



# Construction Liability

Policy Wording

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# Part 1 – Important Information

## About this Document

This is an important document that must be read carefully before making a decision in relation to this insurance (which is not compulsory). The Insurer is responsible for the content of this document.

This document can help you to:

- decide whether this insurance will meet your needs; and
- compare it with other products you may be considering.

See the Definitions section page for details regarding of terms that have special meaning. In some cases, a word with special meaning may be defined in a specific part of the Policy.

## What You Need to Read and Understand

This document contains:

- this Part 1 – Important Information section which contains certain important notices, terms and other information;
- Part 2 – Policy Cover Sections which sets out the covers this insurance can provide (subject to eligibility) and the other standard terms and conditions which will apply to the covers (including any applicable limits and exclusions). It includes Definitions which sets out the special meaning We give to certain words used in the Policy. Other words may be specially defined in a Policy, term or condition.

If We issue You with a Policy, You will be given a Policy Schedule. The Policy Schedule sets out certain additional terms applicable to Your Policy and other matters specific to You such as the cover You have been issued and the Policy sums insured and Limits of Liability.

The Policy Schedule must be read together with this document and any other documents We agree with You will form part of Your Policy that We issue. Where We agree, documents other than this document and the Policy Schedule will form part of the Policy, any such documents will be dated and will include a statement identifying them as part of the Policy.

Together they form Your Policy/contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

## About York Underwriting

York Underwriting is a trading name of CR Underwriting Pty Ltd ABN 24 674 417 246 (referred to in this document as York Underwriting) which is an Authorised Representative (AR No. 1313199) of SURA Pty Ltd (SURA) ABN 36 115 672 350 AFSL 294313. In issuing this Policy, SURA and its Authorised Representative York Underwriting will be acting under an authority given to it by the Insurers to issue, arrange, enter into, vary and dispose of the Policy on the Insurer's behalf. This means that when providing any financial service in relation to the issuing of this Policy, SURA and its Authorised Representative York Underwriting are acting as an agent for the Insurers, not for You.

### Our contact details are:

Level 14, 141 Walker Street

North Sydney NSW 2060

Email: [connect@yorkunderwriting.com.au](mailto:connect@yorkunderwriting.com.au)

Telephone: (02) 9930 9500

## About the Insurers

This insurance is underwritten by certain Underwriters at Lloyd's led by MS Amlin Syndicate 2001 (referred to as Insurers/Underwriters/We, Our and Us).

You or Your representatives can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Underwriters at Lloyd's is liable by requesting them from Us. In the event of loss, each Underwriter (and their Executors and Administrators) is only liable for their own share of the loss. Refer to the Several Liability notice for more information on the Underwriter's liability.

You should contact York Underwriting in the first instance in relation to this insurance.

### Lloyd's contact details are:

Lloyds Australia Limited

PO Box R1745 Royal Exchange NSW 1225

Telephone: (02) 8298 0700

## Assumed Liability and Waived Rights

If You have entered into an agreement with another party:

- where You are assuming a greater liability than would apply had You not entered into that agreement; or
- which prevents You from taking a recovery action for indemnity or contribution from that party it may adversely affect Your rights to cover under the Policy.

If You do, it may adversely affect Your rights to cover under the Policy and/or allow Us to cancel the Policy. Applicable law may restrict Our rights in certain circumstances. See When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim and 5.5 Cancellation of the Policy for further information.

You must not, without obtaining Our prior written consent (such consent not to be unreasonably withheld):

- assign any benefits, rights or obligations under Your Policy; or
- enter into any agreement, make any admissions or take any action or step with another party:
  - where You are assuming a greater liability than would apply had You not done so; or
  - which prevents You (or Us) from taking a recovery action for damages, indemnity or contribution from that other party You would have been entitled to.

See When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim for further information.

## **Complaints and Dispute Resolution Process**

If You have any concerns or wish to make a complaint in relation to the Policy, Our services or Your insurance claim, please contact Us and We will attempt to resolve Your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact York Underwriting in the first instance:

Complaints Officer

### **York Underwriting**

Level 14, 141 Walker Street

North Sydney NSW 2060

Telephone: (02) 9930 9500

Email: [IDR@SURA.com.au](mailto:IDR@SURA.com.au)

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

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

### **Lloyd's Australia Limited**

PO Box R1745 Royal Exchange NSW 1225

Telephone: (02) 8298 0700

Email: [idraustralia@lloyds.com](mailto:idraustralia@lloyds.com)

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

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

### **Australian Financial Complaints Authority**

GPO Box 3

Melbourne VIC 3001

Telephone: 1800 931 678

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

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

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

### **Service of Suit**

The Insurers accepting this insurance agree that:

- a) if a dispute arises under the Policy, the Policy will be subject to Australian law and practice and the Insurers will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b) any summons to be served upon the Insurers may be served upon:

#### **Lloyd's Underwriters' General Representative in Australia**

PO Box R1745 Royal Exchange NSW 1225

who has authority to accept service on the Insurers' behalf;

- c) if a suit is instituted against any of the Insurers, all Insurers participating in the Policy will abide by the final decision of such Court or any competent Appellate Court.

In the event of a Claim arising under the Policy notice should be given as soon as possible to:

Complaints Officer

#### **York Underwriting**

Level 14, 141 Walker Street

North Sydney NSW 2060

Telephone: (02) 9930 9500

Email: [IDR@SURA.com.au](mailto:IDR@SURA.com.au)

### **Deductible**

If You make a Claim under the Policy, You will be required to bear one or more Deductible(s).

The descriptions of the Deductible(s) and the circumstances in which they are applied are explained in this document, the Policy Schedule and other documents forming the Policy.

