



**ASR** | Underwriting  
Agencies

## Policy Wording

# COMBINED LIABILITY

General & Products Liability

ASR Underwriting Agencies ABN 84 113 542 233 AFSL 291522





# ASR Underwriting Agencies

Important Information .....	3
Complaints and Dispute Resolution Process.....	6
Public & Products Liability Insurance.....	7
SECTION A – Public Liability.....	9
SECTION B – Pollution Liability.....	10
SECTION C – Products Liability.....	11
General Exclusions Applicable to All Sections of the Policy .....	12
Conditions .....	14
Lloyd’s Privacy Policy Statement Underwriters at Lloyd’s, London .....	16
Lloyd’s Australian Alternative Disputes Resolution Clause .....	16

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## Important Information

### Insurer

The Policy is underwritten by Certain Underwriters at Lloyds of London Information about your Policy This is the Policy wording. It tells you:

- what the Policy covers,
- what the Policy does not cover,
- how to make a claim,
- Excesses, and
- other conditions.

Details of the insurance which are particular to you are shown on the Certificate which we send to you with the Policy wording. The date when your insurance cover ends is particularly important.

Please read this Policy carefully and retain it in a safe place.

How Goods and Services Tax affects any payments we make. The amount of premium payable by you for this policy includes an amount on account of the GST on the premium. When we pay a claim, your GST status will determine the amount we pay.

When you are:

- a. not registered for GST, the amount we pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- b. registered for GST, we will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a damaged item insured under the Policy) we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number & Taxable Percentage.

Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of your claim is less than the sum insured/ limit of indemnity or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

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

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

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

### Your Duty of Disclosure

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

You have this duty until we agree to insure you.

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

You do not need to tell us anything that:

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

### **If you do not tell us something**

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

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

### **Evidence of value**

Please retain receipts of purchase or proof of the value of all property insured by this Policy so that you can prove the amount of any loss if you have to claim under this Policy.

### **Cooling-off information**

If you want to return your insurance after your decision to buy it, you may cancel it and receive a full refund. To do this you may notify your Financial Services Provider electronically or in writing within 21 days from the date the Policy commenced.

This cooling-off right does not apply if you have made or are entitled to make a claim. Even after the cooling-off period ends, you still have cancellation rights however your Financial Services Provider may deduct certain amounts from any refund for administration costs or any non-refundable taxes.

If your Policy is for an event that will start and finish within the 21 day cooling-off period, you can only exercise your right before the event starts or the expiry of the cooling-off period, whichever is the earlier. For example, for travel insurance, the commencement of the journey is the event.

Preventing our right of recovery if you have agreed not to seek compensation from another person who is liable to compensate you for any loss, damage or liability which is covered by this Policy we will not cover you under this Policy for that loss, damage or liability.

### **Third Party Interests**

You must inform us of the interests of all third parties (eg. financiers, lessors) to be covered by this insurance. We will protect their interests only if you have informed us of them and we have noted them on the Certificate.

### **Our Agreement**

We agree to provide you with the insurance cover set out in each of the Policy sections which you select and which are listed in the Schedule. You have paid or agree to pay us the premium set out in the current Schedule. The insurance cover is in force for the period of insurance set out in the Schedule. We will cover you for loss, damage and liability occurring during that period of insurance, subject to the terms, conditions, limitations and exclusions of the policy.

We will not pay any more than the sum insured or limit of liability for each section which is shown in the Schedule. We will not pay the excesses shown in the Schedule. If any loss or damage leads to a claim under more than one Section of this Policy, you must pay the highest applicable excess, but you need to pay only one excess.

### **General definitions applying to all sections of this Policy**

Wherever the words listed below are used in the Policy wording, they mean what is set out below:

#### **Word or Term Meaning**

*Australia* the Commonwealth of Australia, its dependencies and Territories.

*Business* the trade or occupation described in the Schedule carried on at and from the location (and no other for the purpose of this insurance).

*Business hours* your office and working hours (including overtime) during which you or your employees are on the location for the purpose of your business.

*Excess* the amount specified in the Schedule, payable by you on each and every claim arising out of one event or occurrence under that Policy section.

Should more than one excess be payable under this Policy for any claim or series of claims arising from the one event, such excesses shall not be aggregated and the highest single level of excess only shall apply.

*Period of insurance* the duration of this Policy for the period specified in the Schedule, or any renewal period for which the appropriate premiums are paid in each case.

*Policy* this Policy together with any Schedule and endorsement. *Policy Schedule* the current Schedule of Insurance which has been numbered and issued by or on behalf of us.

