with Us fully in the recovery of a Loss.

## **DEFINITIONS**

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

“**Claim documents**” means:

- a) the documentation created in the preparation of, or evidencing, a claim; and
- b) all records and documents that may assist Us to investigate:
  - i) a claim; or
  - ii) a Loss; or
  - iii) Your right of recovery in consequence of a Loss;

including electronic records, computer records, video and audio recordings, working papers, internal memoranda, reports, accounting records and audit documents.

“**Employee**” means:

- a) a person:
  - i) employed by You under a contract of service; or
  - ii) assigned, by any agency whose business it is to furnish personnel, to perform Employee duties for You, in the ordinary course of the Business, during the Period of Insurance, and whom You have the right to direct in the detail of that person’s performance of work;
- b) a former Employee during a period of not more than 30 days following the cessation of that person’s service;
- c) a Group of Employees, which means:

- i) two or more Employees acting in collusion;
- ii) an Employee acting alone and also acting as a member of a Group of Employees;
- iii) two or more Groups of Employees having an Employee in common.

However, Employee does not include:

- d) a person who is not directly paid remuneration by You other than as described in a)ii) above; or
- e) a person who is one of Your directors or trustees, except when performing acts within the scope of the usual duties of an Employee; or
- f) a person who is a member of any committee that examines or audits or has custody of or access to Your money, negotiable instruments or goods.

**“Limit of indemnity”** means the Limit of Indemnity of Employee Dishonesty insurance shown in the Schedule for all Losses during the Period of Insurance.

**“Limit per Employee”** means the Limit per Employee for Employee Dishonesty insurance, shown in the Schedule, in respect of any Loss or all Losses caused by an act or acts of the one Employee.

**“Loss”** means direct loss:

- a) of:
  - i) Money;
  - ii) negotiable instruments; or
  - iii) goods;

which belong to You, or are in Your possession and for the loss of which You are liable;
- b) occurring in the ordinary course of the Business;
- c) caused directly by an act of fraud or dishonesty:
  - i) of an Employee; and
  - ii) committed within twelve (12) months before discovery by You of the act of fraud or dishonesty, and
- d) discovered by You:
  - i) during the Period of Insurance; or
  - ii) if this Section is not renewed or is cancelled, within twelve (12) months after the Period of Insurance or the date of cancellation for this Section of the Policy;

but in either case no later than twelve (12) months after the cessation of employment of the relevant Employee, and does not include cover for any indirect or consequential loss whatsoever.

## SECTION 10 - TRANSIT

This section only forms part of Your Policy when Section 10 - Transit is shown as covered in the Schedule.

### COVER

We will cover You for Loss of or Damage to Goods, whilst in Transit within Australian territories.

We will also cover Loss of or Damage to Goods while at any exhibition or display (other than in Your own or controlled Business Premises), limited to a maximum of fourteen days. We will not pay more than \$10,000 for Goods at any one exhibition or display.

If the Transit is interrupted or terminated due to insolvency or financial default of the carrier, whether or not Loss or Damage is caused to the Goods, We will pay the extra costs of freight or storage to forward the Goods to their intended destination, or to return the Goods to the place from which they were despatched, up to a maximum of 10% of the Insured Amount of the Goods.

### EXCLUSIONS APPLICABLE TO SECTION 10

We will not pay for Loss of or Damage:

- a) that existed prior to the commencement of the Transit;
- b) to Temperature Controlled Goods, arising from any variation in temperature, unless the variation in temperature is directly caused by:
  - i) fire, explosion, lightning or Flood;
  - ii) collision, jack-knifing, overturning or derailment of the Conveyance;
  - iii) crashing or forced landing of the conveying Aircraft;
  - iv) breakdown resulting in stoppage or malfunction of refrigerating machinery and the subsequent failure to perform its normal refrigeration cycle for more than four (4) consecutive hours;
- c) to Goods sent by post, unless by registered post;
- d) caused by ordinary leakage, ordinary loss in weight or volume;
- e) that arises as a result of Goods being worked upon;
- f) to Goods caused by electronic, electrical or mechanical breakdown, malfunction or failure. However, this exclusion will not apply where such breakdown, malfunction or failure occurs to the Conveyance;

- g) arising from Theft of Goods if the Conveyance, building, situation, warehouse or place of storage used during the Transit is not securely locked when unattended;
- h) arising from insufficiency or unsuitability of packing, preparation or stowage of the Goods by You or Your Employees;
- i) arising from unfitness of any Conveyance or packaging for the safe carriage of the Goods where You had knowledge of the unfitness prior to the commencement of the Transit;
- j) as a result of unexplained shortage or disappearance;
- k) arising from delay, loss of market, depreciation, deterioration or any other consequential cause or loss or profit, except as may be provided by any extension to this section.

## **BASIS OF SETTLEMENT**

### **1. NON-TEMPERATURE CONTROLLED GOODS**

#### **a) What We pay for Loss of or Damage to plant, machinery, computers and the like up to five years of age:**

At Our option We will pay the lesser of:

- i) the cost of repairing the Goods to a condition equal to but not better or more extensive than when new (including the reasonable costs of any necessary overtime);
- ii) in the case of purchase or sale, the purchase or sale price plus the cost of packing and transport; or
- iii) in the case of movement of return Goods (inwards or outwards), Stock Transfers and movement of Goods, other than for the reason of purchase or sale, the new replacement cost or, if not available, as near as possible to the same make, model and specifications as is available, whichever is the lesser

#### **b) What We pay for Loss of or Damage to plant, machinery, computers and the like more than five years old**

At Our option We will pay the lesser of:

- i) the cost of repairing or reinstating the Goods to a condition equal to but no better or more extensive than its condition immediately prior to the Loss or Damage (including the reasonable cost of any necessary overtime)
- ii) in the case of a purchase or sale, the purchase or sale price plus the cost of packing and transport; or

- iii) in the case of movement of return Goods (inwards or outwards), Stock Transfers and movement of Goods, other than for the reason of purchase or sale, We will pay the greater of the written down book value in your books of account or the current market value, whichever is the lesser

**c) What We pay for Loss of or Damage to Non-Temperature Controlled Goods other than plant, machinery, computers and the like**

At Our option We will pay the lesser of:

- i) the cost of repairing or reinstating the Goods to a condition equal to but not better or more extensive than its condition immediately prior to the Loss or Damage (including the reasonable cost of any necessary overtime); or
- ii) the invoice value covering the Goods while in Transit (including freight if separately invoiced to the receiver of the Goods), or if there is no invoice value, the cost of replacing the Goods with similar goods of the same quality or as near as possible to that quality, whichever is the lesser.

**2. TEMPERATURE CONTROLLED GOODS**

**What We pay for Loss of or Damage to Temperature Controlled Goods other than plant, machinery, computers and the like**

At Our option We will pay the lesser of:

- a) the cost to re-condition the Goods (including the reasonable costs of any necessary overtime); or
- b) the invoice value covering the Goods while in Transit (including freight if separately invoiced to the receiver of the Goods), or if there is no invoice value, the cost of replacing the Goods with similar goods of the same quality or as near as possible to that quality, whichever is the lesser.

**3. BRANDED GOODS**

For any Damaged Goods bearing identifying brands or labels or other permanent markings, the Goods may be retained by You to dispose of as You see fit, provided a reasonable allowance is agreed for the value of the Goods and this allowance is deducted from the claim settlement. Where only the labels or packaging are effected, We will pay You only the cost to recondition or replace those labels or packaging.

## LIMITS TO WHAT WE PAY

The most We will pay for:

- a) All goods in any one Conveyance is the Insured Amount shown in the Schedule.
- b) Trade samples in Transit in Your or Your Employee's care, custody or control, is \$10,000 any one claim or series of claims arising from any one event.
- c) Shipping containers in your care, custody or control, to the extent that you are legally liable to pay for any Loss of or Damage to them, is \$10,000 any one claim or series of claims arising from any one event.

## EXCESS

You must pay the amount of any Excess shown in the Schedule for each claim You make under this section.

## ADDITIONAL BENEFITS

Cover provided under this section is extended to include the following additional benefits.

### 1. On forwarding and transfer

Where Loss of or Damage to Goods, which occurs during the Period of Insurance, is the result of:

- a) an insured event;
- b) a collision involving, or overturning or derailment of the Conveyance;

We will cover You for the reasonable costs incurred for transferring, storing and/or forwarding the Goods to a suitable place.

The most We will pay under this additional benefit is limited to 15% of the Insured Amount for this section or \$10,000, whichever is the lesser, for any one loss.

### 2. Removal of debris

Where a claim is payable under this section, We will also pay the reasonable costs incurred to remove, transport and dispose of Goods that are subject to the claim, provided that You are legally obliged to bear such costs.

The most We will pay under this additional benefit is limited to 15% of the Insured Amount for this section or \$10,000, whichever is the lesser, for any one loss.

### 3. Minimisation costs

We will pay the reasonable costs incurred to avoid or minimise any further Loss of Damage to the Goods.

#### 4. **Air freight of replacement parts**

We will pay the cost of air freighting replacement parts from suppliers to the original destination, even if the original Transit was not by air freight.

We will not pay more than \$10,000 any one claim or series of claims arising from any one event. The amount We pay under this Additional Benefit will be in addition to the Insured Amount for this section.

### **CONDITIONS APPLICABLE TO SECTION 10**

#### 1. **Benefit of insurance**

The carrier or any other bailee of the Goods cannot claim any benefit under this section.

#### 2. **Claims procedure**

In addition to General Condition 6.- Claims of this Policy, You must also:

- a) ensure that delivered containers and seals are examined immediately by a responsible official of the receiver.

If the container is delivered Damaged or with seals broken or missing or with seals other than stated in the shipping documents, note the delivery docket accordingly and retain all defective or irregular seals for subsequent identification.

- b) If the Damage was not immediately apparent at the time of delivery, apply immediately for surveys to be performed by the carrier or other person who had charge of the Goods to be conducted within three (3) days of delivery.

Any admissible claim under this section will not be prejudiced where packages containing Goods, excluding shipping containers, are not opened and unpacked immediately upon receipt into store, and Loss or Damage is only discovered by You when the packages are opened or unpacked, provided that the Loss or Damage has been discovered not later than ninety (90) days after the receipt of packages by the receiver.

#### 3. **General average and salvage clause**

If Your Goods are being transported by sea between Australian ports and General Average is declared, We insure Your proportion of the General Average and/or salvage contribution irrespective of the amount insured being less than the contributory value, subject always to the Limit stated in the Schedule.