### **When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim**

A reference to We, Our and Us in this provision is to the Insurer and a reference to You and Your is to any person insured by the Policy.

We may only ever refuse to pay or reduce the amount We pay under a claim to the extent permitted by applicable law.

Some situations in which We may refuse to pay or reduce the amount We pay under a claim under the Policy (to the extent permitted by applicable law) include (but are not limited to):

- a) when You apply for cover (this includes new business, variations, extensions, reinstatements and renewals) and You do not comply with Your Duty of Disclosure; or
- b) if You do not comply with or meet a Policy term or condition or We can rely on an exclusion or other limitation (All referred to as "Terms" when used in the Policy) – See Our rights regarding the operation of or breach of a term of the Policy;

- c) if You make a fraudulent claim – See Fraudulent claims for more detail;
- d) where You have not or are not acting in accordance with Your duty of utmost good faith under the Insurance Contracts Act 1984 (Cth) – See Duty of Utmost Good Faith for more detail.

We may also have cancellation rights in the above circumstances to the extent permitted by applicable law.

Subject to applicable law, the amount of any claim entitlement can also be affected and/or reduced by other things, including any limits (e.g. monetary or time limits) or Deductible(s), any outstanding Premium and recoveries You or We might make relevant to a loss as set out in the Policy terms.

See Our rights regarding the operation of or breach of a term of the Policy for more detail.

### **Our rights regarding the operation of or breach of a term of the Policy**

We will only rely on any rights We have regarding the operation of or breach of a term of the Policy to the extent permitted by applicable law (including Our right to refuse or reduce a claim if You do not comply with or meet a Policy term or condition or where an exclusion or other limitation applies). The law can be complex and We provide a high-level summary below of some key examples on how the Insurance Contracts Act 1984 (Cth) may affect matters depending on the circumstances. To the extent of any inconsistency the Insurance Contracts Act 1984 (Cth) will prevail.

Other laws can apply beyond the Insurance Contracts Act 1984 (Cth) such as the Corporations Act 2001 (Cth) and the Australian Securities and Investment Commissions Act 2001 (Cth) and You need to seek Your own advice regarding all relevant legal rights You may have.

### **Terms allowing Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into**

Subject to Our rights in relation to fraudulent claims explained below, by reason of section 54 of the Insurance Contracts Act 1984 (Cth), where the effect of the Policy (this includes all terms or conditions, including any exclusion or other limitation) is to allow Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into, We will exercise Our rights under the Policy as explained below.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

Under section 54, an act by You or some other person includes an omission and inaction and an act or omission that has the effect of altering the state or condition of the subject-matter of the Policy or of allowing the state or condition of that subject-matter to alter.

### **How We exercise Our rights where section 54 applies (unless there is a fraudulent claim)**

- Where:
  - the act was necessary to protect the safety of a person or to preserve property; or
  - it was not reasonably possible for You or the other person not to do the act; or
  - You prove no part of the loss that gave rise to the claim was caused by the act,We will not refuse to pay or reduce the claim by reason only of that act.
- Where the act:
  - could not reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy; or

- could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy but You prove that some part of the loss that gave rise to the claim was not caused by the act, We may not refuse to pay the claim, so far as it concerns that part of the loss,

We may not refuse to pay or reduce the claim by reason only of that act, but We can reduce Our liability in respect of the claim by an amount that fairly represents the extent to which Our interests were prejudiced as a result of that act.

- Otherwise, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy, We may refuse to pay the claim.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Terms allowing Us to refuse or reduce a claim because of pre-existing defects or imperfections existing before the Policy was entered into**

Only where section 46 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim is made in respect of a loss that occurred as a result, in whole or in part, of a defect or imperfection in a thing; and
- at the time the contract was entered into You were not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the defect or imperfection,

We may not rely on any provision included in the Policy that has the effect of limiting or excluding Our liability under the Policy by reference to the condition, at a time before the Policy was entered into. This does not apply if the Policy is in an excluded class to which section 46 does not apply.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Fraudulent claims**

In all cases, where a claim is made fraudulently under:

- the Policy; or
- the Insurance Contracts Act against Us by a person who is not You,

We may refuse payment of the claim to the extent permitted by applicable law. Under section 56(2) of the Insurance Contracts Act 1984 (Cth) a court may, if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair, order Us to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

### **Duty of Utmost Good Faith**

The following can also (where applicable) affect Our and Your rights and obligations regarding the operation of, reliance on, or breach of a term of the Policy:

- section 13 of the Insurance Contracts Act 1984 (Cth) requires each party to the Policy to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith. The obligation also extends to third party beneficiaries as defined in the Act but only applies to them after the contract is entered into.

- section 14 of the Insurance Contracts Act 1984 (Cth) provides that if reliance by a party to the Policy on a provision of the Policy would be to fail to act with the utmost good faith, the party may not rely on the provision.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details.)

## **Terms Apply to Extent Enforceable**

A term (or part of a term) of the Policy will be applied to the extent is not unenforceable under applicable law.

## **General Insurance Code of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice (the Code), 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.

Lloyd's Australia Limited has adopted and endorses the Code.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code.

For further information on the Code, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

For more information on the Code Governance Committee (CGC) go to [insurancecode.org.au](http://insurancecode.org.au).

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

The amount payable by You for the Policy includes an amount for GST.

When We pay a claim, Your GST status will determine the amount We pay.

The amount that We are liable to pay under the Policy will be reduced by the amount of any Input Tax Credit (ITC) that You are or may be entitled to claim for the supply of goods or services indemnified by that payment.