*We, us, Underwriters* Certain Underwriters at Lloyds of London

*You, your* the Insured named in the Schedule.

### **General Insurance Code of Practice**

We subscribe to the General Insurance Code of Practice.

The purpose of the Code is to raise the standards of practice and service in the general insurance industry. The Code aims to:

- Constantly improve claims handling in an efficient, honest and fair manner;
- Build and maintain community faith and trust in the financial integrity of the insurance industry; and
- Provide helpful community information and education about general insurance.





## Complaints and Dispute Resolution Process

If you have a complaint about an insurance product issued by us or a service you have received from us, including the settlement of a claim, please contact your intermediary to initiate the complaint with us. If you are unable to contact your intermediary, call us on (07) 3442 3333.

We will ask you to complete a Complaint Report Form and your complaint will be reviewed by our Internal Review Panel free of charge.

We will keep you informed of the progress of our review at least every 10 working days and give you our response in writing within 15 working days provided we have all necessary information and have completed any investigation required.

In the unlikely event that this does not resolve the matter or you are not satisfied with the way your complaint has been dealt with, you should contact the Compliance Manager at:

Lloyd's Australia Limited

Level 9, 1 O'Connell Street,

Sydney NSW 2000

Telephone: (02) 9223 1433

You will be advised whether your dispute will be handled by either Lloyd's Australia or the Complaints Department at Lloyd's in London.

Where you are a retail client and your dispute is eligible for referral to the Financial Ombudsman Service (FOS), your dispute will be reviewed by a person at Lloyd's Australia with appropriate authority to deal with your dispute.

FOS will review our decision in accordance with their terms of reference. You are not bound by their decision. However, we are bound to act immediately on FOS's decision. This is a free service provided by an independent body. Brochures outlining the operations of FOS are available from us or the Insurance Council of Australia in your State or Territory. You can phone the FOS from anywhere in Australia on 1800 367 287 or write to them at:

Financial Ombudsman Services Limited Level 12 717 Bourke St Docklands

Melbourne Vic 3008 Email: [info@fos.org.au](mailto:info@fos.org.au)

Where you are a retail client and your dispute is not eligible for referral to the FOS, or where you are a wholesale client, Lloyd's Australia will refer your dispute to the Complaints Department at Lloyd's, who will then liaise directly with you.

In this case, you may be eligible for referral to the Financial Ombudsman Service (UK). Such referral must occur within 6 months of the final decision by the Complaints Department at Lloyd's. Further details will be provided by the Complaints Department with their final decision to you.

Your dispute will be acknowledged in writing within 5 business days of receipt, and you will be kept informed of the progress of our review of your dispute at least every 10 business days. The length of time required to resolve a particular dispute will depend on the individual issues raised, however in most cases you will receive a full written response to your dispute within 15 business days of receipt, provided we have received all necessary information and have completed any investigation required.

This service is free of charge to policyholders

## Public & Products Liability Insurance

### 1. OPERATIVE CLAUSE

The Underwriters will indemnify the Insured against their liability to pay damages (including claimants' costs, fees and expenses) in accordance with the law of any country but not in respect of any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part).

This indemnity applies only to such liability as defined by each insured Section of this Policy arising out of the conduct of the Business stated in the Schedule, subject always to the terms, Conditions and Exclusions of such Section and of the Policy as a whole.

For the purpose of determining the indemnity granted

#### 1.1. "Personal Injury" means

- 1.1.1. death, bodily injury, illness, disease, disability, shock, fright, mental anguish or mental injury
- 1.1.2. false arrest, false imprisonment, wrongful eviction, wrongful entry or other invasion of the right of private occupancy, wrongful detention and humiliation
- 1.1.3. assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property

#### 1.2. "Property Damage" means

- 1.2.1. loss of, physical damage to or destruction of tangible property including the loss of use thereof at anytime resulting therefrom. All such loss of use shall be deemed to happen at the time of the physical damage that caused it
- 1.2.2. loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by physical damage or destruction of other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to first happen at the time of the physical damage that caused it

#### 1.3. "Pollution" means pollution or contamination of the atmosphere or of any water, land or other tangible property;

#### 1.4. "Product" means any property after it has left the custody or control of the Insured which is or is deemed to have been designed, specified, formulated, manufactured, grown, extracted, produced, processed, treated, assembled, erected, constructed, installed, altered, serviced, repaired, sold, supplied or distributed by or on behalf of the Insured (including any packaging or container thereof other than a Vehicle), but shall not include food or drink supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit.

