



DIRECTORS' AND OFFICERS' LIABILITY INSURANCE POLICY

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IMPORTANT INFORMATION

THIS POLICY

This policy is an important document. The policy wording and schedule together set out the cover provided, the amount insured and the terms and conditions of your insurance. Please read it carefully and keep it in a safe place.

Your insurance broker has arranged this policy for you. If you have any questions about your cover, or you wish to contact ProRisk, please contact your insurance broker for assistance.

PRORISK

ProRisk, Professional Risk Underwriting Pty Ltd ABN 80 103 953 073 AFSL 308076, is a coverholder for certain Underwriters at Lloyd's. ProRisk has the authority to bind this policy on their behalf.

CLAIMS MADE POLICY

This policy is issued by ProRisk on a claims made and notified basis. This means that the policy only covers claims first made against you during the period of insurance and notified to ProRisk in writing during the period of insurance. The policy does not provide cover for any claims made against you during the period of insurance if at any time prior to the commencement of the period of insurance you were aware of facts which might give rise to those claims being made against you.

Section 40(3) of the *Insurance Contracts Act 1984* provides that where the insured gives notice in writing to the insurer during the period of insurance of facts that might give rise to a claim against the insured, the insurer cannot refuse to pay a claim which arises out of those facts, by reason only that the claim is made after the period of insurance has expired.

YOUR DUTY OF DISCLOSURE

Section 21 of the *Insurance Contracts Act 1984* provides that before you enter into a contract of general insurance with an insurer, you have a duty to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require disclosure of matter:

- That diminishes the risk to be undertaken by the insurer;
- That is of common knowledge;
- That your insurer knows, or in the ordinary course of its business, ought to know;
- As to which compliance with your duty of disclosure is waived by the insurer.

NON-DISCLOSURE

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

POLICY CANCELLATION

In the event of policy cancellation by the insured, ProRisk's cancellation rates will apply.

GOODS AND SERVICES TAX

The premium includes an amount for GST.

Underwriters' liability to the insured in respect of a claim or series of claims under this policy is calculated less any input tax credit to which the insured is entitled for any acquisition which is relevant to the claim, or to which the insured would have been entitled had it made a relevant acquisition. The insured must inform Underwriters of the extent to which it is entitled to an input tax credit, and any GST liability arising from the insured's provision of incorrect advice is payable by the insured.

'GST', 'input tax credit' and 'acquisition' have the meaning given to those words in A New Tax System (Goods and Services Tax) Act 1999 (as amended).

PRIVACY STATEMENT

ProRisk is bound by the obligations of the *Privacy Act 1988* (as amended) regarding the collection, use, disclosure and handling of personal information. We will protect the privacy of your personal information.

We collect personal information about you to enable us to provide you with relevant products and services, to assess your application for insurance and, if a contract is entered, to enable us to provide, administer, and manage your policy, and to investigate and handle any claims under your policy. We may disclose your information to third parties (who may be located overseas), such as Underwriters, lawyers, claims adjusters, and others appointed by ProRisk or by certain Underwriters to assist us and them in providing relevant products and services. We may also disclose your information to people listed as co-insured on your policy and to your agents. By providing your personal information to us, you consent to us making these disclosures.

If you do not provide all or part of the information required, we may not be able to provide you with our products and services, consider your application for insurance, administer your policy, assess or handle claims under your policy, or you may breach your Duty of Disclosure.

When you provide us with personal information about other individuals, we rely upon you to have made them aware of that disclosure, and of the terms of the ProRisk Privacy Statement, and to obtain their consent.

For a copy of the ProRisk Privacy Statement or to request access to or update the personal information, contact the Privacy Officer at ProRisk by email: enquiries@prorisk.com.au or by mail at the address shown on this policy.

GENERAL INSURANCE CODE OF PRACTICE

ProRisk and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from www.codeofpractice.com.au.

This policy wording and the schedule are Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia.

COMPLAINTS HANDLING

Any enquiry or complaint relating to this insurance should be referred to ProRisk in the first instance. We have a complaints handling and internal dispute resolution process to assist you, and information about our complaints handling procedures is available upon request. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

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

Telephone Number: (02) 9233 1433
Facsimile Number: (02) 9233 1466

: who will refer your dispute to the Complaint's Department at Lloyd's.

Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

Lloyd's Underwriters are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the Scheme if a Lloyd's Underwriter is unable to meet its obligations to you under this contract. If you were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of the contract.

Further information about the Scheme is available from the Financial Services Compensation Scheme (7th Floor, Lloyds Chambers, Portoken Street, London, E1 8BN and on their website at www.fscs.org.uk

In consideration of the payment of the premium set forth in Item 11 of the Schedule and in reliance on the statements made and information contained within the Proposal Form and subject to the terms and conditions of this Policy and after the exhaustion of all other indemnification available to the Directors or Officers or the Company from any other source including any other policy of insurance the Underwriters will:

1. INSURING CLAUSE

a) **Directors' and Officers' Liability**

Pay on behalf of any Director or Officer Loss (other than Loss payable under 1. Insuring Clause b)) arising from any Claim first made against them during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Wrongful Act committed by them in the capacity as Director or Officer.

b) **Company Reimbursement**

(After the Company has indemnified the Director or Officer concerned) Pay on behalf of the Company Loss arising from any Claim first made against any Director or Officer during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Wrongful Act committed by them in the capacity as Director or Officer.

c) **Employment Entity Liability**

(If this insuring clause is stated in Item 6 of the Schedule as applicable to this Policy) Pay on behalf of the Company Loss (other than Loss payable under any other Insuring Clause) arising from any Claim first made against the Company during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Employment Wrongful Act committed by the Company.

2. DEFINITIONS

All definitions within this Policy shall have the same meaning, whether expressed in the singular or the plural. The headings in this Policy shall not affect its interpretation.

a) Claim means:

1. A demand for compensation received by a Director or Officer (or the Company in the case of 1. Insuring Clause c) or d) if applicable) in writing in respect of any actual or alleged Wrongful Act or Employment Wrongful Act ;
2. Legal or (if brought by a proper regulatory body or regulatory authority) administrative or investigative or regulatory proceedings instigated against a Director or Officer (or the Company in the case of 1. Insuring Clause c) or d) if applicable)).

b) Company means: the Parent Company and any Subsidiary.

c) Defence Costs means: costs and charges and expenses incurred in the investigation or defence of a Claim or circumstances notified with the prior and written consent of the Underwriters (such consent not to be unreasonably withheld).

d) Director or Officer means:

1. Any natural person who was, or is, or becomes a director or officer of the Company or a superannuation trustee of any employee benefit plan or pension plan or superannuation fund of the Company.
2. Any Employee while acting in a managerial capacity.

3. Any natural person who was, or is, or becomes a Non-Executive Director of the Company as defined according to applicable law.
4. Any natural person proven to be a shadow director of the Company as defined according to applicable law.
5. In the event of the bankruptcy or death or incapacity of any natural person who falls within the ambit of 2. Definitions d) 1. or 2. or 3. their estate and heirs and legal representatives, but only in respect of any Claim against such natural person otherwise covered under this Policy.

Director or Officer shall not mean any external auditor or liquidator or administrator or receiver or administrative receiver of the Company.

- e) Employee means: any natural person who was, or is, or may hereafter be employed under a contract of service or apprenticeship with the Company. Employee shall not mean any consultant, sub-contractor, independent contractor, independent professional adviser, agent or Director or Officer.
- f) Employment Wrongful Act means: any actual or alleged:
 1. Discrimination or harassment of an Employee or of a prospective Employee; or
 2. Wrongful termination of the employment of an Employee, or the demotion or the refusal to promote an Employee, or the refusal to employ a natural person as an Employee; or
 3. Retaliatory action taken against an Employee proven to have arisen from that Employee exercising or attempting to exercise of his or her rights according to applicable law.
- g) Loss means: such sums which the Directors or Officers (or the Company in the case of 1. Insuring Clause c or d)) are legally liable to pay as compensatory damages for any Wrongful Act (or any Employment Wrongful Act in the case of 1. Insuring Clause c)) and Defence Costs. Loss shall not include salaries, wages, benefits, remuneration, sums payable pursuant to a financial support direction or contribution notice issued by the Pensions Registrar, taxes, fines, penalties, punitive or exemplary damages (other than such damages awarded for libel and slander) or any damages constituting the multiplication of a lesser damages sum or any amount deemed uninsurable under the Laws of Australia or the expenses of the Directors or Officers or (in the case of 1. Insuring Clause c)) any compensation payable in respect of statutory or contractual notice periods or costs incurred in any employment-related education programme or any liability or costs incurred in the modification of any building with the objective of making it more accessible or more accommodating to any disabled person.
- h) Not For Profit Entity means: any registered charity or trade association which is incorporated on a not-for-profit basis and is not incorporated or domiciled or licenced or registered in the North America.
- i) Outside Entity means: and:
 1. company which the Underwriters have specifically agreed in writing to include within this definition;
 2. Not For Profit Entity.
- j) Parent Company means: the company named in Item 1 of the Schedule.
- k) Period of Insurance means: the period in Item 2 of the Schedule and, if applicable, the periods referred to 4. Extensions c) and d).