You must advise Us of Your correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is Your entitlement to an ITC on Your Premium as a percentage of the total GST on that Premium. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a claim is less than the applicable Limit of Indemnity or the other limits applicable to the Policy, We will only pay the GST (less Your ITC) applicable to the settlement. This means that if these amounts are not sufficient to indemnify the whole claim, We will only pay the GST relating to Our share of the settlement for the whole claim.

We will pay the claim by reference to the GST exclusive amount of any supply made by any business of Yours which is relevant to the claim.

GST and ITC have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

## Privacy Statement

In this Privacy Statement the use of “We”, “Our” or “Us” means York Underwriting, SURA and the Insurers unless specified otherwise.

In this Privacy Statement the use of personal information includes sensitive information.

We are committed to protecting the privacy of the personal information You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- deciding whether to issue a policy,
- determining the terms and conditions of Your Policy,
- compiling data to help develop and identify other products and services that may interest clients, and
- handling claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not;
- b) whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual’s racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal and sensitive information in order to provide You with the relevant services and/or products.

When You give Us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers 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 personal information to Us.

We will protect Your information using physical, technical, and administrative security measures to reduce the risks of loss, misuse, unauthorised access, disclosure and alteration. Some of the safeguards that We use are firewalls and data encryption, physical access controls to Our data centres, and information access authorisation controls.

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling claims, We may have to disclose Your personal and other information to other parties and service providers such as Our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas where it is reasonably necessary for, or directly related to, the functions, services or activities We provide to You. When We transfer Your information to other countries, including countries which may not have data protection laws that provide the same level of protection that exists in Australia, We will protect the information as described in this Privacy Policy.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer Your Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Your Duty of Disclosure in this document.

We will notify You as soon as possible if Your personal information is involved in a data breach that is likely to result in serious harm to You.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Our privacy or You have any query on how Your personal information is collected or used, or any other query relating to Our Privacy Policies, please contact Us.

## **Sanctions**

We shall not provide cover and We shall not be liable to pay any claim or provide any benefit under the Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us, Our parent company or Our ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, the Commonwealth of Australia, United Kingdom, New Zealand or the United States of America.

## **Several Liability**

The liability of an Underwriter under this contract is several and not joint with other Underwriters party to the Policy. An Underwriter is liable only for the proportion of liability it has underwritten.

An Underwriter is not jointly liable for the proportion of liability underwritten by any other Underwriter. Nor is an Underwriter otherwise responsible for any liability of any other Underwriter that may underwrite the Policy.

The proportion of liability under the Policy underwritten by an Underwriter (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in the Policy Schedule.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an Underwriter.

Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with any other members.

A member is liable only for that member's proportion.

A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various parts in this clause to this contract in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

The Underwriters bind themselves each and for their own part and not one for another. Each Underwriter's liability under the Policy shall not exceed that percentage or amount of the risk shown against that Underwriter's name.

## **Your Duty of Disclosure**

Before the contracting insured enters into an insurance contract (referred to as You and Your in this notice), You have a duty to tell Us of 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;
- is of common knowledge;
- 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 fail to comply with Your Duty of Disclosure, and We would not have entered into the contract, for the same premium and on the same terms and conditions, had the failure not occurred, We may, subject to applicable law:

- be entitled to cancel Your contract or reduce the amount We will pay You if You make a claim, or both; or
- if Your failure to tell Us is fraudulent, refuse to pay a claim and treat the contract as if it never existed.

Subject to applicable law or unless We state otherwise, a breach of the duty by one contracting insured affects all contracting insureds in these ways.

### **Avoiding misrepresentations**

Under the Insurance Contracts Act 1984 (Cth) if the contracting insured (referred to as You and Your in this notice) makes a misrepresentation to Us before the insurance contract is entered into (this includes before each renewal, extension, variation, replacement or reinstatement of an insurance contract) and We would not have entered into the contract, for the same premium and on the same terms and conditions, had the misrepresentation not occurred, We may, subject to applicable law:

- be entitled to cancel Your contract or reduce the amount We will pay You if You make a claim, or both; or
- if Your misrepresentation was fraudulent, refuse to pay a claim and treat the contract as if it never existed.

Subject to applicable law or unless We state otherwise, a breach of the duty by one insured affects all insureds in these ways.

A misrepresentation includes a statement that is in any way false, misleading, dishonest or which does not fairly reflect the truth. For example, a statement of fact that is not true, a statement of opinion that is not the subject of an honestly held belief or a statement of intent that never existed at the time provided. We will not treat something as a misrepresentation merely because You failed to answer a question or gave an obviously incomplete or irrelevant answer to a question.

Refer to the Insurance Contracts Act 1984 (Cth) for full details as this is only a summary.

### **Answering Our questions**

Answers to Our questions help Us decide whether to provide this insurance and if so, on what terms.

When answering Our questions:

- take reasonable care to make sure Your answers are true, honest, up to date and complete in all respects. You may breach the duty if You answer without any care as to its truth or if You only guess or suspect the truth. If in doubt, pause the application and obtain the true facts before answering; and
- if another person is answering for You, We will treat their answers as Yours. In such a case, You should check the questions have been answered correctly on Your behalf by them.

Please note that You have obligations beyond these pre contractual duty of disclosure and avoiding misrepresentation obligations once the contract is entered into, which are set out in the contract terms and applicable law.

### **Third Party Interests**

The contracting insureds (the Insured) are the only parties to the Policy.

No insurance is provided in relation to the interest of any persons not specified as being entitled to access a benefit under the Policy.

The benefit of the cover under the Policy is extended automatically to Third Party Beneficiaries. They are not contracting parties and only access the benefit of cover by reason of the operation of section 48 of the Insurance Contracts Act 1984 (Cth). The following sets out how the Policy operates in relation to such persons (subject always to the operation of applicable law).