#### 1.5. "Vehicle" means any type of machine designed to travel on wheels or on self-laid track (including any trailer or other attachment drawn by any such machine) made or intended to be propelled other than by manual or animal power.

#### 1.6. "Insured means"

- 1.6.1. the entity or entities named in the Schedule as the Insured
- 1.6.2. any subsidiary and related bodies corporate (as defined in the Corporations Act 2001) now existing or hereafter constituted.

#### 1.7. "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 governments(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.

#### 1.8. "Occurrence" means an event, including continuous or repeated exposures to substantially the same general conditions, which result in Personal Injury and/or Property Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent upon or attributable to one source or original cause shall be deemed one Occurrence

## 2. INDEMNITY TO OTHERS

The indemnity granted extends to

- 2.1. any party (other than a principal) who enters into an agreement with the Insured for any purpose of the Business, but only to the extent required by such agreement to grant such indemnity and subjects always to Clauses 7.3.3, and 12.6;
- 2.2. officials of the Insured in their business capacity for their liability arising out of the performance of the Business and/or in their private capacity arising out of their temporary engagement of the Insured's employees;
- 2.3. the officers, committee and members of the Insured's canteen, social, sports, medical, fire fighting and welfare organisations in their respective capacity as such;
- 2.4. the personal representatives of the estate of any person indemnified by reason of this Clause 2 in respect of liability incurred by such persons;

provided always that all such persons or parties shall observe, fulfil and be subject to the terms, Conditions and Exclusions of this Policy as though they were the Insured.

## 3. CROSS LIABILITIES

Each person or party specified as the Insured in the Schedule is separately indemnified in respect of claims made against any of them by any other, subject to Underwriters' total liability not exceeding the stated Indemnity Limits.

## 4. DEFENCE COSTS

The Underwriters will pay all costs, fees and expenses incurred by the Insured, with Underwriters' prior written consent, in the investigation defence or settlement of any claim made against the Insured under this Policy (hereinafter called "Defence Costs") other than in respect of any actions in the United States of America or Canada.

Defence Costs extend to include the costs of representation at any inquest inquiry or other proceedings in respect of matters which have a direct relevance to any claim made or which might be made against the Insured provided such claim or claims arise from an Occurrence which is the subject of indemnity by this Policy.

## 5. INDEMNITY LIMITS

Underwriters' liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the Schedule against each Section in respect of any one Occurrence or series of Occurrences arising from one originating cause, but under Section B and Section C the Indemnity Limits represent Underwriters' total liability in respect of all Occurrences during the Period of Insurance.

Defence Costs will be payable in addition to the Indemnity Limits unless this Policy is endorsed to the contrary.

Should liability arising from the same originating cause form the subject of indemnity by more than one Section of this Policy, each Section shall be subject to its own Indemnity Limit, provided always that the total amount of Underwriters' liability shall not exceed the greatest Indemnity Limit available under any one of the Sections providing indemnity.



## SECTION A – Public Liability

### 6. SECTION A – INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause for liability to pay damages for and/or arising out of Personal Injury and/or Property Damage occurring during the Period of Insurance within the Territorial Limits detailed in the Schedule to the Policy but not against liability arising out of

6.1. Pollution;

6.2. or in connection with any Product.

### 7. SECTION A – EXCLUSIONS

This section does not cover liability

7.1. arising out of the ownership, possession or use of any Vehicle which is registered or which is required under any legislation to be registered or in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected), other than liability

7.1.1. where such compulsory liability insurance or statutory indemnity does not provide indemnity and the reason for not providing indemnity does not involve a breach of legislation relating to a Vehicle

7.1.2. for Property Damage caused by or arising from the operation or use of any tool or plant forming part of or attached to or used in connection with any Vehicle, or

7.1.3. for Property Damage arising out of the loading or unloading of goods to or from any Vehicle, or

7.1.4. for Property Damage to any bridge, weighbridge, road or anything beneath caused by the weight of any Vehicle or load thereon, or

7.1.5. for Property Damage arising out of any Vehicle temporarily in the Insured's custody or control for the purpose of parking, or

7.1.6. for Property Damage caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading or unloading, whilst being operated or used within the confines of the Insured's premises

7.2. arising out of the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft or hovercraft (other than watercraft not exceeding five metres in length and then only whilst on inland waterways);

7.3. for Property Damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than

7.3.1. premises (or the contents thereof) temporarily occupied by the Insured for work therein (but no indemnity is granted for Property Damage to that part of the property on which the Insured is working and which arises out of such work);

7.3.2. clothing and personal effects belonging to employees and visitors of the Insured;

7.3.3. premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement.