- l) Policy means: this wording and the Schedule and all endorsements appended hereto. The Policy cannot be assigned without the written consent of the Underwriters.
- m) Pollution means: any actual or alleged or threatened discharge or release or escape or dispersal or disposal of pollutants or contamination of whatever kind or any direction or request that a Director or Officer or the Company test for or monitor or clean up or remove or contain or treat or detoxify or neutralise any pollutants.
- n) Proposal Form means: the written proposal for this Policy and any policy of which this Policy is a renewal as submitted to and accepted by the Underwriters and any written information submitted to and accepted by the Underwriters in connection with this Policy all of which shall be deemed to form part of this Policy. It is also noted and agreed that the Proposal Form shall be the basis of this contract of insurance and (with regard to the answers and declarations and statements and content thereof) shall be construed as a separate application for insurance by each Director or Officer.
- o) Schedule means: the document so-entitled which is appended to this Policy.
- p) Subsidiary means: any company in which the Company either directly or indirectly:
 1. Holds the majority of the voting rights; or
 2. Holds more than half of the issued share capital; or
 3. Has the right to remove or to appoint a majority of the board of directors.
 Subsidiary also means: any company which the Company or any Subsidiary acquires or creates during the Period of Insurance, other than (unless specifically accepted by the Underwriters in writing) any company that:
 - 1) Has total assets that exceed the sum stated in Item 10 of the Schedule, or
 - 2) Has its securities listed on any exchange in North America, or
 - 3) (Once acquired or created) does not fall within one or more of 2. Definitions p) 1. to 3. inclusive.
- q) Underwriters means: certain Underwriters at Lloyd's and any other participating insurance companies.

SEVERAL LIABILITY

The obligations of each insurance company and Lloyd's syndicate (including the underwriters thereof) shall be several and not joint and shall be solely to the extent of that company's or syndicate's individual subscription. No such company or syndicate shall be responsible for the subscription of any other such company or syndicate who for any reason does not satisfy all or part of its obligations hereunder.

- r) Wrongful Act means: any actual or alleged error, misstatement, misleading statement, omission, neglect, breach of duty, breach of trust or breach of warranty of authority by the Directors or Officers in the discharge of their duties as Directors or Officers or any matter claimed against them solely by reason of their being Directors or Officers of the Company. In respect of any Subsidiary, Wrongful Act shall only mean Wrongful Acts committed or allegedly committed between the dates that any company falls within the 2. Definition p) 1. to 3. inclusive.
If the Company is taken over or is merged with any other organisation or if any person or entity acquires more than fifty percent of the voting share capital of the Parent Company Wrongful Act shall only mean any Wrongful Act committed or allegedly committed prior to the date of such takeover, merger or acquisition.
- s) North America means: the United States of America, Canada and their states, localities, overseas territories and possessions.

- t) North American Claim means any:
 - a) Claim brought in the courts of North America or under the laws of North America; or
 - b) actual or attempted enforcement or upholding against the Directors or Officers or the Company by any court or arbitrator or tribunal outside North America of any damages or compensatory or monetary awards or judgments or orders or settlements or costs or expenses made within North America; or
 - c) Claim brought as a consequence of the operations of the Company or any Outside Entity in North America.

