



Section 1: Combined General & Products Liability

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Policy Wording

In consideration of the premium being paid by the Insured to Liberty International Underwriters (hereinafter called LIU) and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy wording and endorsements (where applicable).

1 Insuring Clause

Subject to the terms of this Policy, Liberty International Underwriters (hereinafter called LIU) will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

2 Definitions

2.1 "Asbestos" means:

2.1.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite.

2.1.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres.

And includes Asbestos Products and Products containing Asbestos.

2.2 "Damage" means:

2.2.1 Physical damage to or destruction of tangible property, (other than Product) including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it.

2.2.2 Loss of use of tangible property, (other than Product) that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

- 2.3 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.
- 2.4 "Injury" means death, bodily injury, sickness or disease to any person.
- 2.5 "Insured" wherever used in this Policy means the Insured named in the Schedule and
- 2.5.1 Any subsidiary company incorporated within the Commonwealth of Australia (including subsidiaries thereof) of the Insured;
- 2.5.2 Any other entity incorporated within the Commonwealth of Australia controlled by the Insured and over which the Insured assumes active management;
- 2.6 "Insured's Business" is the business shown in the Schedule.
- 2.7 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ARBN 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.8 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.9 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.10 "Period of Insurance" is the period shown in the Schedule or any subsequent Renewal Certificate or any extension by endorsement.
- 2.11 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.12 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).



2.13 "Terrorism" means an act or acts

2.13.1 That are violent in nature or are dangerous to human life:

2.13.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia; and that have the apparent intent of:

2.13.1.1.1 Intimidating or coercing any civilian population;

2.13.1.1.2 Influencing the policy of any government
By intimidation or coercion; or

2.13.1.1.3 Affecting the conduct of any government
by mass destruction, assassination, or kidnapping,

Or

2.13.2 That result in:

2.13.2.1 The denial of access to or services from web sites, computer networks, or telecommunications equipment; or

2.13.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, or mechanical equipment, or that otherwise interrupt the functioning of web sites or such properties

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

2.14 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.

2.15 "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.

3 Indemnity to Others

Subject to the terms of this Policy and in accordance with Insuring Clause 1, this Policy will extend to pay to or on behalf of:

- 3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal.
- 3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity.
- 3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such.
- 3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy (insofar as they can apply) as though they were the Insured.

4 Cross Liabilities

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Policy.

5 Limit of Indemnity

LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Product(s) shall not exceed the sum stated in the Schedule.

6 Defence Costs

In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and expenses incurred with LIU's prior written consent in connection with any claim or potential claim for which the Insured is indemnified by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a Court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America, the Dominion of Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by LIU in addition to the Limit of Indemnity.

7 Exclusions

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a Policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:
 - 7.1.1 Injury for which no indemnity is or would be available to the Insured under the said Policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law.
 - 7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said Policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law.



- 7.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer.
 - 7.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon.
 - 7.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 7.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
- 7.2.1 Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises on which the Insured is or has been working on if the physical damage or destruction arises from such work.
 - 7.2.2 Premises tenanted by the Insured.
 - 7.2.3 Directors', employees' and visitors' clothing and personal effects.
 - 7.2.4 Other property (not owned by the Insured) temporarily in the Insured's possession provided:
 - 7.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on;
 - 7.2.4.2 LIU's limit of liability under this clause 7.2.4 does not exceed \$100,000 each and every Occurrence and in the aggregate for any one Period of Insurance.

Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.

- 7.3 Damages claimed for, and the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 7.4 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 7.5 Liabilities assumed under the terms of a contract, agreement or warranty unless the Insured would have been liable in the absence of such contract, agreement or warranty;
- 7.6 Where the Insured may have been able to recover from another party(ies) but for an agreement between the Insured and such party(ies) where the Insured has waived, released or abandoned any right of recourse or recovery against such other party(ies).
- 7.7 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.
- 7.8 Injury to any Worker.

Provided that if the Insured:

- 7.8.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
- 7.8.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law;

then this Policy will respond to the extent that the Insured's liability would not be covered under any such fund, scheme, policy of insurance or self insurance arrangement had the Insured complied with its obligations pursuant to such Law.

- 7.9
 - 7.9.1 Any Workers' Compensation Law;
 - 7.9.2 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;
 - 7.9.3 Employment Practices.