## SECTION B – Pollution Liability

### 8. SECTION B – INDEMNITY

The Insured is indemnified by this Section in accordance with the Operative Clause for liability to pay damages for and/or arising out of Personal Injury and/or Property Damage occurring during the Period of Insurance and arising out of Pollution within the Territorial Limits detailed in the Schedule to the Policy, but only to the extent that the Insured can demonstrate that such Pollution

8.1. was the direct result of a sudden, specific and identifiable event occurring during the Period of Insurance;

8.2. was not the direct result of the Insured failing to take reasonable precautions to prevent such Pollution.

### 9. SECTION B – EXCLUSIONS

This Section is subject to the Exclusions of Sections A and C and also does not cover liability for and/or arising out of

9.1. Property Damage to premises presently or at any time previously owned leased or tenanted by the Insured;

9.2. Property Damage to land or water within or below the boundaries of any land or premises presently or at any time previously owned leased or tenanted by the Insured.



## SECTION C – Products Liability

10. **SECTION C – INDEMNITY**

The Insured is indemnified by this Section in accordance with the Operative Clause for and/or arising out of Personal Injury and/or Property Damage occurring during the Period of Insurance within the Territorial Limits detailed in the Schedule to the Policy but only against liability arising out of or in connection with any Product and not against liability arising out of Pollution.

11. **SECTION C – EXCLUSIONS**

This Section does not cover liability

11.1. arising out of Property Damage to any Product or part thereof;

11.2. for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof and/or financial loss consequent upon the necessity for such repair, reconditioning, modification or replacement;

11.3. arising out of the recall of any Product or part thereof;

11.4. arising out of any Product or part thereof which with the Insured's knowledge is intended to be incorporated into the structure, machinery or controls of any aircraft.





## General Exclusions Applicable to All Sections of the Policy

12. This Policy does not cover liability:
- 12.1. in respect of any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or in respect of any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part)
  - 12.2. in respect of any Occurrence which the Insured is, or would be but for the existence of this Policy, entitled to indemnity under any other policy of insurance;
  - 12.3. arising out of the deliberate, conscious or intentional disregard by the Insured's technical or administrative management of the need to take all reasonable steps to prevent Personal Injury or Property Damage;
  - 12.4. for and/or arising out of Personal Injury imposed
    - 12.4.1. by any workers compensation law
    - 12.4.2. by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement
    - 12.4.3. for or in respect of any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment or prospective employment of any person or persons by the Insured provided that if the Insured is
      - 12.4.3.a. 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 or not) for such Personal Injury, or
      - 12.4.3.b. not required to so insure or otherwise fund such liability by reason only that the Personal Injury is to a person who is not a worker or employee for the purposes of the relevant workers' compensation law or the Personal Injury is not an injury which is subject to such lawthen 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;
  - 12.5. in relation to any fines, penalties, aggravated, punitive or exemplary damages or other non-compensatory damages, including but not limited to multiplications of compensatory awards or damages
  - 12.6. based on or arising out of liquidated damages clauses, penalty clauses or performance warranties unless proven that liability would have attached in the absence of such clauses or warranties;
  - 12.7. arising out of or as a consequence of professional advice given by the Insured for a fee
  - 12.8. for pure financial loss not consequent upon Personal Injury and/or Property Damage
  - 12.9. directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;
  - 12.10. directly or indirectly caused by or contributed to by or arising from
    - 12.10.1. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
    - 12.10.2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - 12.11. for the amount of the Excess stated in the Schedule which the Insured must bear in respect of each Occurrence inclusive of Defence Costs
- (if any product from one prepared or acquired batch causes Property Damage to property of or Personal Injury

to more than one person, the Property Damage to property of all persons and all Personal Injury resulting from that batch shall be considered as arising out of one Occurrence

12.12. directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part or arising from the existence of or exposure to asbestos and /or any asbestos containing materials

12.13. For loss of use of tangible property which has not been physically damaged or destroyed resulting from

12.13.1. a delay in or lack of performance by or on behalf of the Insured in respect of any contract or agreement, or

12.13.2. the failure of the Insured's Product to meet the level of performance, quality, fitness or durability warranted or represented by the Insured, but this exclusion does not apply to loss of use of other tangible property resulting from physical damage to or destruction of the Insured's Product after such Product has been put to use by any person or organisation other than the Insured.