3. LIMITS AND RETENTIONS

- a) The Underwriters' aggregate limit of liability for all Loss in respect of all Claims shall be the amount specified in Item 3 of the Schedule.
- b) If stated in Item 4 of the Schedule to be applicable an aggregate limit of AUD \$500,000 or the amount specified in Item 3 of the Schedule (whichever is the smaller) shall apply to Claims under 4. Extensions (b). This limit shall be part of and not in addition to the aggregate limit of liability specified in Item 3 of the Schedule.
- c) An aggregate limit of liability of AUD \$2,000,000 or the amount specified in Item 3 of the Schedule (whichever is the smaller) shall apply to Claims under 1. Insuring Clause c) (if applicable). This limit shall be part of and not in addition to the aggregate limit of liability specified in Item 3 of the Schedule.
- d) The Underwriters shall only be liable for the amount of Loss in respect of each Claim which is in excess of the applicable retention amount specified Item 5 of the Schedule or elsewhere in this Policy.
- e) In the event that the Underwriters are liable for Loss under two or more Insuring Clauses then notwithstanding anything stated in this Policy to the contrary, the largest of all retentions shall be applied in respect to all Insuring Clauses.
- e) All Claims or series of Claims arising from or attributable to or which are causally connected with a single Wrongful Act or a single Employment Wrongful Act or a series of related Wrongful Acts or a series of related Employment Wrongful Acts or which are causally connected shall be considered as a single Claim.
- f) For the purposes of determining the limit of liability this Policy will be construed as a joint policy with an aggregate limit available to all Directors and Officers and the Company collectively.

4. EXTENSIONS

a) Outside Board Cover

Underwriters will pay on behalf of any Directors or Officers Loss arising from any Claim first made against them during the Period of Insurance and notified to the Underwriters during the Period of Insurance arising from them serving at the request or the order or the direction of the Company in the capacity of a director or officer or a governor or a trustee of any Outside Entity in respect of any Wrongful Act committed in such capacity provided that:

1. such request or order or direction has been given by the Company in writing;
2. any cover under this extension shall only apply in excess of any other insurance or indemnification available to the Directors or Officers;

3. Underwriters shall not be liable to make any payment for Loss in connection with any Claim made against a Director or Officer by or on behalf of the Outside Entity;
4. (in the case of any Outside Entity which falls within the ambit of 2. Definitions i) 1) the Underwriters agreement to any Outside Board Cover must be specifically obtained in writing;
5. if any other insurance is provided by the Underwriters under any other contract of insurance, then the total aggregate limit of liability for all Loss covered by virtue of this extension shall be reduced by the limit of liability specified in the schedule of such other contract of insurance;
6. this Extension is deleted and of no effect for Loss arising from a Claim based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with the insolvency or bankruptcy or liquidation or receivership or administration of any Outside Entity.

b) **Pollution Defence Costs**

Underwriters will pay Defence Costs on behalf of the Directors and Officers (if it is stated in Item 4 of the Schedule that this extension is applicable) incurred in defending themselves against criminal or regulatory proceedings in respect of Pollution, where the incident giving rise to the Claim occurs outside of North America and is not a North American Claim and which results from any Wrongful Act giving rise to a Claim.

c) **Discovery Period**

The Directors and Officers shall have the right to an extension of the coverage granted by this Policy with respect to any Claim which shall be made against them during the Effective Period of this extension. Any Claim made during the Effective Period of this extension shall be considered made during the Period of Insurance.

d) **Retired Directors and Officers Cover**

If a natural person retires from the position of Director or Officer during the Period of Insurance, they shall be entitled to an extension of the coverage granted by this Policy with respect to any Claim which shall be made against them during the Effective Period of this extension which arises out of their position as Director or Officer. Any Claim made during the Effective Period of this extension shall be considered made during the Period of Insurance.

The Effective Period of any extension shall be determined as follows:

4. Extension c) shall terminate 12 months after the expiry of the Period of Insurance.
4. Extension d) shall terminate 72 months after the expiry of the Period of Insurance.
4. Extensions c) and d) shall be deleted and of no effect;
 - i) if this Policy is succeeded or replaced by any other policy which provides directors' and officers' liability insurance,
 - ii) if at renewal the Underwriters offer terms or conditions or limits of liability or request premium even if any or all of them are different from those of the expiring Policy,
 - iii) unless the Underwriters receive an additional premium equal to fifty percent (50%) of the Premium specified in Item 11 of the Schedule within 30 days after the expiry of the Period of Insurance,
 - iv) unless a written request to invoke either extension is received by the Underwriters within 15 days after the expiry of the Period of Insurance,
 - v) if this Policy is terminated by the Underwriters for non payment of premium,
 - vi) in respect of any Wrongful Act taking place after the expiry of the Period of Insurance.
4. Extensions c) shall be deleted and of no effect if 4. Extensions d) is or has been invoked.