7.10 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:

7.10.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

7.10.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

7.11 Any change in the nature of the Business which:

7.11.1 Occurred during the currency of this Policy; and

7.11.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any officer of the Insured shall be deemed to be the knowledge of the Insured.

7.12 7.12.1 The rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith;

7.12.2 Advice, design, formula or specification given for a fee by the Insured or any person covered by Clause 3 of this Policy.

Provided that this exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.

7.13 7.13.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants, provided always that this Exclusion 7.13.1 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place;

7.13.2 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.13.3 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.13.4 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso in Exclusion 7.13.1 shall not exceed the Limit of Indemnity shown in the Schedule.

7.14 Injury sustained due to the inhalation or ingestion of, or exposure to:

7.14.1 Tobacco or tobacco smoke.

7.14.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7.15 7.15.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion;

7.15.2 Nuclear weapons material.

7.16 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

7.16.1 War and military action which includes without limitation the following:

7.16.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

7.16.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents;

7.16.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.16.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:

7.16.2.1 Alone or on behalf of or in connection with any organisation;
or

7.16.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.

7.16.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation, or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or radiation or radioactive contamination in place of Exclusion 7.15.

7.17 Ownership, maintenance, operation, possession or use by or on behalf of the Insured of any aircraft, aerial device, watercraft or hovercraft.

7.18 The Deductible and/or self-insured retention shown in the Schedule.

7.19 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of \$500,000 or 10% of the Limit of Indemnity whichever is the lesser.

7.20 Asbestos.

7.21 7.21.1 Claims made and actions instituted within the United States of America, the Dominion of Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada;

7.21.2 Claims and actions to which the laws of the United States of America, the Dominion of Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.

7.22 Fines, penalties, punitive damages, exemplary damages, liquidated damages and/or aggravated damages.

- 7.23 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.

8 General Conditions

- 8.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.
- 8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.
- 8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.
- 8.4 The amount shown within the Schedule as a Deductible and/or self insured retention is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured.
- 8.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:

8.5.1 The total amount in respect of the said claim or claims to which the Insured is entitled to indemnity under this Policy, or

8.5.2 The total amount sought by the claimant(s) in the said claim or claims, or

8.5.3 The total amount for which the said claim or claims can be settled,

and in addition to such payment LIU will pay Defence Costs incurred up to the date of the said payment as provided for by Clause 6 of this Policy.

Upon such payment, LIU shall relinquish conduct or control of such claims and be under no further liability under this Policy in connection with such claim or claims or Defence Costs.

8.6 This Policy shall be interpreted in accordance with the laws of Australia.

8.7 The Insured must:

8.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;

8.7.2 Take all reasonable precautions to:

8.7.2.1 Prevent Injury and Damage;

8.7.2.2 Prevent the manufacture, sale or supply of defective Products;

8.7.2.3 Comply, and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;

8.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.

The amount of any benefit under this Policy for any liability arising from Injury and/or Damage caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

8.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

8.9.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto.

8.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy.



8.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the third business day after the date on which notice was given to the Insured by LIU (whichever is the earlier).

Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this General Condition, or any other notice, statement, document or information relating to this insurance Policy. Where the Insured has an insurance broker, nothing in this paragraph shall restrict LIU's right to notify the broker as agent of the Insured.

8.10 Where this Policy provides any indemnity to the Insured which is prohibited by law, this Policy shall be varied by operation of this General Condition so that this Policy does not respond to the extent that the indemnity is prohibited by law.

This Policy is valid only if attaching to a signed and current Policy Schedule including any applicable endorsements and it is signed and dated by a duly authorised representative of LIU.

Section 2: Employment Practice Liability

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Important Notice

Please note that this is a Claims Made policy. Accordingly, **Liberty** will only cover the **Insured** in respect of **Claims** which are first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period**. The **Insured** should carefully read all of this **Policy**, including all definitions and, in particular, the exclusions, to ascertain the precise scope of cover afforded by this **Policy**. The **Insured** is advised to consult its insurance agent or broker to ensure a clear understanding of the **Insured's** rights and obligations under this **Policy**.

Policy Wording

In consideration of payment of the **Premium** by the **Insured**, and subject to all the terms, conditions and exclusions, including all definitions, of this **Policy**, **Liberty** agrees as follows:

1. Insuring Clauses

1.1 Employment Practice Liability

Liberty will pay on behalf of the **Insured** the **Loss** which the **Insured** is legally liable to pay as a result of a **Claim** alleging an **Employment Practice Breach** in the conduct of the **Business** specified in the **Schedule**.