Access to cover only applies from the time they become a Third Party Beneficiary and ends when they are no longer a Third Party Beneficiary.

Nothing in the Policy is intended to give any such Third Party Beneficiaries any right to enforce any term of the Policy which that person would not have had but for the Insurance Contracts Act 1984 (Cth). Their rights and obligations are subject to the operation of the Insurance Contracts Act as it applies to such persons and other applicable law.

They:

- have, in relation to a claim, the same obligations to Us as they would have if they were the insured; and
- may discharge the Insured's obligations in relation to the loss, damage or liability.

We also have the same defences to an action by such persons as We would have in an action by the Insured including, but not limited to, defences relating to the Insured's conduct (whether the conduct occurred before or after the Policy was entered into). Any exclusions applying to the Insured also apply to a Third Party Beneficiary claiming under the Policy.

Such persons have no right to cancel or vary the Policy or its cover – only the Insured (as the contracting party) and We can do this. If We cancel or vary the Policy or its cover, We do not need to obtain such persons' consent to do so.

We also do not provide any notices in relation to this insurance to such persons as they are not a contracting party to the Policy. We only send notices to the Insured who we have contractual obligations to under the Policy.

Neither We nor the Insured hold anything on trust for, or for the benefit or on behalf of any such persons under this insurance arrangement.

The Insured:

- does not act on Our behalf in relation to the insurance;
- is not authorised by Us to provide any financial product advice, recommendations or opinions about the insurance.

Any Third Party Beneficiary needs to read this document and other documents forming the Policy carefully to properly understand the benefits they have access to as non-contracting parties. The insurance cover is subject to the terms, conditions, limitations and exclusions of the Policy.

Any person who may be entitled to a benefit under the Policy should consider obtaining advice as to whether the benefits are appropriate or useful for their personal needs from a person who is licensed to give such advice. No advice is provided by Us or Our representatives that the benefits are appropriate or useful for any person's needs. Nothing prevents such persons from entering into other arrangements regarding insurance.

In some cases the Insured may specify loss payees We will make payments to (e.g. a financier).

## **Policy Interpretation**

Headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:

- a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, successors, re-enactments and replacements thereof;
- a word importing the singular includes the plural (and vice versa);
- a word indicating a gender includes every other gender;

- the words “include”, “including”, “for example”, “particularly” or “such as” or equivalent are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- any examples provided are subject always to the Policy terms and applicable law; and
- a reference to “\$” or “dollar” is to Australian currency.

# Part 2 – Policy Cover Sections

## 1. Definitions

When used and capitalised in the Policy, including its Schedule and its endorsements, the following definitions shall apply. Where any word is defined every derivative of that word has a corresponding meaning. References to the singular also include the plural and vice versa.

### Advertising Injury

means liability arising from:

- a) unintentional defamation;
- b) infringement of copyright or title or slogan;
- c) piracy, plagiarism or unfair competition or idea misappropriation;
- d) invasion of the right of privacy,

committed or alleged to have been committed by You in any advertisement, publicity article, broadcast or telecast during the Period of Insurance.

### Aircraft

means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space, other than model aircraft.

### Business Activities

means:

- a) the business described in the Schedule;
- b) the provision of canteen, social, sports, welfare organisations for the benefit of Your employees;
- c) child minding, first aid, fire or ambulance services incidental to Your business;
- d) private work undertaken by Your employees for any director or senior executive of the Insured;
- e) plant and equipment owners, operators and/or hirers;
- f) property owners, occupiers, lessees, lessors and/or developers.

### Communicable Disease

means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not; and
- b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- c) the disease, substance or agent can cause or threaten bodily injury, illness, damage to human health, human welfare or property.

### **Completed Operations**

means Construction Operations that have been completed or handed over to the principal/owner, irrespective of when the work was commenced or completed.

### **Computer System**

means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

### **Construction Operations**

means all contracts for the construction, erection, installation, alteration, manufacture fabrication, assembly, repair or service of or to tangible property carried out by or for the Insured.

### **Cyber Act**

means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

### **Cyber Incident**

means:

- a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

### **Deductible**

means the amount(s) specified in the Schedule or elsewhere in the Policy which You will be liable to pay in respect of each and every claim before We shall make any payment. The Deductible will be advised to the Insured before they enter into a Policy with Us.

### **Insured, You, Your**

means:

- a) the named Insured as shown in the Schedule including all subsidiary, controlled, parent or holding companies now or previously existing or hereafter formed or acquired; and/or
- b) additional Insureds as specified in the Schedule; and/or
- c) joint ventures (incorporated or otherwise) including joint venture partners at the discretion of the Insured described in a); and/or
- d) principals and/or owners; and/or
- e) contractors and sub-contractors of any tier employed from time to time; and/or
- f) consultants, engineers, project managers, suppliers and manufacturers for their onsite manual activities only; and/or
- g) any person, firm or company which the Insured has agreed to include as an insured by virtue of any contract or agreement listed in the Schedule or in an endorsement, to the extent required by such contract or agreement and subject always to the terms and limits of this Policy; and/or

- h) lenders and financiers as required by contract or agreement to the extent required by such contract or agreement; and/or
- i) any unnamed party having an insurable interest in the Business Activities and/or Construction Operations to the extent of that insurable interest; and/or
- j) any director, partner, officer or employee of any of a) to i) above whilst acting with the authority or on behalf of, but only in respect of the Business Activities and/or Construction Operations, all for their respective rights, interests and liabilities.

### **Internet Operations**

means:

- a) use of electronic mail systems by You including but not limited to Your employees, part time and temporary staff, and others acting on behalf of You;
- b) access through Your network to the world wide web or a public internet site or application by You including but not limited to Your employees, part time and temporary staff, and others acting on Your behalf;
- c) access to Your intranet (meaning internal company information and computing resources) which is made available through the world wide web for Your customers or others outside Your organisation; and
- d) the operation and maintenance of Your web site.