4. Extensions d) shall be deleted and of no effect if 4. Extensions c) is or has been invoked.
4. Extensions a) and b) and c) and d) shall be deleted and of no effect in respect of all insuring clauses except 1. Insuring Clause a).
4. Extensions a) and b) and c) and d) shall not be construed to mean an increase or an extension or a reinstatement of the limit of liability specified in Item 3 of the Schedule.

5. EXCLUSIONS

The Underwriters shall not be liable for Loss in connection with any Claim:

- a) based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with, any;
1. legal or administrative or disciplinary or regulatory proceedings which existed or were pending at the date stated in Item 7 of the Schedule, or any fact or circumstance or event in anyway pertaining to such proceedings;
 2. a) Director or Officer gaining any personal profit or advantage or receiving any remuneration to which he or she was not or is not legally entitled;
b) Director or Officer committing any dishonest or fraudulent act or omission or any wilful violation of law;
provided that this exclusion shall only apply if such profit or advantage or remuneration or act or omission is established by admission or by a court or a tribunal;
 3. circumstance notified or Claim made under any insurance which was in force prior to the Period of Insurance or which was known about by any of the Directors or Officers or the Company prior to the Period of Insurance;
 4. actual or alleged violation of the Securities Act 1933 or the Securities Exchange Act of 1934, including any amendment or re-enactment thereof or any similar provision in any State statutory law enacted in the United States of America;
 5. actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, including any amendment or re-enactment thereof or any similar provision in any State statutory law enacted in the United States of America;
 6. pensions or pension plans or pension trusts or pension programmes or employee benefit plan or superannuation fund;
 7. Pollution other than;
 - a) to the extent covered under 4. Extensions (b); or
 - b) any Claim brought by a shareholder of the Company (other than a Director or Officer) on the basis solely that Pollution has caused a loss in the value of the share capital of the Company due to a breach of duty owed by the Directors and Officers;
 8. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 9. war, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted Authority;
 10. Terrorism (including, without limitation, contemporaneous or ensuing loss or damage or legal liability caused by fire and/or looting and/or theft). The burden of proving that any Claim does not fall within this Terrorism Exclusion shall be upon the Directors or Officers and/or the Company. For the purposes of this Exclusion Terrorism means

any act or acts of force or violence (whether threatened or actual) by any person or persons acting alone or on behalf of or in connection with any organisation, which is carried out for political, religious or ideological ends and is either directed towards the over-throwing or influencing of the Government de jure or de facto or to put the public or any part of the public in fear;

11. offering of securities of the Company;
12. failure to effect or to maintain, or any failure to collect or recover under, insurance;
13. breach of professional duty or professional services provided by or on behalf of the Directors and/or Officers and/or the Company;
14. (if stated in Item 6 of the Schedule as applicable to this Policy) North American Claim;
15.
 - i) actual or alleged breach of legislation relating to collective redundancies;
 - ii) regulations relating to minimum wage regulations or disability benefits, unemployment benefits, retirement benefits, social security benefits, redundancy benefits, compensation or unemployment insurance;
 - iii) order or judgment to reinstate any Employee;
 - iv) actual or alleged liability under any express employment contract or agreement, other than any liability which the Company would face in the absence of such a contract or agreement. (Exclusion 15 i) to iv) inclusive to apply in respect of Insuring Clause 1 c) only);
 - v) liability assumed by way of warranty or contract or guarantee unless such liability would have attached in the absence of such warranty or contract or guarantee.

b) for;

16. damage to or destruction of any tangible property or the loss of use thereof;
17. bodily injury or sickness or disease or mental injury or mental anguish or death of any person provided that this exclusion shall not apply to any Claim for an Employment Wrongful Act or for emotional distress in connection with a wrongful termination of employment or a Claim for discrimination or harassment by any Employee;

c) made;