In the event of a General Average contribution arising under this section, contact Us before signing any General Average bond.

#### 4. Pairs and sets

In respect of a claim payable under this section, where any Goods consist of articles in a pair or set, We will not pay more than the value of any particular article(s) of the pair or set which may be Lost or Damaged without reference to any special value which such article or articles may have as part of such pair or set, nor more than a proportionate part of such pair or set.

#### DEFINITIONS APPLICABLE TO SECTION 10

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

**“Conveyance”** means any ship, vessel, aircraft, registered postal service (except in the case of Temperature Controlled Goods), rail and road vehicle used to transport the Goods.

**“General Average”** means any extraordinary sacrifice or expenditure that is voluntarily and reasonably made or incurred for the purpose of preserving property at risk in a sea voyage.

**“Goods”** means Your goods that you sell, buy or use in Your Business being the following:

- a) Non-Temperature Controlled Goods if shown as covered in the Schedule;
- b) Temperature Controlled Goods if shown as covered in the Schedule;
- c) trade samples;
- d) return insured Goods;
- e) Stock Transfers;
- f) retail and sales packaging

**“Non-Temperature Controlled Goods”** means goods belonging to You which are not Temperature Controlled Goods.

**“Stock Transfer”** means transfer of stock between your Business Premises.

**“Temperature Controlled Goods”** means goods belonging to you that required a controlled temperature environment for Transit.

**“Transit”** means the time during the Period of Insurance from when Goods first begin loading at the warehouse, situation or place of storage on or in to the Conveyance and continues through the ordinary course of transit, until the Goods are first placed inside the receiver’s warehouse, situation or place of storage.

## SECTION 11 - TAX AUDIT

This section only forms part of Your Policy when Section 11 -Tax Audit is shown as covered in the Schedule.

### COVER

We will cover You for Professional Fees reasonably and necessarily incurred by You in connection with an official Tax Audit by an Authority, which is commenced and notified to Us during the Period of Insurance. There are three mutually exclusive cover options available for this insurance.

The nature and extent of cover provided under this section 11 will depend on whether You select:

1. **Business Audit Only** - with Investigation Cover (which provides cover under this section excluding Extension 2 - Directors' Personal Tax Returns); or
2. **Business and Directors Audit** - with Investigation Cover (which provides cover under this section including Extension 2 - Directors' Personal Tax Returns); or
3. **Individual Cover** (which provides cover under this section for insureds, who are not companies, and in respect of the personal income tax Returns of their spouses excluding Extension 2 - Directors' Personal Tax Returns).

The cover You select will be shown in the Schedule.

### EXCLUSIONS

This section does not cover:

- a) any Professional Fees incurred without Our prior written consent;
- b) any claim or claims caused by or arising out of any income return that has not been prepared or reviewed prior to dispatch by Your Tax Agent. However, this exclusion does not apply to any Return for:
  - i) prescribed sales tax;
  - ii) income derived from any payment under a contract of employment of service between You and any other person, company or entity, other than when that payment is paid by a company for which You are a director or have a controlling interest;
  - iii) income derived from any payment from superannuation, pension or other retirement benefit; or

- iv) income derived from personal investments that You are not wholly or mainly dependent on;
- c) You:
  - i) if You bring about a Tax Audit through Your failure to lodge taxation or any other return within the time limit prescribed by statute or through any extension of time granted by the Authority;
  - ii) if You make a statement to the Authority or Your Tax Agent that omits a material particular or is false or misleading; or
  - iii) if You bring about a Tax Audit by Your failure to pay all taxes by the due date or within any extension of time granted by the Authority;
- d) the amount of any fine or penalty that You may be ordered to pay by any Authority or court;
- e) any amount that You are unable to recover because of a contract or agreement that You have entered into that excludes or limits Your rights to recover that amount;
- f) any tax return prepared:
  - i) by a person who ordinarily resides outside Australia;
  - ii) for a company, firm or entity which operates outside Australia;
- g) Professional Fees incurred relating to Tax Audits of income received or earned where the source of income is outside Australia;
- h) any claim arising from any Tax Audit for which notice or information was received by You or Your Tax Agent before the inception of this section;
- i) any claim or claims caused by or arising out of any inquiry from an Authority which is not related to either an identified intention to conduct a Tax Audit or is not directed at obtaining information or data for a possible future Tax Audit;
- j) any claim or claims caused by or arising out of any fraudulent act or fraudulent omission or statement made by You to an Authority.

However, this exclusion does not apply when a false or misleading statement made by You results from:

- i) You being misled by the Authority, when You did not and could not be expected to know that statement was false or misleading; or
- ii) a matter which You can demonstrate to Our satisfaction to be a contentious matter;
- k) any claim or claims caused by or arising out of Your improper, unwarranted or unjustified refusal or failure to comply with any request made by the Authority.

Refusal or failure to comply will not be deemed improper, unwarranted or unjustified if You refuse or fail to comply based upon the reasonable advice of Your Tax Agent or professional adviser that such refusal or failure is appropriate and You provided Your Tax Agent or professional adviser with all relevant documents and information.

- l) any claim or claims caused by or arising out of any wrongful act committed by You with wilful, dishonest, fraudulent, malicious or criminal intent;
- m) any Tax Audit where a return has been prepared lodged or submitted dishonestly or fraudulently, and where the supporting documents have been falsely created or collected;
- n) any Tax Audit where the Australian Taxation Office, or where a Tax Agent assesses Your behaviour as being a case of deliberate evasion or recklessness;
- o) any routine enquiries, or enquiries from the Tax Agent which are not identified as being either preliminary to, or relating to a Tax Audit of a return;
- p) Professional Fees that are:
  - i) associated with any criminal prosecution;
  - ii) associated with any return lodged outside Australia;
  - iii) in respect of any person or organisation ordinarily resident outside Australia;
- q) any:
  - i) amounts sought by any amended notice of assessment;
  - ii) additional tax, duty, government impost or the like; or
  - iii) costs in legally pursuing or defending any legal actions against You or initiated by You (unless it is at Our discretion);
- r) any Tax Audit that includes a refund or claim for tax or duty relief arising out of an arrangement, facility, financial structure or the like adopted for the principal purpose of obtaining that refund or relief, unless the arrangement has received prior written approval from the relevant government or government authority or agency before being offered to You or the general public;
- s) any form of activity involving a periodic review relevant to You maintaining industry status, licence, compliance, membership, any form of occupational health and safety compliance, or any similar requirements;
- t) any form of activity involving a review of how the professional firm assisting You undertakes its professional duty;
- u) any form of practice or procedural audit of any of Your files;
- v) any activity involving a statutory authority;

- w) any activity agency gathering information or data that is not part of a formal Tax Audit; or
- x) any activity involved in the familiarisation, education, training, application, implementation, process or operation of any amendments or changes to existing or the introduction of new statutory or industry regulation.

#### **EXTENSIONS APPLICABLE TO SECTION 11**

If We agree to pay a claim for Professional Fees under this section the cover provided under the following extensions will also apply.

##### **1. Reinstatement of Insured Amount**

If We pay an amount for a claim under this section We will automatically reinstate the Insured Amounts under this section. You will not have to pay any additional premium.

##### **2. Directors' Personal Tax Returns (for Business and Directors Audit - with Investigation Cover only)**

If the Schedule shows that You have selected 'Business and Directors Audit - with Investigation Cover' and You are a company, We will also pay for Professional Fees reasonably and necessarily incurred by each director in connection with an audit by an Authority of the director's and their spouse's personal income tax Returns that are lodged with that Authority which is commenced and notified to Us during the Period of Insurance.

The amounts payable under this extension are included in, and do not apply in addition to, the 'Business and Directors Audit - with Investigation Cover' Insured Amount.

This extension will not apply if the Schedule shows that You have selected 'Business Audit Only - With Investigation Cover' or 'Individual Cover'.

##### **3. Travel and accommodation expenses**

We will reimburse You for travel and accommodation expenses incurred by You or Your Employees if they are reasonably and necessarily incurred to substantiate the claim.

#### **INSURED AMOUNTS**

Subject to Extension 1 - Reinstatement of Insured Amount, if the Schedule shows the cover is:

- a) **Business Audit Only - with Investigation Cover**, the most We will pay in respect of a Tax Audit commenced in the Period of Insurance is the Insured Amount shown in the Schedule; or
- b) **Business and Directors Audit - with Investigation Cover**, the most We will pay in respect of a Tax Audit commenced in the Period of Insurance relating to:

- i) the Insured named in the Schedule or any company, firm, partnership or trust in which the Insured named in the Schedule holds 50% or more ownership, interest or shareholding; and
  - (ii) each director named in the Schedule and their spouses;
- is the Insured Amount shown in the Schedule; or
- c) **Individual Cover**, the most We will pay in respect of a Tax Audit commenced in the Period of Insurance relating to all individuals named in the Schedule as insureds and their spouses is the Insured Amount shown in the Schedule.

## **EXCESS**

The Excess that applies is shown in the Schedule.

## **CONDITIONS APPLICABLE TO SECTION 11**

The following conditions apply to this section.

### **1. Claims**

For any claim:

- a) You must notify Us within 30 days of the first notice to You or your Tax Agent of a Tax Audit;
- b) You must keep Us fully informed of all developments as they occur;
- c) You must take all necessary and reasonable steps to minimise any delays and costs incurred or likely to be incurred;
- d) We have the right to directly access Your Tax Agent and lawyers and any documented advice they have given You relevant to the Tax Audit; and
- e) You must ensure that Your Tax Agent will and does assist Us with any matter We may pursue with the Authority.

### **2. Co-operation**

You must cooperate with Us fully in any investigation, negotiation, defence or settlement of any claim. This may include attending court to give evidence.

### **3. Conduct of Claims**

We:

- a) may appoint legal or other representatives to assist in the conduct of a claim;
- b) shall have the right and full discretion to conduct claims; and

- c) reserve the right to negotiate and settle any claim on terms We consider appropriate.

#### 4. **Authority matters**

- a) You must make a full and complete statement of the total income and profits or gains of a capital nature derived by You and of any deductions or capital losses during each tax year;
- b) You must be registered for GST purposes, if required by the operation of legislation; and
- c) all correspondence, requests and inquiries from the Authority must be dealt with within an acceptable time, taking all reasonable steps to minimise cost and delay.