### **Limit of Liability**

means the relevant amount(s) specified as the limit(s) of liability (including any sub-limits) in this document, the Schedule or other document(s) forming part of the Policy.

### **Loss of Use**

means economic loss arising from loss of use suffered by any party consequent upon physical loss of, damage to or the destruction of tangible property belonging to that party.

### **Occurrence**

means an event or series of events including continuous or repeated exposure to substantially the same general conditions, which results in:

- a) Personal Injury (including death) suffered or alleged to have been suffered by any person; or
- b) Property Damage; or
- c) Advertising Injury,

neither expected nor intended by You.

### **Period of Insurance**

means the time during which the Policy is in existence. It:

- a) starts from the beginning of the period of insurance specified in the Schedule; and
- b) finishes at 4.00pm on the last day of the end of that period of insurance, unless ending earlier in accordance with the Policy terms or applicable law.

Each renewal results in a new contract and new Period of Insurance.

## **Personal Injury**

means:

- a) bodily injury, death, sickness, disease, disability, shock; fright, mental anguish or mental injury;
- b) false arrest, false imprisonment, wrongful eviction, wrongful detention or malicious prosecution;
- c) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Personal Injury or Property Damage or eliminating danger;
- d) defamation of character to the extent not already covered under Advertising Injury;
- e) wrongful entry or invasion of privacy;
- f) loss of consortium, loss of servitium or service and any loss of support or dependency.

## **Policy**

means this document and the Schedule or any endorsement issued by Us in connection with the policy.

## **Pollution**

means the discharge, dispersal, seepage, release or escape of smoke, vapours, acids, alkalis, chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or water.

## **Property Damage**

means:

- a) physical loss of, damage to or the destruction of tangible property, including the resulting Loss of Use of that property, providing that all such Loss of Use shall be deemed to have occurred at the time of the physical damage from which it resulted;
- b) Loss of Use of tangible property which has not been physically lost, destroyed or damaged provided such Loss of Use is caused by physical loss of, damage to or destruction of some other tangible property and the Loss of Use shall be deemed to have occurred at the time of physical damage from which it resulted.

## **Product**

means any product (including containers, packaging or labelling) sold, supplied, erected, repaired, altered, treated, installed, processed, grown, manufactured, assembled, tested, serviced, hired out, stored, transported or distributed by the Insured (after such goods or products cease to be in the possession or under the control of the Insured) in the course of the Business Activities or Construction Operations of the Insured within the Territorial Limits, but shall exclude Completed Operations.

## **Schedule**

means the schedule, renewal schedule or endorsement schedule issued by Us in connection with the Policy for the applicable Period of Insurance.

## **Site**

means any place where work or activity is undertaken in connection with the Business Activities or Construction Operations, including off-site relating to storage, rework/fabrication and transit.

## **Subcontractors**

means those persons or entities (incorporated or not) engaged by a contractor or You (a) or (b) or (c) or (d) as defined, or by a sub-contractor to a contractor to You (a) or (b) or (c) or (d) as defined, stated in the Schedule.

### **Territorial Limits**

means the territories stated in the Schedule.

### **Terrorism**

means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

### **Third Party Beneficiary**

means persons who are not contracting parties to the Policy but for whom the benefit of cover is extended by reasons of section 48 of the Insurance Contracts Act 1984 (Cth) that:

- a) are expressly specified in the Policy as a person or type of person to which the benefit of cover is extended; or
- b) are listed in the Schedule as third party beneficiaries,

unless otherwise excluded, but only to the extent of their interest specified. See the Third Party Interests clause for details of the rights and obligations of third party beneficiaries.

### **Turnover**

means the total value of work completed for Business Activities and/or Construction Operations covered hereunder during the Period of Insurance, including, where applicable, the value of principal supplied or free issue materials.

### **Vehicles**

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 made or intended to be used in conjunction with any such machine.

### **Watercraft**

means any vessel, aerial device, hovercraft, offshore installation, rig, platform, or watercraft made or intended to move in or through water (including inland waterways), other than watercraft not exceeding 12 metres in length or where such watercraft are owned and operated by others and used by You for Business Activities.

### **We, Us, Our**

means Certain Underwriters at Lloyd's acting through their agent York Underwriting.

### **Worker to Worker Claims**

means:

- a) legal liability of Yours in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law; or
- b) a claim made by an injured worker (as defined by the relevant workers' compensation legislation) against You other than the worker's direct employer.

## **2. What We Cover**

Subject to the terms, conditions, exclusions, limitations and Limit of Liability of the Policy We will cover You in respect of all amounts for which You shall become legally liable to pay in respect of or consequent upon:

- a) Personal Injury;
- b) Property Damage;
- c) Advertising Injury;

as a result of an Occurrence happening during the Period of Insurance within the Territorial Limits and arising in connection with Your Business Activities and Completed Operations or Your Products.

We will also cover You, in addition to the Limit of Liability specified in the Schedule for the following:

- i) costs and expenses incurred for temporary repair and/or shoring up of property;
- ii) all legal costs and other expenses incurred for investigation, negotiation, presentation and defence of claims and suits;
- iii) cost and expenses incurred by You for first aid rendered for injury to others at the time of the Occurrence.

Subject to our prior approval which shall not be reasonably withheld, which results from a claim We have accepted arising from a), b) or c) above.

## **3. Limit of Liability**

We will pay up to the Limit of Liability for any one Occurrence, and in the aggregate, as stated in the Schedule, for all claims for Personal Injury, Property Damage or Advertising Injury.