18. by or on behalf of the Company or by or on behalf of any Director or Officer provided that this exclusion shall not apply in respect to 1. Insuring Clause a) and b) to:
 - a) a Claim by a Director or Officer in respect of Employment Wrongful Acts;
 - b) a claim for indemnity or contribution in respect of a Claim first brought against a Director or Officer or the Company which is otherwise covered under the terms of this Policy;
 - c) a Claim in the form of a shareholder derivative action which has not been instigated by any Director or Officer or by the Company;
 - d) a Claim brought by a liquidator or administrator or receiver or administrative receiver on behalf of the Company which has not been instigated or assisted by any Director or Officer or by the Company;
 - e) a Claim against a former Director or Officer unless the Claim is made by or on behalf of a proprietary company as defined under Section 45A of the Corporations Act 2001 (Cth);
 - f) a Claim made by a former Director or Officer;

d) made (if stated in Item 6 of the Schedule to be applicable to this Policy);

19. (in the name of the Company or not) or instigated by or on behalf of, or for the benefit of, any person or entity holding beneficially or otherwise more than 25% of the issued share capital of the Company;
20. in respect of 1. Insuring Clause c) and 1. Insuring Clause d) (if either or both are applicable) if the Company is not or ceases to be a co-defendant with a Director or Officer;

The Wrongful Acts or knowledge of any Director or Officer shall not be imputed to any other Director or Officer for the purpose of applying the exclusions.

6. CLAIMS CONDITIONS

It is a condition precedent to the liability of the Underwriters that:

- a) notice of any Claim shall be given to the Underwriters as soon as is reasonably practicable and in any event within 14 days of the end of the Period of Insurance and that notice of a Claim shall be given in writing by post or by facsimile to the address specified in Item 9 of the Schedule.)
- b) at their own cost the Directors or Officers and the Company shall provide to the Underwriters in a timely fashion all information and assistance they reasonably require to allow them to investigate, defend, or resolve any Claim or circumstance notified and to exercise any subrogation rights.
- c) the Underwriters have the right but not the obligation to control the defence and settlement of any Claim and the appointment of lawyers to represent the Directors and Officers or the Company.
- d) the Directors or Officers and the Company shall furnish the Underwriters in a timely fashion with copies of all papers in connection with any Claim or circumstance notified.
- e) the Directors or Officers or the Company shall not make any admission or give any offer or settlement or promise or indemnity to any party without the prior and written consent of the Underwriters.
- f) no Director or Officer nor the Company shall be required to contest any Claim at trial unless a mutually agreed upon Queen's Counsel shall advise that the Claim should be contested.
- g) Defence Costs which are advanced on behalf of the Directors or Officers or the Company prior to the resolution of a Claim shall be repayable by the Directors or Officers or the Company to the Underwriters in the event that the Claim is not covered under this Policy.
- h) if a Director or Officer or the Company refuses to consent to any settlement recommended by the Underwriters or their legal representatives and elects to contest or to continue defence of a Claim, then the liability of the Underwriters for such Claim shall not exceed the amount for which the Claim could have been settled up to the date of such refusal.
- i) in the event that any Claim under this Policy gives rise both to Loss which is covered under this Policy and losses which are not so covered, or includes a Claim against a Director or Officer and a Claim against the Company, the Underwriters and the Company and the Directors or Officers shall negotiate in good faith to agree a fair and proper basis for allocation taking into consideration the relative legal exposures of the various parties and that in the event that the Underwriters and the Company and/or the Directors or Officers

cannot agree on allocation they shall submit the dispute to a mutually agreed upon Queen's Counsel to determine a fair and proper basis for allocation having regard to the relative legal exposures of the various parties.

- j) if the Directors and Officers are unable to satisfy a right to payment or indemnity against the Company for Loss arising out of a Claim solely by reason of the Company having insufficient funds then the Underwriters will provide such payment or indemnity against Loss to the extent that the Company could have granted it as legally permitted or required by law provided always that any such payment or indemnity will be subject to the largest deductible as stated to be applicable to the Company in this Policy.
- k) all rights of recovery of the Directors or Officers or the Company shall be subrogated to the Underwriters if the Underwriters make any payment under this Policy.
- l) where payment is made under this Policy for the acquisition of goods or services or other supply, the Underwriters will reduce the amount of such payment by an amount of any input tax credit to which the Company is or would or will be entitled by virtue of the Goods and Services Tax Act 1999, whether or not that acquisition is actually made.
- m) where payment is made under this Policy instead of payment for the acquisition of goods or services or other supply, the Underwriters will reduce the amount of such payment by the amount of any input tax credit to which the Company is or would or will be entitled by virtue of the Goods and Services Tax Act 1999, had the payment been applied to acquire such goods or services or other supply.