#### **DEFINITIONS APPLICABLE TO SECTION 11**

The following words have the following meanings for this section only. You should also refer to the General Definitions section starting on page 14.

**Authority** means:

the Australian Taxation Office, a revenue office of an Australian State or Territory; a Commonwealth, State or Territory government department, body or agency which is duly authorised to conduct a Tax Audit.

**Designated Tax** means:

any tax assessable in accordance with the provisions, as amended, of the:

- a) Income Tax Assessment Act 1936 (Cth);
- b) Income Tax Assessment Act 1997 (Cth);
- c) Fringe Benefits Tax Assessment Act 1986 (Cth);
- d) A New Tax System (Goods And Services Tax) Act 1999 (Cth);
- e) Superannuation Guarantee (Administration) Act 1992 (Cth);
- f) Termination Payments Tax (Assessment And Collection Act) 1997 (Cth);
- g) Sales Tax Assessment Act 1930 (Cth);
- h) Sales Tax Assessment Act 1992 (Cth);
- i) any legislation of an Australian State or Territory relating to payroll tax; or
- j) any other legislation that is intended to replace any legislation referred to in a) to i) above.

**Professional Fees** means:

fees, costs and disbursements payable to a Tax Agent or professional person (other than You or Your Employee) in connection with a Tax Audit by an Authority.

Professional Fees does not mean any fees, costs or disbursements:

- a) that relate to any subsequent objection lodged with the Authority in respect of a Tax Audit;
- b) incurred after the Tax Audit has been completed; or
- c) incurred after 12 months from the commencement date of the Tax Audit other than when You can demonstrate to Our satisfaction that the delay in completing the Tax Audit was caused primarily by the Authority.

**Return** means:

any return legally required to be, and is actually lodged with, an Australian Commonwealth, Federal or State government or government authority or agency by You or on Your behalf.

**Tax Agent** means:

any person who is recognised by the Authority as a registered tax agent, as appropriate to the type of Designated Tax, who prepares returns and statements required by that Authority in respect of Your liability to pay a Designated Tax, including supervision of the preparation of, and review prior to dispatch of, those returns and statements.

Tax Agent does not mean You or a person working for You under a contract of employment.

**Tax Audit** means:

- a) the audit of a Return submitted by You or on Your behalf in respect of Your liability to pay any Designated Tax (including the amount of tax payable) following lodgement of a Return for that Designated Tax;
- b) any official inquiry, investigation, examination or review in respect of Your liability to pay any Designated Tax (including the amount of tax payable) following lodgement of a Return for that Designated Tax; or

If an official inquiry, investigation, examination or review referred to in paragraph b) above escalates or results in an audit as referred to in paragraph a) above, then this would be viewed as one Tax Audit for the purposes of this section.

For the purpose of this section:

- a) the Tax Audit commences at the time You or Your Tax Agent or professional adviser first receive notice of either an audit under paragraph a) above or an inquiry, investigation, examination or review, under paragraph b) above.
- b) the Tax Audit is complete when:
  - i) the auditor has given written notice to that effect;
  - ii) the auditor notifies Us that it has made a concluded decision about Your Returns;

- iii) when the auditor has issued an assessment or amended assessment of Your Returns; or
  - iv) in the absence of b) i), b) ii) or b) iii) where Your Tax Agent or professional adviser declares in writing that such an audit has been concluded.
- c) “You” includes any company, firm, partnership or trust in which You hold a 50% or more ownership, interest or shareholding.

## SECTION 12 - MANAGEMENT LIABILITY

This section only forms part of Your Policy when Section 12 - Management Liability is shown as covered in the Schedule.

### IMPORTANT INFORMATION

There are four Coverage Parts within this cover section:

Coverage Part 1 - Directors & Officers Liability

Coverage Part 2 - Employment Practices Liability

Coverage Part 3 - Statutory Liability

Coverage Part 4 - Company Liability Cover

The Schedule will indicate which Coverage Parts You have selected.

### COVERAGE PART 1 - DIRECTORS & OFFICERS LIABILITY

Note: This Coverage Part 1 is to be read in conjunction with the General Provisions section of this cover section.

#### a. Definitions

The following definitions apply to this Coverage Part 1 only:

“Claim” means:

- a) any written document served upon Your People marking the beginning of a civil, criminal, or arbitral proceeding against Your People alleging a Wrongful Act; or
- b) any written communication demanding compensation or threatening commencement of proceedings in respect of an actual or alleged Wrongful Act; or
- c) for the purpose of Extension 4 - General Investigation Costs and Expenses, Extension 5 - Occupational Health and Safety Costs and Extension 8 - Pollution Costs of this Coverage Part 1, any Investigation; or
- d) for the purpose of Extension 3 - Extradition Bail Bond Costs of this Coverage Part 1, any Extradition Proceeding.

**“Extradition Bail Bond Costs”** means:

the reasonable premium (not including any collateral) for a bond or other financial instrument to guarantee any of Your People’s contingent obligation for bail or equivalent, in any jurisdiction not excluded by this section, required by a court in respect of an Extradition Proceeding.

**“Extradition Proceeding”** means:

- a) A written request for extradition of any of Your People, a warrant for the arrest of any of Your People or other proceedings commenced by a writ, complaint, summons or other originating process against any of Your People under the provisions of the Extradition Act 1988 (Cth) and/or any associated regulations; and
- b) any associated appeals, including but not limited to the pursuit of judicial review proceedings, against the decision of the Attorney General or other appropriately authorised representative of the Australian Government to issue a surrender warrant under the Extradition Act 1988 (Cth); and
- c) the equivalent of the above in any other jurisdiction not excluded by this section.

A Wrongful Act of any of Your People is not required for cover for an Extradition Proceeding.

**“Loss”** means:

any amount which Your People are legally obligated to pay in respect of a covered Claim, including but not limited to:

- a) awards of damages or orders made by any court or tribunal to pay compensation;
- b) judgments;
- c) sums payable due to settlements to which We have consented (such consent not to be unreasonably withheld);
- d) awards of claimant’s costs;
- e) pre-judgment and post-judgment interest;
- f) Defence Costs;
- g) Investigation Costs and Expenses; and/or
- h) Extradition Bail Bond Costs covered under Extension 3 of this Coverage Part 1.

Loss does not include:

- i) any amount for which Your People are absolved from payment;
- ii) any punitive, exemplary or aggravated damages;
- iii) the multiple portion of any multiplied damages award;

- iv) any fines or penalties, other than any Statutory Fine covered under the waiver to Coverage Part 1, Exclusion 2;
- v) any taxes imposed by law, other than any taxes covered under Coverage Part 1, Extension 7 - Personal Tax Liability; or
- vi) any other amount which is uninsurable under the law pursuant to which this section is construed.

**“Wrongful Act”** means:

any error, misstatement, misleading statement, act, omission, negligence, breach of duty, libel, slander, breach of contract, breach of warranty, wrongful trading, or other act actually or allegedly committed or attempted by Your People in their capacity as a director, secretary, officer or Employee of Your Company or in an Outside Position. Wrongful Act also includes an Employment Related Wrongful Act.

#### **b. Coverage**

The following coverage applies to this Coverage Part 1 only:

##### **1. Individual Cover**

We will pay, on behalf of Your People, Loss for any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance or, if exercised, during the Discovery Period, provided Your People are not indemnified by You and are legally obligated to pay.

##### **2. Your Reimbursement Cover**

We will pay You for any Loss arising from Your indemnification of Your People, as permitted or required by law, and that Your People have become legally obligated to pay on account of any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance or, if exercised, during the Discovery Period.

#### **c. Extensions**

The following extensions apply to this Coverage Part 1 only:

##### **1. Additional Non-Executive Directors Limit**

In the event the payment of Loss exhausting the Limit of Indemnity, the limits of liability of any other policies operating in excess of this Policy and all other sources of indemnification available to a Non-Executive Director of Your Company, then We will pay to, or on behalf of Non-Executive Directors only, any Loss resulting from a Claim subject to the applicable Additional Non-Executive Directors Limit amount stated in the Schedule.

The Additional Non-Executive Directors Limit shall only apply in respect of Claims subsequent to, and completely unrelated and unconnected to, the Claim or Claims or the underlying facts and matters that led to, the exhaustion of the Limit of Indemnity.

The Excess applicable to cover provided under this Extension 1 is as stated in Excess (a) of the Schedule.

For the purpose of this extension a Non-Executive Director is any director who, at the time of the alleged Wrongful Act or Investigation, is not an Employee of Your Company, or a paid consultant of Your Company.

## 2. **Employment Superannuation Scheme**

We will pay, on behalf of Your People, for any Claim by reason of any Wrongful Act resulting in Loss arising out of their individual or collective capacities as trustees of Your Company's Stand Alone Superannuation Fund. Cover provided by this extension shall not be excluded solely on the ground that a Claim is brought by a member of the superannuation or pension scheme who is also a director or officer of Your Company.

## 3. **Extradition Bail Bond Costs**

We will pay, on behalf of Your People, Extradition Bail Bond Costs.

Our total aggregate liability for all Claims under this Extension 3 shall not exceed the amount of the Extradition Bail Bond Costs sub-limit of indemnity stated in the Schedule.

## 4. **General Investigation Costs and Expenses**

We will pay, on behalf of Your people, the Investigation Costs and Expenses of Your People arising from an Investigation.

Our total aggregate liability for all Claims under this Extension 4 shall not exceed the amount of the 'General Investigation Costs and Expenses' sub-limit of indemnity stated in the Schedule.

If there is an entitlement to payment under Extension 5 - Occupational Health and Safety Costs or Extension 8 - Pollution Costs of this Coverage Part 1, then there is no entitlement to payment under this Extension 4.

## 5. **Occupational Health and Safety Costs**

Notwithstanding General Exclusion 2 - Bodily Injury and Property Damage, We will pay on behalf of Your People:

- a) Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against Your People and notified to Us during the Period of Insurance, based upon occupational health and safety law which results from a Wrongful Act; and
- b) Investigation Costs and Expenses, where the subject matter of the Investigation is occupational health and safety law.

For the purpose of this extension only, Investigation Costs and Expenses also includes necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries,

fees or benefits of Your People) incurred with our prior written consent, in representing and assisting Your People at a visit from an inspector of a workplace health and safety authority in connection with and following a workplace safety incident, provided that notice of the visit is given to You and is notified to Us during the Period of Insurance.