12.14. for Personal Injury and/or Property Damage directly or indirectly caused by, resulting from 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.

This General Exclusion also excludes Personal Injury and/or Property Damage directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of Terrorism

If the Underwriters allege that by reason of this General Exclusion any Personal Injury and/or Property Damage is not covered by this Policy the burden of proving to the contrary shall be upon the Insured.

In the event that any portion of this General Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect

12.15. directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part or arising from the existence of or exposure to mould, fungus/fungi, spore(s), mildew(s), mushroom(s), yeast(s), or biocontaminant(s) or any by-product therefrom

12.16. directly or indirectly arising out of sexual assault, sexual harassment, sexual molestation, rape or the consequences thereof

## **NOTICE RELATING TO TERRORISM**

### **AUSTRALIA TERRORISM INSURANCE ACT 2003 NOTICE**

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

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

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

## Conditions

### 13. PRINCIPALS CLAUSE

Where the Insured so request the Underwriters agree to indemnify any Principal of the Insured but only to the extent that such liability arises solely out of the work performed for the Principal by or on behalf of the Insured. Such Principal shall be subject to and comply with the terms and conditions herein and this clause shall in no way operate to increase the Indemnity Limits stated in the Schedule.

### 14. OBSERVANCE OF TERMS

The Insured must observe and comply with the terms and conditions of this Policy. Any term or condition of this Policy insofar as it relates to anything to be done or complied with by the Assured shall be a condition precedent to the Underwriter's liability to make any payment under this Policy.

The Underwriters shall only be liable to bear GST to the extent that GST is irrecoverable by the Insured. For the avoidance of doubt, any element of GST which the Underwriters is obliged to pay shall be encompassed within the Limit of Indemnity.

### 15. CLAIMS CONDITIONS

15.1. The Insured must notify the Underwriters in writing as soon as possible of any Occurrence which may give rise to a claim under this Policy.

15.2. The Insured shall not admit liability for or negotiate the settlement of any claim, or incur any Defence Costs, without the written consent of the Underwriters. The Insured shall do nothing which may prejudice the rights of the Underwriters, including but not limited to preserving all possible defences, and rights of contribution or indemnity, in respect of a claim.

15.3. The Insured must, at its own expense, provide the Underwriters with all assistance and co-operation reasonably required by the Underwriters to enable the Underwriters to determine the Insured's entitlement to indemnity under the Policy, and in the investigation, settlement and/or defence of any claim.

15.4. The Underwriters reserve the right, but do not have an obligation, to take control of and conduct in the Insured's name the investigation, settlement or defence of any claim. The Underwriters shall be entitled to prosecute 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 such claim and the Insured shall give all such information and assistance as the Underwriters may require.

15.5. A claim against the Insured will only be defended if in the opinion of the Underwriters there is a reasonable prospect of success and after taking account of the commercial considerations and economics of defending such claim.

### 16. GENERAL CONDITIONS

#### 16.1. REASONABLE PRECAUTIONS

The Insured at its own expense shall:

16.1.1. take all reasonable precautions to prevent Personal Injury or Property Damage and cease any activity which may give rise to liability under this Policy;

16.1.2. exercise care in the selection and supervision of employees;

16.1.3. as soon as possible after discovery cause any defect or danger to be made good or remedied and in the meantime shall cause such additional precautions to be taken as the circumstances require;

16.1.4. comply with all statutory requirements and other safety regulations imposed by any authority.

#### 16.2. ALTERATION

The Insured shall give notice to the Underwriters as soon as possible of any alteration which materially affects the risk.

#### 16.3. CANCELLATION

The Underwriters may cancel this Policy in accordance with the Insurance Contracts Act 1984 (Cth).

#### 16.4. DISCHARGE OF LIABILITY

The Underwriters may at any time pay to the Insured in connection with any claim under this Policy to which an



Indemnity Limit applies the amount of such limit (after deduction of any sums already paid) or any lesser amount for which such claim can be settled and upon such payment being made the Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claim.

#### 16.5. PROPORTIONMENT OF DEFENCE COSTS

Except where the Indemnity Limit is inclusive of Defence Costs if a payment exceeding the Indemnity Limit has to be made to dispose of a claim the liability of the Underwriters to pay all Defence Costs in connection therewith shall be limited to such proportion of the said Defence Costs as the Indemnity Limit bears to the amount required to be paid to dispose of such claim.