1.2 Defence Costs

Liberty will also pay on behalf of the **Insured** the **Defence Costs** incurred in respect of a **Claim** covered under Insuring Clauses 1.1.

Defence Costs are subject to the **Excess** and are included within the **Limit of Liability** specified in the **Schedule**.

2. Exclusions

Liberty will not cover the **Insured** for any **Loss** or **Defence Costs** for, arising out of, or in any way connected with:

2.1 Fraud & Dishonesty

any fraudulent, criminal, wilfully reckless, malicious or dishonest act, error or omission committed or omitted by an **Insured** including any intentional breach of any law or regulation. This exclusion will only apply where it is established by an admission of the **Insured** or by a judgment, award, finding or other adjudication of a court, tribunal, commission or arbitrator that such conduct did in fact occur.

2.2 Personal Injury

death, bodily or mental injury, sickness or disease of any person.

2.3 Property Damage

loss of, damage to, or destruction of any real or personal property, including any consequential losses flowing from such loss, damage or destruction.

2.4 Superannuation

any responsibilities, obligations or duties in respect of any superannuation fund, profit sharing or other employee benefits programme including but not limited to any actual or alleged breach of any responsibilities, obligations or duties imposed under the Superannuation Industry (Supervision) Act 1993 (Cth) or the Superannuation Guarantee (Administration) Act 1992 (Cth) or any amendment thereto.

2.5 Retroactive Date

any **Employment Practice Breach** committed or allegedly committed prior to the **Retroactive Date** specified in the **Schedule**.

2.6 Prior Matters

- (a) any **Claim** made, threatened or intimated against an **Insured** prior to the commencement of the **Policy Period**;
- (b) any facts that an **Insured** was aware of before the commencement of the **Policy Period** that might give rise to a **Claim**;
- (c) any facts reported, or which can be or could have been reported, to an insurer under any insurance policy entered into before the commencement of the **Policy Period**;
- (d) any facts disclosed to any insurer in any proposal for insurance before the commencement of the **Policy Period**; or
- (e) any facts disclosed to **Liberty** in the **Proposal**.

2.7 Existing Legal Obligations

an obligation, or breach of an obligation, under:

- (a) any law or regulation providing for paid or unpaid leave of any kind;
- (b) any **Industrial Instrument**;
- (c) any contract of employment where such obligation is the same as, or concurrent with, an obligation referred to in (a) or (b).

2.8 Statutory Benefits

any obligation pursuant to any law, regulation or **Industrial Instrument** in respect of workers' compensation, occupational or workplace health and safety, disability benefits, unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law, regulation, **Industrial Instrument** whatsoever, or any breach of such obligation.

2.9 Redundancy

any obligation of any kind under any source in respect of redundancy or severance, or any breach or non-observance of such obligation.

2.10 Contractual Liability

any liability assumed by an **Insured** under any contract, agreement or understanding unless such liability would have attached in the absence of such contract, agreement or understanding.

2.11 Unfair Contract

any actual or alleged participation by an **Insured** in any unfair contract of employment for which a statutory remedy exists or allegedly exists.

2.12 Interested Parties

any **Claim** brought by or on behalf of any natural person who owns an equity interest in, or has a claim to an equity interest in, the **Company**.

2.13 Industrial Disputes

any strikes, work-to-rule, work bans, overtime bans, go-slows, picketing, sit-ins, lock-outs, demonstrations or any other industrial action or industrial dispute.

2.14 Pollution

the actual or alleged presence, discharge, dispersal, release or escape of any **Pollutant(s)** or the cost of removing, nullifying or cleaning up any **Pollutant(s)**.

2.15 Terrorism

any act or acts by any person or group of persons or government causing or threatening to cause any harm of any nature for political, religious, ideological, ethnic or similar purpose or to intimidate or influence any government or the public or any section of the public.

2.16 War

any war or military action which includes, without limitation, the following:

- (a) war, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- (b) warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (c) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against the same.

2.17 Radiation & Nuclear

- (a) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- (b) any weapon of war employing atomic or nuclear fission or fusion or other like reaction or radioactive force or matter.

2.18 Geographical Limitation

any **Employment Practice Breach** committed or allegedly committed outside of Australia.