The cover provided under this Extension will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

Our aggregate liability for all Claims under this Extension 5 shall not exceed the amount of the 'Occupational Health and Safety Costs' sub-limit of indemnity stated in the Schedule.

If there is an entitlement to payment under Extension 8 - Pollution Costs of this Coverage Part 1, then there is no entitlement to payment under this Extension 5.

#### **6. Outside Position Liability**

- a) We shall indemnify any of Your People for Loss arising out of a Wrongful Act committed whilst serving in an Outside Position of any Non-Profit Entity or any other entity for which Outside Positions cover is confirmed in the Schedule.
- b) Any cover provided in this extension will only be in excess of any indemnity available from or provided by, or insurance taken out by, the entity in which Your People serve in the Outside Position or any insurance taken out by any other entity that covers Your People in the Outside Position.

#### **7. Personal Tax Liability**

Notwithstanding General Exclusion 5 - Insolvency, the definition of "Loss", applicable to this Coverage Part 1, is extended to include the personal liability of Your People incurred in respect to unpaid taxes of an insolvent company. Provided always that We shall not cover any liability that arises due to Your People's criminal, deliberate or wilful breach of any law or regulation.

Our liability under this Extension 7 will not exceed \$25,000 in the aggregate during any one Period of Insurance.

#### **8. Pollution Costs**

Notwithstanding General Exclusion 2 - Bodily Injury and Property Damage and General Exclusion 10 - Pollution, We will pay on behalf of Your People:

- a) Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against Your People and notified to Us during the Period of Insurance, based on Pollution which results from a Wrongful Act; and
- b) Investigation Costs and Expenses, where the subject matter of the Investigation is Pollution.

Our aggregate liability for all Claims under this Extension 8 shall not exceed the amount of the 'Pollution Costs' sub-limit of indemnity stated in the Schedule.

The cover provided under this Extension 8 will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

**9. Retired Directors**

In the event that any of Your People cease to be a director or officer of Your Company prior to the expiry of the Period of Insurance for reasons other than:

- a) disqualification from holding the office of director or officer; and/or
- b) dismissal from their position as director or officer; and/or
- c) the acquisition of Your Company as noted in General Extensions 1. Acquisition of Your Company; and/or
- d) Your Company being wound-up;

Your People shall be entitled to a free Discovery Period for a period of 84 months, provided always that this Discovery Period shall not apply where You renew or replace this Coverage Part (whether with Us or not).

**10. Spousal Liability**

If a Claim against Your People includes a Claim against Your People's Spouse solely by reason of:

- a) the legal status as a Spouse of Your People; or
- b) ownership or interest in property which the claimant seeks as recovery for alleged Wrongful Acts of Your People then:

all Loss which such Spouse becomes legally obligated to pay by reason of such Claim will be treated for purposes of this Coverage Part as Loss which Your People become legally obligated to pay on account of the Claim made against Your People.

All terms and conditions of this Coverage Part, including without limitation the Excess if any, applicable to Loss incurred by Your People in the Claim will also apply to such spousal Loss.

The cover provided by this extension does not apply to the extent the Claim alleges any act or omission by Your People's Spouse.

#### **d. Exclusions**

The following exclusions apply to this Coverage Part 1 only:

We will not be liable for Loss on account of any Claim:

##### **1. Company versus Your People Exclusion**

brought or maintained by or on behalf of Your Company against any of Your People, provided that this exclusion shall not apply to:

- a) Defence Costs; or
- b) any Claim that has been brought or maintained either directly or derivatively on behalf of Your Company (without the solicitation, participation or assistance of any of Your People or Your Company) against Your People; or
- c) any Claim by a liquidator, administrative receiver or receiver, provided that such Claim is not solicited or assisted by any of Your People; or
- d) any Claim arising from a shareholder derivative action, provided that such Claim is not solicited or assisted by any of Your People.

##### **2. Fines and Penalties**

which consists of fines or penalties.

However this exclusion shall not apply, up to a sub-limit of \$1,000,000, where Your People have committed an offence under an Act of Parliament punishable on conviction by a Statutory Fine unless:

- a) such Statutory Fine is due to an actual or alleged violation of any law or regulation with respect to vehicle, air or marine traffic; and/or
- b) such Statutory Fine is attributable to, or in any way involving Your People's intentional or reckless disregard of the provisions of any Act of Parliament; and/or
- c) such Statutory Fine (or part of a Statutory Fine) is a penalty imposed for failing to comply with any enforcement order or remedial order or for the cost incurred by Your People in complying with any enforcement or remedial order; and/or
- d) such Statutory Fine relates to an offence other than in the course of or in connection with Your Business.

### 3. **Outside Position**

for a Wrongful Act by Your People in an Outside Position if such Claim is brought or maintained by or on behalf of the entity in which Your People serve or by or on behalf of any director, officer or trustee of such entity except:

- a) a Claim that is a derivative action brought or maintained on behalf of such entity without the solicitation, assistance or active participation of such entity or any director, officer or trustee of such entity; or
- b) a Claim brought or maintained by a director, officer or trustee of such entity for any actual or alleged Employment Related Wrongful Act; or
- c) a Claim brought or maintained by an external auditor appointed by the Outside Directorship Company; or
- d) a Claim brought or maintained by a liquidator, administrator or receiver or manager or equivalent in any jurisdiction on behalf of such entity without the solicitation, assistance or active participation of any of Your People or by or on behalf of any director or officer in such entity.

### **COVERAGE PART 2 - EMPLOYMENT PRACTICES LIABILITY**

Note: This Coverage Part 2 is to be read in conjunction with the General Provisions section of this cover section.

#### **a. Definitions**

The following definitions apply to this Coverage Part 2 only:

**“Claim”** means:

- a) any written document served upon Your Company marking the beginning of a civil, criminal, or arbitral proceeding against Your Company alleging a Wrongful Act; or
- b) any written communication demanding compensation or threatening commencement of proceedings in respect of an actual or alleged Wrongful Act; or
- c) for the purpose of Extension 1 - Investigation Costs and Expenses of this Coverage Part 2, any Investigation.

**“Loss”** means:

any amount which Your Company is legally obligated to pay in respect of a covered Claim, including but not limited to:

- a) awards of damages or orders made by any court or tribunal to pay compensation;
- b) judgments;

- c) sums payable due to settlements to which We have consented (such consent not to be unreasonably withheld);
- d) awards of claimant's costs;
- e) pre-judgment and post-judgment interest;
- f) Defence Costs; and/or
- g) Investigation Costs and Expenses.

Loss does not include:

- i) any amount for which Your Company is absolved from payment;
- ii) taxes, fines or penalties imposed by law;
- iii) the multiple portion of any multiplied damages award or punitive, exemplary or aggravated damages;
- iv) any other amount which is uninsurable under the law pursuant to which this cover section is construed;
- v) contractual damages based upon the terms and of contract of employment; or
- vi) any amount payable by Your Company in respect of an unfair contract of employment.

**"Wrongful Act"** means an Employment Related Wrongful Act.

## **b. Coverage**

The following applies to this Coverage Part 2 only:

We will pay, on behalf of Your Company, Loss for any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance or, if exercised, during the Discovery Period.

## **c. Extension**

The following extension applies to this Coverage Part 2 only:

### **1. Investigation Costs and Expenses**

We will pay, on behalf of Your Company, the Investigation Costs and Expenses of Your Company arising from an Investigation which may give rise to a Claim against Your Company, under this Coverage Part 2, for an Employment Related Wrongful Act.

Our aggregate liability for all Claims under this Extension 1 shall not exceed the amount of the 'Investigation Costs and Expenses' sub-limit of indemnity stated in the Schedule.

#### **d. Exclusions**

The following exclusions apply to this Coverage Part 2 only:

We will not be liable for Loss on account of any Claim:

1. **Employee Entitlements**

for payment to any of Your People of any amount which Your Company was obligated (whether under any statute or any express or implied term of any employment agreement or otherwise) to pay prior to the Wrongful Act being committed.

2. **Employee Remuneration**

for the payment of any remuneration or benefit to any of Your People who has been reinstated into their former position after a Wrongful Act.

3. **Industrial Action**

arising from Wrongful Acts committed during any lockout, strike, picket, stand-down or suspension, or other industrial dispute.

4. **Modifications to Workplace**

for the cost of physical modifications to Your Company's workplace, or the cost of changes to workplace procedures.

5. **Non-Compliance**

for non-compliance with any judgment, award, determination or demand against Your Company issued or published by any Employment Relations Authority, Employment Court, Court of Appeal, Human Rights Commission, Complaints Review Tribunal, Privacy Commission, or Labour Inspector employed by a Department of Labour (or equivalent) or any other court or statutory body.

6. **Redundancy Compensation**

for failure by Your Company to pay adequate redundancy compensation or benefit in accordance with any legal requirement to any of Your People dismissed by reason of redundancy.

7. **Statutory Liability**

arising out of or connected with any statute relating to workers compensation, accident compensation or occupational health and safety.

### COVERAGE PART 3 - STATUTORY LIABILITY

Note: This Coverage Part 3 is to be read in conjunction with the General Provisions section of this cover section.

#### a. Definitions

The following definitions apply to this Coverage Part 3 only:

**“Claim”** means:

- a) any written communication by a regulatory, governmental, professional or other authorised institution served upon Your Company threatening commencement of legal proceedings, or marking the beginning of legal proceedings against Your Company alleging a Wrongful Act; and/or
- b) for the purpose of Extension 1 - Investigation Costs and Expenses of this Coverage Part 3, any Investigation.

**“Loss”** means any Defence Costs and any Statutory Fine.

Loss does not include:

- a) any amount for which Your Company is absolved from payment;
- b) any compliance, remedial, reparation or restitution costs;
- c) the multiple portion of any multiplied damages award;
- d) punitive, exemplary or aggravated damages;
- e) any taxes, employee remuneration or compensation payable; or
- f) any other amount which is uninsurable under the law pursuant to which this cover section is construed.

**“Wrongful Act”** means any act or omission by Your Company in connection with Your Business that may result in an allegation that Your Company has committed an offence under an Act of Parliament punishable on conviction by Statutory Fine or imprisonment.

#### b. Coverage

The following coverage applies to this Coverage Part 3 only:

We will pay, on behalf of Your Company, Loss for any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance or, if exercised, during the Discovery Period.

### **c. Extensions**

The following extension applies to this Coverage Part 3 only:

#### **1. Investigation Costs and Expenses**

We will pay, on behalf of Your Company, the Investigation Costs and Expenses of Your Company arising from an Investigation which may give rise to Loss which is covered under this Coverage Part 3.