## **4. Deductible**

Unless We agree otherwise with You, We will subtract the amount of the Deductible from the amount otherwise payable for each Occurrence. Unless otherwise stated, the Deductible does not include charges, expenses and legal costs incurred by either Us or You with Our written consent in the defence or settlement of the claim.

## 5. Exclusions

The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see [When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim](#).

We shall not provide indemnity for the following:

### 5.1. Advertising Injury

Advertising Injury caused by or arising out of:

- a) statements made at Your direction with the knowledge such statements are false;
- b) failure of performance of contract, however this exclusion does not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
- c) any incorrect description of Your Products or services;
- d) any error in the advertised price of Your Products or services;
- e) failure of Your Products or services to conform with advertised performance, quality, fitness or durability.

### 5.2. Asbestos

liability arising out of, caused by or in connection with asbestos or materials containing asbestos or asbestos contained in any Products.

### 5.3. Biological and Chemical Materials

any loss, damage, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials.

### 5.4. Communicable Disease

any loss, damage, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence.

### 5.5. Contractual Liability

any liability or obligation assumed by the Insured under any agreement or contract except to the extent that:

- a) the liability or obligation would otherwise have been implied by law; or
- b) the liability or obligation arises from a provision in a contract for lease of real or personal property other than a provision which obliges the Insured to effect insurance or provide indemnity; or
- c) the liability or obligation is assumed by the Insured under any warranty under the requirement of state or federal legislation in respect to product safety; or
- d) the liability or obligation is assumed under those agreements specified in the Schedule or any endorsements to the Policy agreed to by Us.

## **5.6. Cyber**

any loss, damage, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any Cyber Act or Cyber Incident including but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident.

However, this exclusion shall not apply in respect of liability for:

- a) any ensuing Personal Injury (other than mental injury, mental anguish or mental disease); or
- b) any ensuing physical damage to third party property;

resulting from or arising out of a Cyber Incident, unless that Cyber Incident is caused by, contributed to by, resulting from, arising out of or in connection with a Cyber Act. Nothing contained in the foregoing shall provide any coverage for any action taken in controlling, preventing, suppressing or remediating a Cyber Incident or a Cyber Act.

## **5.7. Defective Work and Defective Product**

the cost of making good, replacing, repairing, reperforming, correcting, improving or reinstating any Construction Operations, Completed Operations, Product or part thereof which is alleged to be defective or deficient.

This exclusion does not apply to costs incurred to rectify any part or parts of the Construction Operations, Completed Operations or Product which itself are free of defect and/or deficiency but are damaged as a consequence of such defect or deficiency.

## **5.8. Employment Practices**

liability directly or indirectly occasioned by, happening through or in consequence of any claim for breach, wrongful or unfair dismissal of employment contract, defamation, discrimination, harassment and/or in relation to the hiring, supervision, retention and/or personal development of any director, partner or employee of Yours.

## **5.9. Fines and Penalties**

fines, penalties, aggravated, punitive, exemplary and liquidated damages.

## **5.10. Internet Operations**

liability arising directly or indirectly out of or in any way connected with Your Internet Operations.

## **5.11. Pollution**

- a) liability directly or indirectly caused by Pollution or contamination, however this exclusion shall not apply to liability where such Pollution or contamination is caused by a sudden, unintended and unexpected happening during the Period of Insurance;
- b) the cost of removing, nullifying or cleaning up polluting or contaminating substances unless the Pollution or contamination is caused by a sudden, unintended and unexpected happening during the Period of Insurance.

## **5.12. Product Recall**

the cost of, or damages claimed, in relation to the inspection, recall and/or withdrawal of any defective and/or deficient Product supplied by You.

### **5.13. Product Warranty**

liability arising in connection with any guarantee or warranty of fitness or quality in respect of Your Products other than any guarantee or warranty of fitness or quality in respect of Your Products established or implied by virtue of the Sale Of Goods Act 1923 or equivalent legislation or a warranty that work done will be performed in a workmanlike manner.

### **5.14. Professional Advice**

liability for or arising out of:

- a) the rendering of or failure to render professional advice or service by You or any resultant error or omission;
- b) advice, design, supervision or specification given for a fee or in circumstances where a fee would usually be payable.

### **5.15. Property in Care, Custody and Control**

liability for damage to property belonging to, leased or hired by You, or in Your care, custody or control.

Provided that this exclusion does not apply to:

- a) premises (including adjacent premises and structures), structures, machinery, plant and equipment or any part(s) of such premises, structures, plant and equipment (including contents thereof) being worked upon and/or temporarily occupied by You for the purpose of the Business Activities and/or Construction Operations;
- b) premises or any part(s) of premises (including fixtures and fittings and contents thereof) leased or tenanted by You except Property Damage caused by fire or any other peril against which the tenancy lease or agreement stipulates that first party insurance shall be effected by You;
- c) Vehicles not owned or used by You or on Your behalf, whilst in a car park owned or operated by You, provided the carpark is not operated for income or reward as part of the Business Activity;
- d) any other property in Your physical or legal control, other than that described in Exclusion 5.15(a), 5.15(b), 5.15(c) for which You have not assumed any responsibility to obtain insurance. Our liability under this Exclusion 5.15(d) will not exceed \$250,000 per Occurrence and in the annual aggregate.

### **5.16. Radioactive Contamination**

liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

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

### **5.17. Terrorism**

liability arising directly or indirectly as a result of or in connection with any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

### **5.18. Vehicle Liability**

Personal Injury or Property Damage caused by, arising out of, or in connection with Your ownership, possession, maintenance or use of any Vehicle:

- a) in respect of which there was, at the time of the event giving rise to the claim, a statutory obligation to effect insurance or to contribute to a fund but only to the extent that such insurance or fund is required to provide indemnity;
- b) which is insured under a non-statutory Vehicle insurance policy arranged by You.