2.19 Jurisdictional Limitation

- (a) any legal action or litigation brought in a court or tribunal outside of Australia;
- (b) any legal action or litigation brought in a court or tribunal inside Australia to enforce a judgment entered in a court or tribunal outside of Australia; or
- (c) the application of the laws of any jurisdiction other than those of the Commonwealth of Australia or an Australian State or Territory in any legal action.

In addition, the following exclusions apply:

2.20 Penalties & Punitive Damages

Liberty will not pay for:

- (a) any fines or penalties; or
- (b) any exemplary, aggravated, multiple or punitive damages.

2.21 Goods & Services Tax

Liberty will not pay for any **GST** imposed or payable in respect of the **Premium** or any payment for **Loss** or **Defence Costs** made under this **Policy**.

3. Claims Conditions

3.1 Notification of Claims & Co-operation

As soon as an **Insured** becomes aware of a **Claim** during the **Policy Period** then that **Insured** must:

- (a) notify **Liberty** in writing of the **Claim**. The notification must be sent to:

The Claims Department
Liberty International Underwriters
Level 27, 'Gateway'
1 Macquarie Place
Sydney, New South Wales, Australia 2000
Tel: 61-2-8298 5800
Fax: 61-2-8298 5887.

- (b) give **Liberty** such information and co-operation as it may reasonably require including but not limited to:
- (i) a description of the **Claim**;
 - (ii) the nature of the alleged **Employment Practice Breach**;
 - (iii) the nature of the alleged or potential loss;
 - (iv) the names of actual or potential claimants; and
 - (v) the manner in which the **Insured** first became aware of the **Claim**.

3.2 Defence & Settlement

Liberty may, in its absolute discretion, take over the conduct of any investigation, settlement or defence of any **Claim**.

The Insured must:

- (a) take all reasonable steps to mitigate loss;
- (b) not agree to any waiver or limitation of or delay as to their legal rights of recovery against any other party;
- (c) not admit liability, negotiate any settlement, enter into any settlement agreement or incur any **Defence Costs** without the prior written consent of **Liberty** which consent shall not be unreasonably withheld; and
- (d) give **Liberty** all the information and assistance that **Liberty** requires for the purpose of investigating:
 - (i) the cause and consequences of any **Claim**;
 - (ii) the **Insured's** liability to any party in respect of any **Claim**; and
 - (iii) whether **Liberty** has any liability to the **Insured** under this **Policy** and, if so, the extent of its liability;and conducting any **Claim**.

3.3 Other Insurance

If **Loss** or **Defence Costs** insured under this **Policy** are also potentially insured under any other insurance policy or policies, then the **Insured** must advise **Liberty** at the time of making a claim under this **Policy**, and provide **Liberty** with details of the other insurance(s).

3.4 Allocation Clause

In the event an **Insured** is a party to a demand or proceeding which is covered only in part by this **Policy**, the **Insured** and **Liberty** will use their best efforts to agree upon a fair and proper allocation of **Loss** and **Defence Costs** which relate solely to what is covered under this **Policy**.

In the event that an agreement cannot be reached, a Senior Counsel (to be mutually agreed upon by **Liberty** and the **Insured**) shall, as an expert but not an arbitrator, determine a fair and proper allocation. Until the Senior Counsel has made his or her determination, **Liberty** may, in its absolute discretion, pay such **Loss** and **Defence Costs** as it considers appropriate. The cost of such Senior Counsel's opinion shall be deemed to be part of **Defence Costs**.

3.5 Insured's Right to Contest a Claim

Liberty shall not require an **Insured** to contest any **Claim** unless a Senior Counsel (to be mutually agreed upon by **Liberty** and that **Insured**) advises that such **Claim** should be contested. In formulating such advice, Senior Counsel shall take into consideration the economics of the matter (including potential **Loss** and **Defence Costs**) and the prospects of the **Insured** successfully defending the **Claim**. The cost of such Senior Counsel's opinion shall be deemed to be part of **Defence Costs**.

In the event that **Liberty** recommends settlement in respect of any **Claim** and the **Insured** does not agree that such **Claim** should be settled, the **Insured** may elect to contest such **Claim** provided always that the liability of **Liberty** shall not exceed the amount for which the **Claim** could have been settled plus **Defence Costs** incurred with **Liberty's** prior written consent up to the date of such election.