### **d. Exclusions**

The following exclusions apply to this Coverage Part 3 only:

We will not be liable for Loss on account of any Claim:

#### **1. Consumer Protection**

based upon, arising from or in consequence of any actual or alleged violation of any consumer protection Act.

#### **2. Enforcement Order**

for payment of any fine (or part of a fine) which is a penalty imposed for failing to comply with any enforcement order or remedial order or for the cost incurred by You in complying with any enforcement or remedial order.

#### **3. Motor, Air and Marine**

arising out of an actual or alleged violation of any law or regulation with respect to vehicle, air or marine traffic.

#### **4. Prior Knowledge**

where Your Company knew, or where a reasonable person in the circumstances ought reasonably to have known, prior to the Period of Insurance that Your Company had contravened a law and committed an offence pursuant to that law.

#### **5. Reckless Disregard**

arising out of or based upon, attributable to, or in any way involving Your Company's intentional or reckless disregard of the provisions of any Act of Parliament.

#### **6. Unreasonable Plea**

where Your Company is intending to plead guilty or not guilty, but the intended plea is not reasonable, based on the available evidence, the weight and cogency of that evidence, the burden of proof and the applicable law.

## 7. Your Business

arising out of activities which are not either:

- a) part of the ordinary course of Your Business; or
- b) directly connected with Your Business.

### COVERAGE PART 4 - COMPANY LIABILITY COVER

Note: This Coverage Part 4 is to be read in conjunction with the General Provisions section of this cover section.

#### a. Definitions

The following definitions apply to this Coverage Part 4 only:

**“Business Crisis Consultant Fees”** means the reasonable costs, charges, fees and expenses of an independent management consultant engaged to minimise the effect of the Business Crisis Event, but only during the first thirty (30) days immediately following the Business Crisis Event.

**“Business Crisis Event”** means any one of the following unforeseen events which, in the reasonable opinion of the Managing Director (or equivalent) of Your Company, if left unattended has the potential to lead to an imminent decrease of 30% or more of Your Company’s consolidated revenues:

- a) the loss of a major customer or contract of Your Company; or
- b) the sudden and unexpected death of or injury to any of Your People; or
- c) the unexpected imposition of a tax bill; or
- d) the unexpected recall of any product manufactured, distributed or sold by Your Company; or
- e) the illegal tampering with or contamination of any product manufactured, distributed or sold by Your Company.

**“Claim”** means:

- a) any written communication demanding compensation or threatening the commencement of proceedings in respect of an actual or alleged Wrongful Act;
- b) any written document served upon Your Company marking the beginning of a civil, criminal or arbitral proceeding against Your Company alleging a Wrongful Act; or
- c) for the purpose of Extension 3 - General Investigation Costs and Expenses, Extension 4 - Occupational Health and Safety Costs and Extension 5 - Pollution Costs of this Coverage Part 4, any Investigation.

**“Loss”** means:

any amount which Your Company is legally obligated to pay in respect of a covered Claim, including but not limited to:

- a) awards of damages or orders made by any court or tribunal to pay compensation;
- b) judgments;
- c) sums payable due to settlements to which We have consented (such consent not to be unreasonably withheld);
- d) awards of claimant’s costs;
- e) pre-judgment and post judgment interest;
- f) Defence Costs;
- g) Investigation Costs and Expenses; or
- h) Business Crisis Consultant Fees covered under Extension 1 of this Coverage Part 4.

Loss does not include:

- i) any amount for which Your Company is absolved from payment;
- ii) any punitive, exemplary or aggravated damages;
- iii) the multiple portion of any multiplied damages award;
- iv) any taxes, fines or penalties imposed by law;
- v) any other amount which is uninsurable under the law pursuant to which this section is construed.

**“Wrongful Act”** means any error, misstatement, misleading statement, act, omission, negligence, breach of duty, libel, slander, breach of warranty, wrongful trading, or other act actually or allegedly committed or attempted by Your Company in connection with Your Business.

## **b. Coverage**

The following coverage applies to this Coverage Part 4 only:

We will pay for Loss on behalf of Your Company for any Claim for a Wrongful Act first made and notified to Us during the Period of Insurance or, if exercised, during the Discovery Period.

### **c. Extensions**

The following extensions apply to this Coverage Part 4 only:

#### **1. Business Crisis Consultant Fees**

We will pay, on behalf of Your Company, Business Crisis Consultants Fees incurred by Your Company in responding to a Business Crisis Event that first occurs during the Period of Insurance.

We will not pay more than \$25,000 per Business Crisis Event.

#### **2. Contractual Liability**

Notwithstanding Exclusion 2. Breach of Contract, We will pay Defence Costs arising from any Claim in connection with an alleged breach by Your Company of any express contract or agreement. Our total liability during the Period of Insurance for all Claims under this extension will not exceed \$100,000.

#### **3. General Investigation Costs and Expenses**

We will pay, on behalf of Your Company, the Investigation Costs and Expenses of Your Company arising from an Investigation.

Our total aggregate liability for all Claims under this Extension 3 shall not exceed the amount of the 'General Investigation Costs and Expenses' sub-limit of indemnity stated in the Schedule.

If there is an entitlement to payment under Extension 4 - Occupational Health and Safety Costs or Extension 5 - Pollution Costs of this Coverage Part 4, then there is no entitlement to payment under this Extension 3.

#### **4. Occupational Health and Safety Costs**

Notwithstanding General Exclusion 2 - Bodily Injury and Property Damage, We will pay on behalf of Your Company:

- a) Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against Your Company and notified to Us during the Period of Insurance, based upon occupational health and safety law which results from a Wrongful Act; and
- b) Investigation Costs and Expenses, where the subject matter of the Investigation is occupational health and safety law.

For the purpose of this extension only, Investigation Costs and Expenses also includes necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or benefits of Your People) incurred with our prior written consent, in representing and assisting Your Company at a visit from an inspector of a workplace health and safety authority in connection with and following a workplace safety incident, provided that notice of the visit is given to You and is notified to Us during the Period of Insurance.

The cover provided under this Extension will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

Our aggregate liability for all Claims under this Extension 4 shall not exceed the amount of the 'Occupational Health and Safety Costs' sub-limit of indemnity stated in the Schedule

If there is an entitlement to payment under Extension 5 - Pollution Costs of this Coverage Part 4, then there is no entitlement to payment under this Extension 4.

#### 5. **Pollution Costs**

Notwithstanding General Exclusion 2 - Bodily Injury and Property Damage and General Exclusion 10 - Pollution, We will pay on behalf of Your Company:

- a) Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against Your Company and notified to Us during the Period of Insurance, based on Pollution which results from a Wrongful Act; and
- b) Investigation Costs and Expenses, where the subject matter of the Investigation is Pollution.

Our aggregate liability for all Claims under this Extension 5 shall not exceed the amount of the 'Pollution Costs' sub-limit of indemnity stated in the Schedule

The cover provided under this Extension 5 will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

#### **d. Exclusions**

The following exclusions apply to this Coverage Part 4 only.

We shall not be liable for Loss on account of any Claim:

##### 1. **Anticompetitive Behaviour**

arising directly or indirectly from or in connection with or attributable to violation of any law, rule or regulation relating to competition, price fixing, activities in restraint of trade, or deceptive acts and practices in trade or commerce.

##### 2. **Breach of Contract**

arising out of any actual or alleged breach of contract.

3. **Financial Commitments**

arising directly or indirectly from or in connection with any trading debt or financial commitment of Your Company in conducting its business.

4. **Fines and Penalties**

which consists of fines or penalties.

5. **Intellectual Property**

arising directly or indirectly from or in connection with any misappropriation, plagiarism or infringement of any trade mark, trade secret, patent, copyright or any other intellectual property rights.

6. **Intentional Claims**

that Your Company has intentionally encouraged.

7. **Motor, Air or Marine**

arising out of an actual or alleged violation of any law or regulation with respect to vehicle, air or marine traffic.

8. **Statutory Liability**

arising out of an actual or alleged offence under an Act of Parliament.

9. **Your People**

- a) arising from or solicited by Your People; or
- b) arising out of or connected with an Employment Related Wrongful Act.

**GENERAL PROVISIONS**

**a. General Extensions**

The following general extensions apply to all Coverage Parts of this section:

1. **Acquisition of Your Company**

- (a) If during the Period of Insurance:
  - i) You merge, or consolidate with another organisation or are taken-over; or
  - ii) another organisation, or person or group of organisations or persons acting in concert acquires Securities or voting rights that result in ownership or voting control by the other organisation or person of more than 50% of the voting rights of Your Company; or

- iii) another organisation, or person or group of organisations or persons acting in concert secures the ability to control decisions made by the board of directors of Your Company;

cover under this cover section continues until termination of the Period of Insurance as set forth in the Schedule to this cover section, but only in respect of Claims for Wrongful Acts taking place prior to such merger, consolidation, take-over, acquisition, or the ability to control the board of directors' decisions. As of the effective date of such merger, consolidation, take-over, acquisition or the ability to control board of directors' decisions, all premiums paid or due at any time under this cover section are deemed fully earned and non-refundable.

- b) You agree to provide Us with written notice of such merger, consolidation, take-over, acquisition or ability to control the board of directors' decisions as soon as practicable, together with such further information as We may subsequently request.

## 2. **Acquisitions and Creations**

- a) Subsidiaries created or acquired by You prior to the beginning of the Period of Insurance shall have cover available to them under the terms of this cover section for Wrongful Acts committed or alleged to have been committed after the date the Subsidiary was created or acquired.
- b) Subsidiaries created or acquired by You after the beginning of and during the Period of Insurance, either directly or indirectly through any existing Subsidiary, shall have cover automatically available to them under the terms of this cover section for Wrongful Acts committed or alleged to have been committed after such date the Subsidiary was created or acquired, provided always that:
  - i) the total assets of the new Subsidiary do not exceeding 20% (twenty per cent) of the total consolidated assets of Your Company as shown in Your Company's last consolidated financial statement or annual report; and
  - ii) the new Subsidiary is not being domiciled, registered, incorporated outside Australia, and not having any of its Securities listed on any exchange outside of Australia.
- d) With respect to any Subsidiaries created or acquired by You after the beginning of and during the Period of Insurance which are excluded under b) above, You may apply for extension of cover for such Subsidiaries. We will request any additional information required and if We accept them, We will provide terms and conditions, including any additional premium payable, which may be required to extend cover to these Subsidiaries. If We grant cover it will be extended via Endorsement and only for Wrongful Acts committed or alleged to have been committed on or after We provide cover.