Provided that this exclusion does not apply to Personal Injury or Property Damage arising from:

- i) the Vehicle being used as a tool of trade;
- ii) the delivery or collection of any goods to or from any Vehicle;
- iii) the loading or unloading of any Vehicle;
- iv) the use of any mobile plant, machinery or lifting apparatus for work undertaken by You or on Your behalf in the course of the Business Activity, or at any premises owned, occupied or used by You;
- v) damage to any Vehicle or trailer (not belonging to or used by You) in Your physical or legal control where such damage occurs whilst any such Vehicles are in a car park owned or operated by You.

### **5.19. War**

liability directly or indirectly caused by or in any way connected to war, invasion, act of foreign enemy, hostilities (with or without the declaration of war), civil war, factional civil commotion, rebellion, revolution, insurrection, military, usurped power, confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority.

### **5.20. Watercraft and Aircraft**

Personal Injury or Property Damage caused by, arising out of, or in connection with Your ownership, possession, use or Product which with the Insured's knowledge is intended for incorporation into the structure, machinery or controls of any Aircraft or Watercraft.

### **5.21. Worker's Compensation**

liability for Personal Injury sustained by any person arising out of and in the course of their employment by You in respect of which the Insured is 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 accidental compensation whether or not such policy, fund, scheme or self-insurance has been effected.

Provided that this exclusion does not apply to:

- a) a liability of others which has been assumed by You under contract;
- b) any other liability not already insured by a workers' compensation policy, fund, scheme or self-insurance.

## 6. Claims

You shall give Us written notice as soon as reasonably practicable of any Claim made against You.

### 6.1. Claims Procedure

Upon or becoming aware of any claim or event giving rise to or likely to give rise to a claim under this Policy You shall:

- a) give notice as soon as reasonably practicable to Us;
- b) take all reasonable steps to minimise any Personal Injury, Property damage or Advertising injury and prevent any further loss, damage, or liability;
- c) as soon as reasonably practicable provide a statement to Us stating Your knowledge and belief as to the time and cause of the loss, damage or injury;
- d) upon receipt by You of any notice of any claim or of any subsequent proceedings, notice in writing with full particulars to Us as soon as practicable.

Notwithstanding a) to d) above, You are permitted to take immediate action to prevent loss of life or to prevent further loss or damage occurring to the property, and such action shall in no way prejudice Your position in respect of any claim.

No claim for indemnity under the Policy will be prejudiced by reason of You inadvertently delaying or omitting to advise Us of a claim or an Occurrence that may give rise to a claim under the Policy.

Any notice of claim given to Us by You under the Policy shall be accepted by Us as notice of a claim given on behalf of all other parties under this Policy.

### 6.2. Claims Mitigation and Co-Operation

You must:

- a) take all reasonable steps to avoid or diminish any liability;
- b) disclose to Us all relevant information You reasonably believe is relevant to the claim;
- c) provide any assistance to Us that We may reasonably require to investigate and defend any claim or determine Our liability under the Policy.

We will in doing the above act reasonably having regard to Your interests and will keep You informed if You ask Us to.

### 6.3. Reporting and Notice

You shall give Us written notice as soon as reasonably practicable of any claim made against You.

Notice of any claim shall be given in writing to Us, and delivered to:

#### **Proclaim Management Solutions**

Level 9, 271 Collins Street

Melbourne VIC 3000

Email: [liabilityclaims@proclaim.com.au](mailto:liabilityclaims@proclaim.com.au)

Phone: 1300 552 446

and in copy of:

**York Underwriting:**

[claims@yorkunderwriting.com.au](mailto:claims@yorkunderwriting.com.au)

## **7. Conditions**

The following only apply to the extent relevant and subject to applicable law which may restrict Our rights in certain circumstances. For more detail on these restrictions see **When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim**.

### **7.1. Adjustment of Premium**

If the premium for the Policy or any part of it has been calculated on estimates provided by You, You shall within 30 days after the expiry of each Period of Insurance provide to Us any information relevant to the Policy as We may reasonably require to calculate any applicable premium adjustment. The premium for the Period of Insurance shall then be adjusted and any difference will be payable by or returned to You as the case may be.

The adjusted premium shall not be less than the minimum premium charged by Us which will be advised to the Insured before they agree to enter into a Policy with Us and will be shown on the Schedule.

You shall keep a record of all information related to the adjustment of the Premium as requested by Us and shall on reasonable notice, allow Us or Our nominee to inspect and make copies of such records.

### **7.2. Assignment**

No assignment of interest under this Policy shall bind Us without Our prior written consent which shall not be unreasonably withheld. However, should the Insured die or be declared bankrupt or insolvent We will consent to the assignment of the Policy to the Insured's legal representative, provided that written notice is given to the Us as soon as practicable after the date of such death, bankruptcy or insolvency.

### **7.3. Cancellation**

#### **7.3.1. Cancellation by You**

The Insured may cancel the Policy by giving Us notice in writing at the address shown in About York Underwriting. Cancellation will take effect from 4:00pm on the day We receive Your notice of cancellation or such other time otherwise agreed between Us and You.