3.6 Subrogation

If **Liberty** grants indemnity under this **Policy** in respect of any **Claim**, then **Liberty** shall be subrogated to all the **Insured's** rights of recovery in respect of such **Claim** whether or not payment has in fact been made and whether or not the **Insured** has been compensated in full for their loss. Each **Insured** must, at its own cost, provide all reasonable assistance to **Liberty** (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The **Insured** must not do anything that may prejudice **Liberty's** position or its potential or actual rights of recovery against any party. Any amounts recovered by **Liberty** in excess of **Liberty's** total payment to the **Insured** (including **Defence Costs**) shall be restored to the **Insured** less the cost to **Liberty** of such recovery.

4. General Conditions

4.1 Limit of Liability

The maximum amount payable by **Liberty** under this **Policy** for all **Loss** and **Defence Costs** is the **Limit of Liability** specified in the **Schedule**. The **Limit of Liability** is inclusive of any **Defence Costs** but does not include costs incurred by **Liberty** in determining whether the **Policy** provides insurance to the **Insured**.

4.2 Excess

Liberty will only pay in respect to each **Loss** (or alleged **Loss**) and associated **Defence Costs**, the amount which is above the **Excess** specified in the **Schedule**. The **Excess** shall be the first amount borne by the **Insured** and shall remain uninsured.

4.3 Change in Control

If a **Change in Control** occurs during the **Policy Period**, this **Policy** will continue to provide cover but only in respect of **Employment Practice Breaches** committed or allegedly committed prior to the effective date of the **Change in Control**.

4.4 Governing Law & Exclusive Jurisdiction

This **Policy** is governed by the law in force in New South Wales. All matters arising relating to construction or operation of the provisions of this **Policy** shall be submitted to the exclusive jurisdiction of the courts exercising jurisdiction under the law of New South Wales.

4.5 Policy Interpretation & Construction

The headings in this **Policy** are for descriptive purposes only and do not form part of this **Policy** for the purpose of its construction or operation. Words used in the singular shall include the plural and vice versa. For the meaning of any words in bold refer to the **Schedule** or to Section 5 - Definitions.

5. Definitions

In this **Policy**:

5.1 Change in Control means any one of the following events:

- (a) the **Named Insured** consolidates or merges with, or sells all or substantially all of its assets to a person, entity or group of persons or entities acting in concert;
- (b) the **Named Insured** becomes a subsidiary of another entity or becomes controlled by another entity; or
- (c) an administrator, receiver or liquidator is appointed to the **Named Insured**.

5.2 Claim means any:

- (a) written demand for legal remedy;
- (b) civil proceeding including third party proceeding or counterclaim;
- (c) formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document,

first made against the **Insured** during the **Policy Period** and reported to **Liberty** during the **Policy Period** alleging an **Employment Practice Breach** which may result in **Loss** or **Defence Costs** insured under this **Policy**.

5.3 Company means the **Named Insured** specified in the **Schedule** and its **Subsidiaries**.

5.4 Defence Costs means costs and expenses incurred by **Liberty**, or by an **Insured** but only with **Liberty's** prior written consent, solely for the benefit of the **Insured** in the investigation, settlement, defence or appeal of any **Claim** covered under this **Policy**. **Defence Costs** does not include the **Insured's** salaries, wages, travel or accommodation expenses.

5.5 Director means a person who is validly appointed to the position of director or alternate director of the **Company**.

5.6 Employee means a person who is or was employed by the **Company** including any full time, part time or casual employee. **Employee** does not include **Directors**, consultants, independent contractors, secondees to or agents of the **Company** or their respective employees (including the employees of labour-hire companies).

5.7 Employment Practice Breach means any:

- (a) unfair, harsh, unreasonable, unjust or unlawful dismissal or termination of employment for which a statutory remedy exists or allegedly exists;
- (b) harrasment (including sexual harrasment) of any kind in the workplace including the alleged creation or permission of an harrassing workplace environment;
- (c) discrimination on any unlawful basis;
- (d) victimisation on any unlawful basis;
- (e) misleading or deceptive advertising or representation in respect of employment;
- (f) unfair failure to employ or promote, unfair deprivation of a career opportunity, unfair discipline, unfair failure to grant tenure or negligent performance evaluation;
- (g) unlawful interference with privacy;
- (h) defamation; or
- (i) wrongful infliction of emotional distress or mental anguish,

committed or allegedly committed against an **Employee** or prospective employee in respect of that person's past, present or prospective employment with the **Company**.