### 3. **Compensation for Court Attendance**

We will pay, a maximum of \$500 per day up to a total sub-limit of \$100,000 for Your People who are legally required to attend court as a witness in respect of a Claim covered by this section.

The sub-limit forms part of and is not in addition to the Limit of Indemnity.

### 4. **Continuous Cover**

If the Insured first becomes aware of a Circumstance prior to the Period of Insurance, and that Circumstance is not notified to Us until a date during the Period of Insurance then:

- a) providing that the failure to notify such Circumstance was not as a result of fraudulent non-disclosure or fraudulent misrepresentation by the Insured; and
- b) subject to You having continuously held the relevant Coverage Part with Us between the time when the Insured first became aware of such Circumstance and the time of its notification; and
- c) subject to any reduction of liability by Us under this cover section to the extent of any prejudice suffered by Us as a result of the failure by the Insured to notify such Circumstance, which may give rise to a Claim, prior to the Period of Insurance.

We will accept such Circumstance as a valid notification including any Claim arising from it and General Exclusion 7. Known Claims and Circumstances, shall not apply to that Circumstance.

### 5. **Discovery Period**

If this cover section is not renewed or replaced at the end of the Period of Insurance the Insured may purchase a Discovery Period of 84 months commencing from the end of the Period of Insurance during which time the Insured may continue to notify Us of any Claims but only Claims based on a Wrongful Act committed prior to the expiry of the Period of Insurance.

The Insured must request this Discovery Period in writing prior to the end of the Period of Insurance. We will offer this Discovery Period at an additional premium and on such terms and conditions as We determine.

### 6. **Emergency Costs**

If, due to an emergency, the Insured is unable to request Our prior written consent to the incurring of Defence Costs or Investigation Costs and Expenses, We will temporarily waive prior consent as long as Our consent is obtained within thirty (30) days of the first of such Defence Costs or Investigation Costs and Expenses being incurred. The sub-limit of indemnity for all payments made during the aforementioned thirty (30) day period is 10% of the applicable Limit of Indemnity.

**7. Estates and Legal Representatives**

This cover section provides cover for Claims for the Wrongful Acts of Your People where those Claims are made against the estates, heirs or legal representatives of Your People who are deceased or against the legal representatives, trustees-in-bankruptcy, guardians or attorneys of Your People who are incompetent, infirm, disabled, insolvent or bankrupt, but only to the extent that in the absence of such death, incompetence, infirmity, disability, insolvency or bankruptcy, such Claims would have been covered under this cover section.

**8. Preservation of Indemnity**

If any of Your People are unable to obtain the full benefit of a right to indemnity against You to which he or she is entitled, by reason only of Your Company suffering Financial Impairment and having insufficient funds available so as to indemnify Your People, then it is hereby agreed that We shall indemnify Your People against Loss arising from any Claim, up to the annual Limit of Indemnity to the extent it has not been reduced by any current Claim or earlier Claim. The burden of adducing satisfactory proof to obtain the benefit of this extension shall rest entirely with Your People and shall include the production of documentary evidence of Your assets and liabilities and any official statements issued by the liquidator, receiver, statutory manager or compromise manager.

**9. Public Relations & Crisis Management Costs**

We will pay the costs and expenses of a public relations firm or crisis management firm in the event of a Circumstance, if such firm would;

- a) help to mitigate any Loss under this cover section; and/or
- b) assist in exonerating any Insured against an alleged Wrongful Act in the event of a Claim.

This extension is subject to:

- a) no costs or expenses being incurred without Our prior written consent; and
- b) Our being reasonably satisfied that any expenditure with such a firm will be more than proportionately offset by reduced Claims costs to Us; and
- c) an annual aggregate sub-limit of \$100,000 across all Coverage Parts of this cover section.

**10. Your Previous Subsidiaries**

Subsidiaries sold or dissolved by You after the beginning of the Period of Insurance shall have cover available to them under the terms of this Policy for Wrongful Acts committed or alleged to have been committed prior to the date of sale or dissolution.

## **b. General Exclusions**

The following general exclusions apply to all Coverage Parts of this cover section:

We will not be liable for Loss:

### **1. Asbestos**

arising directly or indirectly, out of inhalation of, or fears of the consequences of exposure to or inhalation of, Asbestos, Asbestos fibres or derivatives of Asbestos; or that part of any Loss, cost or expense for the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any Asbestos, Asbestos fibres or derivatives of Asbestos.

### **2. Bodily Injury and Property Damage**

for any bodily injury, mental anguish, emotional distress, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, or for defamation or violation of a person's right of privacy except that:

- a) this exclusion does not apply in respect of: any liability for actual or alleged mental anguish, emotional distress, defamation or violation of a person's right of privacy in any Claim by Your People for any Employment Related Wrongful Act in Coverage Parts 1 - Directors and Officers Liability and Coverage Part 2 - Employment Practices Liability;
- b) We will pay, on behalf of Your People, Defence Costs arising from any Claim first made against them and notified to Us during the Period of Insurance involving criminal proceedings for corporate killing or corporate manslaughter (or other similar criminal offence) provided such payments are not contrary to law; and
- c) this exclusion does not apply to any Occupational Health and Safety coverage afforded under Coverage Part 1 - Directors and Officers Liability; Coverage Part 3 - Statutory Liability and Coverage Part 4 - Company Liability Cover.

### **3. Damages**

- a) for the payment of any tax, including any fine or penalty, resulting from the failure to pay any tax; or
- b) which consists of punitive, exemplary or aggravated damages; or
- c) in respect of which it is illegal to insure or indemnify; or
- d) for damages which are a multiple proportion of any lesser damages award.

4. **Fraud**

for any dishonest, malicious or fraudulent act or omission or any wilful violation of any statute or regulation if a judgment or other final adjudication adverse to any Insured or a formal written admission by any Insured establishes that such Insured committed such an act, omission or wilful violation.

For the purpose of determining the applicability of this Exclusion 4, the fact that one Insured has committed or is alleged to have committed the act, omission or wilful violation described above will not be imputed to any other Insured.

5. **Insolvency or Administration**

arising directly or indirectly from or in connection with or as a consequence of one or more of the following:

- a) an order being made for the winding up of Your Company; or
- b) the appointment to Your Company of a liquidator or a receiver or an administrator or an administrative receiver or a trustee in bankruptcy or, in the case of a voluntary arrangement, a nominee or a supervisor; or
- c) a proposal being made by or to Your Company, or by or to its creditors, of a composition of debts or scheme for arrangement to be conducted under the supervision of an insolvency practitioner, either as a nominee or otherwise; or
- d) in any way whatsoever relating to the solvency or insolvency of Your Company.

6. **Jurisdiction**

brought in a court or tribunal outside of Australia or New Zealand; or any liability arising from the application by an Australian or New Zealand court or tribunal of any foreign law.

7. **Known Claims and Circumstances**

- a) made against or intimated to the Insured prior to the commencement of the Period of Insurance; or
- b) notified under any previous policy of insurance; or
- c) arising out of or connected with any facts or Circumstances which a director or officer of Your Company became aware of prior to the commencement of the Period of Insurance and a reasonable person in the position of the director or officer would have considered those facts or Circumstances might give rise to a Claim against the Insured.

## 8. Major Shareholders

directly or indirectly caused by, arising out of or in any way connected with any person or entity holding beneficially or otherwise or in control of more than 20% (twenty per cent) of the issued share capital of Your Company, whether such Claim is made in the name of Your Company or not.

## 9. Personal Profit

based upon, arising out of or attributable to any Insured gaining any personal profit, remuneration or financial advantage to which such Insured was not legally entitled.

This Exclusion only applies in the event that the foregoing conduct is established by a judgment or other final adjudication adverse to such Insured or by written formal admission by such Insured.

For the purpose of determining the applicability of this Exclusion 9, the fact that one Insured has committed or is alleged to have committed the conduct described above will not be imputed to any other Insured.

## 10. Pollution

based upon, arising out of or attributable to or in any way connected to Pollution, except that:

- a) under Coverage Part 1, Extension 8 - Pollution Costs, We will pay, on behalf of Your People, Defence Costs and Investigation Costs and Expenses subject to the 'Pollution Costs' sub-limit of indemnity stated in the Schedule;
- b) under Coverage Part 4, Extension 5 - Pollution Costs, We will pay, on behalf of Your Company, Defence Costs and Investigation Costs and Expenses subject to the 'Pollution Costs' sub-limit of indemnity stated in the Schedule;
- c) under Coverage Part 1 - Directors and Officers Liability of this cover section, We will pay, on behalf of Your People, Loss arising from any Claim first made against them and notified to Us during the Period of Insurance involving a shareholder and/or bondholder of Your Company either directly or derivatively alleging loss in the value of the share capital of Your Company by reason of Pollution of any kind; and
- d) under Coverage Part 3 - Statutory Liability of this cover section, We will pay, on behalf of Your Company, Loss for any Claim for a Wrongful Act in respect of Pollution.

## 11. Professional Services

- a) arising directly or indirectly out of any breach of duty in respect of any professional services or professional advice provided by the Insured; or
- b) arising directly or indirectly out of any breach of any contract for the provision of professional services or professional advice provided by the Insured.

**12. Retroactive Date**

arising out of, or connected with any facts or Circumstances prior to the Retroactive Date, if any, specified in the Schedule, provided that nothing contained within this exclusion is interpreted as releasing the Insured from their obligation to disclose prior to the commencement of this cover section all details of Claims already made or outstanding, or events likely to give rise to a Claim. The application of this exclusion is subject to the operation of General Extension 4. Continuous Cover.

**13.. Securities**

arising directly or indirectly out of, or in any way connected with:

- a) Your offer, sale or listing of any Securities at any time; or
- b) any of Your People's offer, sale, or listing of any Securities, but only where such Securities have been offered, sold or listed after the commencement of the Period of Insurance.

**14. Superannuation**

which Your Company is obligated to pay in respect of any Claim arising directly or indirectly from or in connection with any actual or alleged violation of any responsibilities, obligations or duties protecting or regulating any superannuation or similar fund.