#### 16.6. ADJUSTMENT OF PREMIUM

If the premium has been calculated on estimates given by the Insured the Insured shall keep an accurate record containing all relevant particulars which shall be available to the Underwriters for inspection.

Within one month of the expiry of each Period of Insurance the Insured shall supply to the Underwriters an accurate statement in the form required so that the premium for that period can be calculated and the difference paid by or allowed to the Insured as the case may be subject to any minimum premium specified in the Schedule to this Policy.

Should the Insured fail to supply such a statement within one month of the expiry of the Period of Insurance the Underwriters shall be entitled if they so wish to charge an additional premium in respect of that Period of Insurance.

#### 16.7. OTHER INSURANCES

16.7.1. To the extent permitted by the Insurance Contracts Act 1984, this Policy will only cover a claim, liability and Defence Costs to the extent that such amount is in excess of any indemnity or cover available to the Insured in respect of that claim, liability or Defence Costs under any other policy entered into by the Insured.

16.7.2. To the extent permitted by the Insurance Contracts Act 1984, this Policy will only cover a claim, liability and Defence Costs to the extent that such amount is in excess of any indemnity or cover available to the Insured in respect of that a claim, liability and Defence Costs under any other policy effected on behalf of the Insured or under which the Insured is a beneficiary (but not a policy to which Clause 16.7.2 applies).

16.7.3. Neither clause 16.7.1 nor 16.7.2 applies to such other insurance that is written only as specific excess insurance over the Indemnity Limit provided in this Policy.

#### 16.8. GOVERNING LAW AND JURISDICTION

16.8.1. any dispute concerning the interpretation of the terms, Conditions, limitations and/or Exclusions contained herein is understood and agreed by both the Insured and the Underwriters to be governed by Australian law.

16.8.2. Any phrase or word in this Policy will be interpreted in accordance with the law of Australia. The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

#### 16.9. SUBROGATION

The Underwriters shall be subrogated to the Insured's rights of recovery in relation to any claim paid or payable under this Policy. The Insured shall co-operate fully with the Underwriters in connection with any action which may be necessary to enforce any rights, remedies, relief or indemnity from other parties arising from the Underwriters's rights of subrogation.

#### 16.10. ASSIGNMENT

16.10.1. The Insured shall not be entitled to assign the benefit of this Policy without the Underwriters's prior written consent.

16.10.2. This Policy shall be for the exclusive benefit of the Insured and in no event shall anyone other than the Insured have any right of action under this Policy.

## Lloyd's Privacy Policy Statement Underwriters at Lloyd's, London

The Certain Underwriters at Lloyd's, London want you to know how we protect the confidentiality of your non-public personal information. We want you to know how and why we use and disclose the information that we have about you. The following describes our policies and practices for securing the privacy of our current and former customers.

### INFORMATION WE COLLECT

The non-public personal information that we collect about you includes, but is not limited to:

- Information contained in applications or other forms that you submit to us, such as name, address, and social security number
- Information about your transactions with our affiliates or other third-parties, such as balances and payment history
- Information we receive from a consumer-reporting agency, such as credit-worthiness or credit history

### INFORMATION WE DISCLOSE

We disclose the information that we have when it is necessary to provide our products and services. We may also disclose information when the law requires or permits us to do so.

### CONFIDENTIALITY AND SECURITY

Only our employees and others who need the information to service your account have access to your personal information. We have measures in place to secure our paper files and computer systems.

### RIGHT TO ACCESS OR CORRECT YOUR PERSONAL INFORMATION

You have a right to request access to or correction of your personal information that is in our possession.

### CONTACTING US

If you have any questions about this privacy notice or would like to learn more about how we protect your privacy, please contact the agent or broker who handled this insurance. We can provide a more detailed statement of our privacy practices upon request.

LSW 1135B

## Lloyd's Australian Alternative Disputes Resolution Clause

In the event that a dispute arises between Underwriters and the Insured/Reinsured out of or otherwise in relation to this agreement, then:

- a. Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
- b. If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
  - b.1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (LEADR) (or other appropriate professional body as agreed by the parties); or
  - b.2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
    - b.2.1. will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);

- b.2.2. will act as an expert and not as an arbitrator;
- b.2.3. will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- b.2.4. will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
- b.2.5. will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- c. Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Level 9, 1 O'Connell Street  
Sydney NSW 2000  
Australia

who has authority to accept service and to appear on Underwriters' behalf.

If proceedings are instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- d. Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- e. Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- f. Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

LSW1145





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