7. GENERAL CONDITIONS

a) The Parties Insured hereby agree that;

- i) The Proposer as referred to in the Proposal Form or the Company shall act on behalf of all Directors or Officers and the Company with respect to the giving and receiving of notice of Claim or termination of this Policy and the receipt and acceptance of any endorsements issued to form part of this Policy and the exercising of any extensions to this Policy including either or both of 4. Extensions (c) and (d);
- ii) No person who is not a party to this Policy may enforce any of its terms under the Contracts (Rights of Third Parties Act) 1999;
- iii) Information provided to the Underwriters regarding the Directors and Officers and the Company will be processed by the Underwriters in compliance with the provisions of the prevailing data protection legislation for the purpose of providing insurance and handling Claims and it is noted and agreed that such processing may necessitate providing such information to third parties;
- iv) At the request of any person who falls within the ambit of 2. Definitions d) 1. or 2. or 3. , the Underwriters will indemnify the spouse of any such person, but only in respect of an action to enforce a judgment obtained against such person against the property of that spouse arising from a Claim insured under this Policy.

b) Policy Construction

This Policy shall be construed in accordance with the laws of Australia. In the event of any dispute arising out of or in connection with this Policy, each party agrees to submit to the jurisdiction of any Court of competent jurisdiction within Australia and to comply with all requirements necessary to enable such Court to properly hear the dispute and determine it.

ENDORSEMENTS

OCCUPATIONAL HEALTH & SAFETY DEFENCE COSTS (AUST)

It is hereby noted and agreed that notwithstanding anything contained in 5.EXCLUSIONS 16. and 17. and 18. to the contrary the Underwriters will pay Defence Costs on behalf of the Directors and Officers subject to the aggregate sub-limit of AUD \$500,000 or an aggregate amount equal to 50 percent of the amount specified in Item 3 of the Schedule (which ever is the smaller) (such limit being part of and not in addition to the aggregate limit of indemnity under this Policy specified in Item 3 of the Schedule) incurred in defending themselves against criminal or regulatory proceedings in respect of any actual or alleged breach of any occupational health and safety laws or regulations which result from any Wrongful Act giving rise to a Claim other than any,

- a) incurred in North America, or
- b) North American Claim, or
- c) civil claim for compensation, or
- d) proceeding or civil claim for damages or compensation arising from that breach or any other Claim otherwise excluded under this Policy.

All other terms, conditions, definitions, limitations, exclusions and provisions of this Policy remain unamended.

CONTINUOUS COVER ENDORSEMENT (AUST)

Notwithstanding anything contained in this Policy to the contrary it is hereby noted and agreed that if, prior to the commencement of the Period of Insurance but after the Continuity Date stated in Item 8 of the Schedule, the Directors and Officers and the Company were aware of circumstances which might give rise to a Claim and which were not notified to the Underwriters in compliance with the claims notification procedures stated in the contract of insurance in force at the time, the Underwriters will indemnify the Directors and Officers and the Company in respect of a Claim arising from such prior known circumstances, provided that;

- a) the failure to notify such circumstances was not as a result of any fraudulent misrepresentation or fraudulent non-disclosure; and
- b) the Limit of Liability and any sub-limits thereto and any retentions to the policy which were in force at the time when the Directors and Officers and the Company first became aware of such Claim or circumstances shall apply (unless those which apply to the Period of Insurance are more restrictive, in which case they shall apply); and
- c) at their absolute discretion the Underwriters will reduce their liability to the extent of any prejudice suffered as a result of the failure to notify such circumstances prior to the commencement of the Period of Insurance; and
- d) Such Claim or circumstance had not been previously notified to the Underwriters.

SERVICE OF SUIT CLAUSE (AUSTRALIA)

The Underwriters hereon agree that :

- (i) In the event of a dispute arising under this Policy, Underwriters at the request of the insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon

Lloyd's General Representative in Australia
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123 Pitt Street
Sydney NSW 2000

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the insured to give a written undertaking to the insured that he will enter an appearance on Underwriters' behalf.

- (iii) If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

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