**15. Territorial Limits**

brought about by a Wrongful Act under the Coverage Part under which indemnity is sought, committed wholly outside Australia or New Zealand, to which the laws of Australia or New Zealand do not apply, or arising from the application by an Australian or New Zealand court or tribunal of any foreign law to a Wrongful Act under the Coverage Part under which indemnity is sought.

**16. Warranties and Guarantees**

which Your People or Your Company are obligated to pay in respect of any Claim arising from or attributable to any actual or alleged liability of Your Company under any contract, guarantee, warranty or agreement or assumed liability to the extent that the contract or assumed liability increases the compensation or damages payable beyond the amount payable in tort or under any applicable statute

### **c. General Conditions**

The following general conditions apply to all Coverage Parts of this cover section:

#### **1. Alteration and Assignment Clause**

No change in, modification of or assignment of interest under this cover section will be effective except when made by a written endorsement to this cover section which is signed by Us or Our authorised representative.

#### **2. Authorisation Clause**

By taking this cover section, You agree to act on behalf of the other Insureds and the other Insureds agree that You may act on their behalf in respect of:

- a) the giving and receiving of notice of a Claim or termination;
- b) the payment of premiums and the receiving of any return premiums that may become due under this cover section;
- c) the agreement to and acceptance of Endorsements; and
- d) the giving or receiving of any notice provided for in this cover section except the giving of notice to apply for the Discovery Period.

#### **3. Breach of Conditions**

Where any Insured breaches any condition of this cover section and this has resulted in prejudice to the handling and/or settlement of any Claim, which in all other respects qualifies to be indemnified under this cover section, the indemnity afforded by this cover section in respect of such Claim shall be reduced to such sum as would have been payable by Us in the absence of such prejudice.

#### **4. Claims and the Limit of Indemnity**

- a) All Claims made during the Period of Insurance are subject to Limit of Indemnity set out in the Schedule for that Period of Insurance.
- b) A Claim is deemed to be first made on the date the Claim is initially made against any Insured, regardless of whether such date is before or during the Period of Insurance.
- c) For the purposes of this cover section, all Claims arising out of the same Wrongful Act and all Interrelated Wrongful Acts of any Insured will be deemed one Claim.

#### **5. Continuing Representations**

In granting cover under this cover section, We relied upon the statements and representations in the Proposal. The Insured represents that all such statements and representations will continue to be true and the continuing accuracy of these statements is deemed material to the acceptance of the risk or the hazard assumed by Us under this cover section.

Notwithstanding what is stated above, any act, error, omission, breach, default or knowledge of any director or officer will not be imputed to any Insured for the purposes of a statement or representation made in the Proposal.

**6. Coverage Parts**

The terms and conditions of each Coverage Part of this cover section apply only to that Coverage Part and shall not apply to any other Coverage Part. Each Coverage Part should be read in conjunction with the General Provisions of this cover section. Should there be inconsistency between the General Provisions of this cover section and the terms set in this cover section and each specific Coverage Part, the terms and conditions of the specific Coverage Part shall prevail.

**7. Fraudulent Claims**

If any Insured, being entitled to indemnity under this cover section, makes any application for indemnity under this cover section, knowing that such application for indemnity is false or fraudulent, We may refuse payment of the Claim and may cancel the contract in accordance with the ICA.

**8. Non-Fraudulent Non-Disclosure**

The Insured acknowledges that the information provided to Us in their Proposal for insurance is relied upon by Us in assessing whether to accept the risk and if so, on what terms. The Insured also acknowledges that in the event of a non-fraudulent, non-disclosure in the Proposal of a matter the Insured knows or a reasonable person in the circumstances would know is relevant to Our decision whether to accept the risk and on what terms, We are entitled to cancel the contract, if a Claim has not been made. Notwithstanding Our right to avoid this cover section for such non-disclosure, We may, in Our absolute discretion, waive Our right to cancel this cover section and confirm indemnity to Your People.

**9. Severability and Non-Imputation**

In determining cover for Claims against Your People, no fact pertaining to, nor knowledge possessed by, nor any Wrongful Act committed by one of Your People will be imputed to any other of Your People.

**d. General Claims Conditions**

The following general claims conditions apply to this cover section:

**1. Allocation**

- a) If in any Claim, the Insured incur Loss jointly with others, or incur in relation to a Claim an amount consisting of both Loss covered by this cover section and Loss not covered by this cover section, then We and the Insured will allocate such amount between covered Loss and uncovered Loss based upon Our assessment of which parts of the amount fall in and which fall outside this cover section.

- b) If We and the Insured against whom a Claim is made agree on the allocation of Defence Costs and/or Investigation Costs and Expenses in respect of Loss covered by this cover section and Loss not covered by this cover section, We will advance on a current basis Defence Costs and/or Investigation Costs and Expenses allocated to covered Loss. If there is no agreement on an allocation of Defence Costs and/or Investigation Costs and Expenses, We will advance on a current basis Defence Costs and/or Investigation Costs and Expenses that We believe to be covered under this cover section until a different allocation is agreed, or it is judicially determined.
- c) Any agreed, or judicially determined allocation of Defence Costs and/or Investigation Costs and Expenses on account of a Claim will be applied retrospectively to all Defence Costs and/or Investigation Costs and Expenses on account of such Claim, notwithstanding any prior advancement to the contrary. Any allocation or advancement of Defence Costs and/or Investigation Costs and Expenses on account of a Claim will not apply to or create any presumption or admission in respect of the allocation of other Loss on account of such Claim or any other Claim.

## 2. **Defence and Settlement**

- a) Unless otherwise agreed by Us in writing, We have the right to investigate any Circumstance and the right, but not the obligation, to conduct in the name of the Insured any investigation and conduct the defence or settlement of any Claim. This right shall cease on the exhaustion of the Limit of Indemnity.
- b) The Insured agrees not to settle or offer to settle any Claim, incur any Defence Costs or otherwise assume any contractual obligation or admit any liability with respect to any Claim without Our prior written consent. We will not be liable for any settlement, Defence Costs, assumed obligation or admission to which We have not so consented to in writing.
- c) The Insured agree to provide Us with all information, assistance and co-operation We reasonably request. Further, the Insured agree that in the event of a Claim, they will do nothing that may prejudice either the Insured's or Our position or any potential or actual rights of recovery. Should the handling or settlement of any Claim be prejudiced by the Insured's actions, the amount payable in respect of such Claim (including costs and expenses) shall be reduced to reflect such prejudice.
- d) We may settle any Claim for any amount that We deem reasonable and the Insured shall consent to such settlement and provide any assistance with the resolution of the Claim that we reasonably require. If the Insured withholds consent to such settlement or declines to provide the assistance We require, Our liability for all Loss on account of such Claim will not exceed the amount for which We could have settled such Claim plus Defence Costs accrued as of the date such settlement was proposed in writing by Us to the Insured.

- e) The Insured will not unreasonably withhold any consent referred to in this General Claims Condition.

### 3. **Defence Costs and Investigation Costs and Expenses**

- a) Defence Costs and Investigation Costs and Expenses are part of and not in addition to the Limit of Indemnity set forth in the Schedule and any Defence Costs and/or Investigation Costs and Expenses paid by Us reduce the available Limit of Indemnity.
- b) Subject to Claims Condition 1. Allocation, We will advance on behalf of the Insured, Defence Costs and/or Investigation Costs and Expenses that they have incurred in connection with Claims made against them, prior to settlement of such Claims. Provided that to the extent it is finally established by judgment, settlement or other final adjudication that any such Defence Costs and/or Investigation Costs and Expenses are not covered under this cover section, all Insured severally according to their interests, agree to repay to Us such Defence Costs and/or Investigation Costs and Expenses.
- c) We will indemnify the Insured for Defence Costs and/or Investigation Costs and Expenses arising out of any criminal prosecution in which they are Acquitted by a Court, provided that:
  - i) no Defence Costs and/or Investigation Costs and Expenses other than those incurred with Our prior written consent shall be payable under this extension; and
  - ii) We shall not be under any obligation to advance Defence Costs and/or Investigation Costs and Expenses as they are incurred, but may advance Defence Costs and/or Investigation Costs and Expenses in amounts and at times as We in Our sole and absolute discretion determine; and
  - iii) the Insured, according to their respective interests, shall repay any payments advanced by Us in the event that they are not entitled to such payment under this cover section.

### 4. **Insured's Right to Contest Claims**

If the Insured does not agree with a decision made by Us to settle a Claim, the Insured can elect to contest the Claim at its own expense but Our liability will not exceed the amount for which the Claim should be settled in the opinion of a Senior Counsel appointed under Claims Condition 9. Senior Counsel.

We shall pay all Defence Costs incurred up to the date the Insured notifies Us in writing of its election under this clause, and shall pay the Insured (subject to the Limit of Indemnity and the Excess) the amount for which the Claim should be so settled. The Insured expressly agrees that Our liability in respect of such Claim shall then be at an end. If We believe that the Claim will not exceed the Excess, We may instruct the Insured to conduct the investigation, defence and settlement at their own expense. Should the Claim subsequently exceed the Excess, We agree to reimburse the reasonable Defence Costs incurred by the Insured in excess of the Excess, or

pay on their behalf any additional Defence Costs, but not exceeding the lesser of the amount Senior Counsel advised the matter should be settled for or the Limit of Indemnity.

#### 5. **Order of Payment**

Where you have an overall annual single aggregate Limit of Indemnity for this cover section and have a Claim which is covered by one or more Coverage Parts, We will:

- a) firstly pay Loss due under Coverage Part 1 - Directors and Officers Liability, b) Individual Cover;
- b) then pay Loss under any other applicable Coverage Parts.

#### 6. **Other Insurance**

Upon giving notice of any Claim the Insured agrees to provide Us with written details of any other insurance or source of indemnification that may cover or partially cover that Claim.

#### 7. **Recoveries**

We agree not to exercise Our rights of recovery against an Insured, save where Claims Condition 2 b) applies.

All recoveries obtained by the Insured from parties other than an Insured, after the settlement or resolution of a Claim and after deducting the reasonable cost of obtaining such recovery, shall be applied in the following order:

- a) first to the benefit of the Insured, where the Insured has contributed to a payment exceeding the Limit of Indemnity made to resolve the Claim up to the amount of that payment;
- b) then to Our benefit for the amount We paid to resolve the Claim;
- c) then to the benefit of the Insured for the Excess paid in respect of the Claim;
- d) then to the benefit of the Insured for any uninsured losses; and
- e) then to Our benefit in respect of any administrative costs connected with the Claim.