#### **7.3.2. Cancellation by Us**

Subject to applicable law, We may cancel the policy as set out in the Insurance Contracts Act 1984 (Cth) by giving You written notice to that effect. This can include where:

- a) You failed to comply with the duty of utmost good faith;
- b) You failed to comply with the Duty of Disclosure where that duty applied to You, or made a misrepresentation to Us before entering into, varying, extending or renewing the Policy;
- c) You failed to comply with a provision of the Policy, including a provision with respect to payment of the Premium;
- d) You made a fraudulent claim under the Policy or any other contract of insurance (whether with Us or some other insurer) that provided insurance cover during any part of the period during which the Policy provides insurance cover;
- e) You failed to notify Us of any specific act or omission or failure that has occurred after the Policy is entered into where notification is required under the terms of the Policy; or

- f) the effect of the Policy is to authorise Us to refuse to pay a claim, either in whole or in part, by reason of an act or omission or failure of You or of some other person and, after the Policy was entered into, such an act or omission or failure has occurred.

When We cancel the policy, it will have effect from whichever of the following times is the earliest (unless We tell the Insured otherwise in Our cancellation notice and subject to applicable law):

- i) the time when another policy of insurance replacing the Policy is entered into by You with Us or another insurer; or
- ii) 4:00pm of the third (3rd) business day after the day on which notice was given to You unless specified otherwise or the Policy is in force because of section 58 of the Insurance Contracts Act 1984 (Cth), in which case the cancellation will have effect from 4:00pm on the fourteenth (14th) business day after the day on which notice was given to You.

We may also refuse to pay any claim for an incident occurring after the cancellation date, subject to applicable law.

### **7.3.3. Effect of cancellation**

Subject to applicable law, the Policy with Us ends from the time of cancellation. However, cancellation by Us or the Insured does not affect any rights that the Insured had under the Policy when it was in force. For the Insured's rights to any premium refund in relation to a cancellation see "Premium refund" section.

### **7.3.4. Premium refund**

If the Policy is cancelled by either the Insured or Us, We will refund the premium for the Policy less a pro-rata proportion of the premium for the unused portion of the estimated Turnover less any government fees, taxes and duties We cannot recover. We will not refund the administration fee or policy fee shown on the Policy Schedule.

Upon cancellation the Insured must provide Us with all information necessary for the adjustment of premium as per Condition 7.1 Adjustment of Premium.

## **7.4. Hold Harmless Agreements**

Where in connection with or in relation to any Business Activities and/or Construction Operations, the Insured enters into an agreement with another party and where the agreement requires the Insured to indemnify, hold harmless or release from liability such other party in respect of any loss, damage or injury, this Policy shall not be prejudiced or invalidated by the relevant Insured agreeing to such a provision and that the indemnity, hold harmless or release from liability given by the Insured shall be equally binding upon Us.

## **7.5. Insurance Contracts Act 1984 (Cth)**

Nothing contained in the Policy shall be construed to reduce or waive either Your or Our privileges, rights or remedies available under the Insurance Contracts Act 1984 (Cth). You need to seek Your own advice regarding all relevant legal rights You may have.

## **7.6. Joint Insureds**

Where You comprise of more than one party each of the parties shall be considered as a separate and distinct unit and the word You shall be considered as applying to each party in the same manner as if a separate Policy had been issued to each of You. Nothing in this clause operates to increase the Limit of Liability applicable to the Policy irrespective of the number of parties constituting You.

## **7.7. Jurisdiction**

The Policy will be governed in accordance with the laws of the Commonwealth of Australia. Any disputes arising out of the Policy will be subject to determination by any Court of jurisdiction within the State or Territory in which the Policy was issued and according to the laws applicable to that jurisdiction.

## **7.8. Notices**

Notice in writing shall be given by You as soon as reasonably practicable to Us of every Occurrence, claim, impending prosecution, inquest and all relevant information which may result in a claim under the Policy, whether or not You believe any liability may be incurred and regardless of any Deductible.

We will send all notices in relation to the Policy to:

- a) the Insured's nominated insurance intermediary until We receive written notice to the contrary from the Insured; or
- b) if there is no nominated intermediary, the Insured, or someone you advise, acting on the behalf of You.

Any notice We give the Insured will be in writing, and it will be effective:

- a) if it is delivered to the Insured or their agent personally; or
- b) if it is delivered or sent to the Insured's address or the Insured's agent's address last known to Us, three business days after having been posted by Us.

## **7.9. Other Insurance**

As soon as reasonably practicable after making a claim under the Policy that may also be recoverable under any other contract of insurance, You shall notify Us of, and shall give Us full details of, any such other insurance which provides insurance, in full or in part as provided for in the Policy so that We may seek contribution from the other insurer.

## **7.10. Payment of Premium**

The Insured will pay Us the premium by the due date shown on the Schedule or tax invoice. Any adjustments of premium and other amounts charged for the Policy and any renewal, extension or endorsement to this Policy must be paid by the due date shown on the relevant invoice for such renewal, extension, or endorsement.

## **7.11. Permission to Occupy and Operate**

Where the Construction Operations provides for staged works and allows for partial occupation pending completion of the contract as a whole, We grant permission for the principal or owner or any other party, to occupy and operate any separable part. Such occupancy or operation will not prejudice the Policy.

### **7.12. Release**

Whenever the Insured is required by contractual agreement to release government or quasi government bodies, such release is allowed without prejudice to this Policy and We agree to waive any rights and remedies or relief to which they may become entitled by subrogation against such bodies.

### **7.13. Subrogation**

In the event of a payment under the Policy to You or on Your behalf We shall, subject to the Insurance Contracts Act 1984 (Cth), be subrogated to all Your rights of recovery against all persons and organisations and You shall provide Us with all relevant information We may reasonably require and do all that is reasonably necessary to assist Us in the exercise of such rights.

We agree to waive all rights that may have been acquired following payment of a claim against any party with whom You, prior to the Occurrence, has agreed in writing to waive their rights to recovery in respect of any loss, damage or injury which may be caused by such party.

## NSW

Level 14, 141 Walker Street  
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