5.8 Employment Benefits means:

- (a) non-monetary benefits including but not limited to the allocation of a company car, travel allowance, mobile or landline telephone, medical or life insurance expenses, education and training allowances, and equipment allowances;
- (b) stock, shares, stock options, share options or any entitlement or right under any equity plan of any description;
- (c) participation in any stock, share, stock option or share option plan, or participation in any equity plan of any description;
- (d) severance or redundancy payments or entitlements;
- (e) any benefit, payment or entitlement of any kind in respect of paid or unpaid leave;
- (f) bonus or incentive payments, or any entitlement or right under a bonus or incentive plan (which, for the avoidance of doubt, does not include any payments, entitlement or right under a commission scheme); and
- (g) payments or contributions in respect of any provident, benefit, superannuation, pension or retirement fund, or any other account, fund, scheme or plan intended to provide benefits, in whole or in part, at retirement or a particular age, or on the happening of a particular event.

5.9 Industrial Instrument means:

- (a) an award, collective or individual agreement, minimum wage order or any other instrument made or authorised under statute; or
- (b) any other collective agreement,

which regulates the terms and conditions of employment.

5.10 GST means the tax imposed as goods and services tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or as amended and any penalty and interest payable in respect of that tax.

5.11 Insured means any **Insured Person** and the **Company**.

5.12 Insured Person means any past, present or future **Director** or **Employee** but only in their capacity as a **Director** or **Employee** of the **Company**.

Insured Person does not include any professional consultants, service providers, auditors, receivers, managers, liquidators, administrators, trustees, mortgagees in possession or the like, or any employees of such persons or entities, who are not employed by the **Company**.

5.13 Liberty means Liberty International Underwriters which is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605.) incorporated in Massachusetts, U.S.A. (The liability of members in Liberty is limited.)

5.14 Loss means:

- (a) damages or claimant's costs or both payable by the **Insured** pursuant to an award or judgment entered against the **Insured**;
- (b) settlements negotiated by **Liberty** and consented to by the **Insured**; or
- (c) settlements negotiated by the **Insured** but only with the prior written consent of **Liberty**.

Loss does not include:

- (i) back pay, or any compensation or damages attributable to the back-payment of remuneration, where the **Company** is ordered by the relevant court or tribunal to reinstate the claimant as an **Employee**;
- (ii) front pay, future loss, future damages, future compensation or future economic relief (in all cases, considered from the point in time that reinstatement was to occur) where the **Company** is ordered by the relevant court or tribunal to reinstate the claimant as an **Employee** but refuses or fails to do so for whatever reason;
- (iii) any **Employment Benefits** or amounts attributable to any **Employment Benefits**;
- (iv) costs incurred by the **Company** to modify any building or property, or to provide any service, in order to make such building or property, or make any service more accessible or accommodating to any disabled person;
- (v) costs incurred by the **Company** in connection with any educational, corrective, sensitivity or other programme, policy or seminar relating to any **Employment Practice Breach**;
- (vi) any amounts which are uninsurable under the law of a relevant jurisdiction.

All **Loss** attributable to one source or originating cause is deemed one **Loss**.

- 5.15 Policy** means this policy wording, any endorsements to it, the **Schedule** and the **Proposal**.
- 5.16 Policy Period** means the period of time specified in the **Schedule** unless the **Policy** is cancelled in which event the **Policy Period** will end on the effective date of the cancellation.
- 5.17 Pollutant** means any solid, liquid, gaseous, biological or thermal irritant or contaminant including, but not limited to, smoke, vapour, soot, fumes, noise, acids, alkalis, compounds, chemicals, asbestos, mould or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 5.18 Premium** means the amount payable by the **Insured** for this **Policy** including any applicable charges as advised by **Liberty**.
- 5.19 Proposal** means the proposal form and any other information submitted by the **Insured** in applying for this insurance.
- 5.20 Schedule** means the schedule attached to this **Policy** and signed by an authorised representative of **Liberty**.
- 5.21 Subsidiary** means any company which, according to the laws of the Commonwealth of Australia or of the Australian State or Territory in which this **Policy** is issued was or is a subsidiary of the **Named Insured** at the commencement of the **Policy Period**.

Cover in respect of any such company applies only in respect of **Employment Practice Breaches** committed or allegedly committed whilst the company was or is a **Subsidiary**.