All recoveries made prior to settlement of any Claim shall be held by You or the lawyer appointed to act for Our benefit pending any settlement. The monies shall not be applied to You or Us in the order set out above until the matter has been fully resolved and all costs and expenses have been ascertained.

#### 8. **Reporting and Notification**

Full details of the Claim (including any writ, summons or other legal document) shall be provided with the notice, which must be forwarded to Us and the Insured shall provide Us with such further information, documentation and co-operation as We may reasonably require.

## 9. Senior Counsel

We shall not require the Insured to defend any legal proceedings in respect of any Claim against them, nor shall the Insured be able to require Us to defend, on its behalf, any legal proceedings in respect of any such Claim, unless a Senior Counsel (to be mutually agreed upon by the Insured and Us and in default by the chairman of the bar association of the state in which this cover section is issued) shall advise that such proceedings should be defended. In formulating such advice, the Senior Counsel shall take into consideration the economics of the matter, the damages and costs that are likely to be recovered by the claimant, the likely Defence Costs and the prospects of the Insured successfully defending the action. The cost of the Senior Counsel's opinion shall be regarded as part of the Defence Costs of any Claim.

In the event that the Senior Counsel advises that, having regard to all the circumstances, the matter should not be defended but should be settled, provided that settlement can be achieved within certain limits that in the Senior Counsel's opinion are reasonable, then the Insured shall co-operate with Us to try to effect such settlement in accordance with this cover section. Should the Insured decide to defend such a Claim, Our liability shall not exceed the amount which the matter could have been resolved for in the advice of the Senior Counsel.

## 10. Subrogation

We shall be subrogated to the Insured's rights of recovery to the extent of any payment made under this cover section. Each Insured agrees to do everything necessary to secure and preserve such rights, including the execution of such documents as are necessary to enable Us to bring proceedings in the name of the Insured.

## e. General Definitions

The following words have the following meanings in this cover section only. You should also refer to the General Definitions section of this Policy that start on page 14.

**"Acquitted by a Court"** means dismissal of charges prior to a hearing or, upon completion of a defended hearing of a prosecution of an Insured, the delivery by a presiding judge of either: a dismissal of the charges at the conclusion of the prosecution case, or a verdict of not guilty at the conclusion of the defended hearing (but shall not include a dismissal pursuant to a plea bargain).

**"Act of Parliament"** means any Act of any parliament or legislative assembly of New Zealand or the Commonwealth of Australia or of any Australian State or Territory, including any amendments, enactments or Statutory Regulations of such Act.

**"Asbestos"** shall mean crocidolite, amosite, chrysotile, fibrous actinolite, fibrous anthophyllite, or fibrous tremolite or any mixture or derivative containing any of those minerals, or dust, fibres or particles of any of those materials.

**"Circumstance"** means an incident, occurrence, fact, matter, act or omission which might be reasonably expected to give rise to a Loss under this cover section.

**“Claim”** means the definition set out in the individual Coverage Part of this cover section under which an indemnity is sought.

**“Coverage Part”** means one of the four divisions within this cover section, comprising: Coverage Part 1 - Directors & Officers Liability; Coverage Part 2 - Employment Practices Liability; Coverage Part 3 - Statutory Liability; Coverage Part 4 - Company Liability Cover.

**“Defence Costs”** means that part of Loss consisting of reasonable costs, charges, fees and expenses (including but not limited to lawyers’ fees, investigators’ fees and experts’ fees) incurred or agreed by Us in the investigation, defence or settlement of a Claim.

Defence Costs shall not include any regular salaries, wages overtime, fees or benefits of any of Your People.

**“Discovery Period”** means the period after the end of the Period of Insurance where the Insured may continue to notify Us of a Claim but only in relation to Wrongful Acts committed prior to or during the Period of Insurance.

**“Employee”** means any person who is or was (or alleges that but for an Employment Related Wrongful Act would have been) a full-time, part-time or temporary person (which will include trainees, casual, seasonal, voluntary and work experience personnel) working under a contract of service with Your Company and who Your Company has the right to govern and direct in their performance of such services.

Employee does not mean any person who is an independent contractor or agent, partner or director of Your Company.

**“Employment Related Wrongful Act”** means any actual or alleged breach of duty, error, act, omission, neglect or misleading statement by an Insured against Your People in connection with any wrongful, unlawful or unfair:

- a) discharge or termination of employment, demotion, discipline, dismissal, deprivation of a career opportunity, failure to employ or promote;
- b) breach of any written or oral employment contract or quasi-employment contract;
- c) employment-related misrepresentation, invasion of privacy, breach of data protection legislation, libel, slander, humiliation and defamation;
- d) violation of employment discrimination laws (including sexual or other workplace harassment and discrimination on the grounds of racial or national origin, sex, sexual orientation, religion, maternity, pregnancy, age and disability);
- e) violation or non-compliance with legislation regulating working hours;
- f) failure to grant tenure, adopt adequate workplace or employment policies and procedures, furnish accurate job references;
- g) retaliatory treatment of whistleblowers and others;

h) employment-related wrongful infliction of mental anguish or emotional distress.

**“Financial Impairment”** means Your status resulting from the appointment by any governmental official, agency or court of any receiver, manager, liquidator (including a provisional liquidator), or similar official to take control of, supervise, manage or liquidate Your Company.

**“ICA”** means Insurance Contracts Act 1984 (Cth).

**“Insured”** means You and Your People.

**“Interrelated Wrongful Acts”** means all Wrongful Acts that have in common any act, error, omission, fact, Circumstance, situation, event, transaction, cause or series of related acts, errors, omissions, facts, Circumstances, situations, events, transactions or causes.

**“Investigation”** means any formal investigation, examination, inquiry or other formal proceeding into the affairs of Your Company or the conduct of Your People in that capacity, as ordered or commissioned by a regulatory, governmental, professional or other authorised institution that has legal authority to conduct such a proceeding, and in which Your Company or Your People in that capacity, are required or requested to attend or produce documents.

An Investigation is deemed to have started when Your Company or Your People are first required or requested to attend or produce documents.

**“Investigation Costs and Expenses”** means reasonable costs, fees and expenses incurred with Our prior written consent (not to be unreasonably withheld or unreasonably delayed) in preparing for, attending, cooperating with, or being represented at any Investigation.

Investigation Costs and Expenses shall not include any regular salaries, wages overtime, fees or benefits of any of Your People.

**“Limit of Indemnity”** for the total period comprising of the Period of Insurance and the Discovery Period means the following:

- a) where there is an overall limit for all Coverage Parts in force, Our maximum liability for each and every Loss and all Losses in the aggregate shall be the overall limit shown in the Schedule;
- b) where there are individual limits for each Coverage Part, Our maximum liability for each Coverage Part for each and every Loss and all Losses in the aggregate for that Coverage Part shall be the individual limit shown against that Coverage Part in the Schedule;
- c) notwithstanding any overall or individual limit, a sub-limit shown in this section restricts the amount payable for each and every Loss and all Losses to which the sub-limit applies;
- d) a sub-limit forms part of the overall or individual limit and is not an additional amount payable beyond the overall or individual limit.

**“Loss”** means the definition set out in the individual Coverage Part of this cover section under which an indemnity is sought.

**“Merger”** means the occurrence of:

- a) You consolidating, amalgamating or merging all or substantially all of Your assets into, to or with another entity or person or group of persons and/ or entities acting in concert; or
- b) any person(s) and/or entity, whether individually or collectively, acquiring an amount of share capital representing more than fifty per cent (50%) of the voting power for the election of directors of Your Company, or acquiring the voting rights for such an amount of the shares.

**“Non-Profit Entity”** means any corporation, association, trust, fund, institution or foundation:

- a) not included in the definition of Your Company; and
- b) established for charitable, community, industry or social purposes, but not for the purpose of making profits.

**“Outside Position”** means the position of director, officer, manager, trustee or other equivalent position held by any of Your People at Your written request in:

- a) any Non-Profit Entity; or
- b) any other entity for which Outside Positions cover is confirmed by the Schedule.

**“Pollutants”** means any substance located anywhere in the world exhibiting any hazardous characteristics including without limitation substances identified on a list of hazardous substances issued by any governmental agency in Australia. Such substances include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste materials. Pollutants also means any other air emission, odour, waste water, oil or oil products, infectious or medical waste, Asbestos or Asbestos products, electric or magnetic or electromagnetic field and noise.

**“Pollution”** means the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of Pollutants into or on real or personal property, water or the atmosphere, clean up or associated costs.

**“Proposal”** means all proposals, including attachments and materials submitted therewith, for this cover section or for any policy of which this cover section is a renewal or replacement. All such proposals, attachments and materials are deemed attached to and incorporated into this cover section.

**“Securities”** shall mean shares, stock, bearer instruments, derivatives, bonds, warrants, debentures, rights under a depository receipt or other securities (or interests therein) of whatever nature.

**“Spouse”** means any lawful spouse, civil partner (including same sex partner) or person deriving a similar status by reason of statute or common law.

**“Stand Alone Superannuation Fund”** means a superannuation fund or pension fund established by Your Company under its own trust structure and either managed by Your Company or on its behalf. It

does not include an industry fund, a wholesale master trust, a retail master trust or public sector employees' funds.

**“Statutory Fine”** means any monetary penalty or costs liable on conviction of any offence under an Act of Parliament.

**“Subsidiary”** or **“Subsidiaries”** means any organisation in which You hold more than 50% of the voting rights of that organisation or have the ability to control decisions made by the board of directors (whether directly or indirectly).

**“Wrongful Act”** means the definition set out in the individual Coverage Part under which an indemnity is sought.

**“You” “Your” “Your Company”** means, individually and/or collectively, the organisation(s) named in the Schedule and their Subsidiaries in existence at the inception date of the Period of Insurance.

**“Your Business”** means Your Business and undertakings, as defined in the Schedule.

**“Your People”** means:

- a) any one or more natural persons who were, now are or will be a director, secretary, officer, or Employee of Your Company; or any person who was or now is or may hereafter become a trustee of a superannuation fund established for the benefit of the Employees of Your Company by whatever name called and whether or not validly appointed to occupy or duly authorised to act in such position;
- b) any person who by virtue of any applicable legislation or law is deemed to be a director or officer of Your Company.

Provided that the term Your People shall not include:

- i) any externally appointed officers such as administrators, receivers, statutory managers, liquidators, mortgagees in possession, or the like; or
- ii) any registered company or corporation.