



ASR | Underwriting
Agencies

Policy Wording

EXCESS LIABILITY

ASR Underwriting Agencies ABN 84 113 542 233 AFSL 291522



ASR Underwriting Agencies

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Insuring Agreements

I. COVERAGE

Underwriters hereby agree, subject to the terms, conditions limits and exclusions of the Policy to indemnify the Insured against their liability to pay damages for compensation (including claimants' costs, fees and expenses) which the Insured is legally liable to pay by reason of their liability caused by or arising out of Personal Injury and/or Property Damage that:

1. is covered under the Primacy Policy and any Underlying Excess Policy (if applicable); and
2. occurs during the Period of Insurance in the Jurisdiction.

II. LIMIT OF LIABILITY

The Underwriters total liability to pay compensation (including claimants' costs fees and expenses) shall not exceed the Limit of Indemnity shown in the Policy Schedule and shall only be payable in excess of the Primary and Underlying Excess Insurers Policy Limits and after the Primary Insurer and Excess Insurers have paid, agreed to pay, or have been held liable to pay the full amount of the Primary and Underlying Excess Insurers Policy Limits.

III. CONDITIONS

1. You must observe and comply with the terms and conditions of the Policy. If the Insured does not meet their obligations under the Policy terms (including if an exclusion applies) We may refuse or reduce what We pay in relation to a claim and/or cancel the Policy, subject to relevant law.
2. The Policy is subject to the same warranties, conditions, definitions, terms and exclusions as the Primary Policy of the Primary Insurer (except as regards the premium, the obligation to investigate and defend, the renewal agreements (if any), the amount and limits of indemnity and except as otherwise stated herein) which were applicable at the time of the occurrence which gave rise to the claim against the Insured. Except as otherwise stated herein the terms of the Policy shall apply regardless of, and to the extent of any inconsistency prevail over, the provisions of the Primary Policy or any Underlying Excess Policy (as applicable).
3. Liability to pay under the Policy shall not attach unless and until the Primary Insurers and Underlying Excess Insurers shall have admitted liability for the Primary and Underlying Excess Policy Limits or unless and until the Insured has by final judgment been held liable to pay an amount which exceeds such Primary and Underlying Excess Policy Limits and then only after the Primary Insurer and Underlying Excess insurers have paid or have been held liable to pay the full amount of the Primary and Underlying Excess Policy Limits.
4. The Primary Policy and any Underlying Excess Policy must be maintained in full force and effect during the Period of Insurance of the Policy, except for any reduction of any Primary and Underlying Excess Insurers Policy Limits contained therein solely as a result of payment of claims thereunder.
5. In the event of reduction or exhaustion of any Primary and Underlying Excess Insurers Policy Limits for which an aggregate is stated in the Primary Policy or Underlying Excess Policy the Policy subject to its terms, conditions, definitions and exclusions shall:
 - a. in the event of reduction, apply to the excess of such reduced Primary and Underlying Excess Insurers Policy Limits;
 - b. in the event of exhaustion, apply in place of the Primary Policy and any Underlying Excess Policy.
6. The Insured shall give written notice to the Underwriters [where] as soon as reasonably

practicable of any claim(s) made against the Insured (or specific event or circumstance that may give rise to a claim(s) being made against the Insured) which is likely to exceed 25% of the Primary and Underlying Excess Insurers Policy Limits.

7. In the event of a loss or claim arising which We may be liable to contribute to under the Policy no costs shall be incurred by the Insured on Our behalf without Our written consent being first obtained (such consent not to be unreasonably withheld) and if We so consent, We shall contribute to the said costs in the proportion that Our share of the loss as finally settled bears to the total sum payable. If however a settlement of the loss be practicable prior to taking the case into Court, whether by compromise or otherwise, for a sum not exceeding the Primary and Underlying Excess Insurers Policy Limits no costs shall be payable by the Underwriters under the Policy. No settlement of a loss by agreement shall be effected by the Insured for a sum in excess of the Primary and Underlying Excess Insurers Policy Limits without Our prior written consent (such consent not to be unreasonably withheld).
8. The Insured or Underwriters may at any time cancel the Policy in accordance with the cancellation terms of the Primary Policy.
9. A minimum premium may be applied which is the minimum amount we are prepared to sell the policy for. Where any part of the premium for the Policy has been shown on the Policy Schedule to be adjustable it is a condition that the necessary particulars shall be declared to the Underwriters within 3 months of the expiry of the Period of Insurance and any additional premium shall be paid within 30 days of advice to the Insured of any adjustment due to Us.

10. General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au.

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

11. Complaints and disputes

If you have any concerns or wish to make a complaint in relation to the Policy, Our services or your insurance claim, please let Us know and We will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact ASR in the first instance:

Attention: John Flower
ASR Underwriting Agencies Pty Ltd
Ph: 07 3442 3333
Direct Ph: 07 3442 3301
Fax: 07 3807 6839
Email: john@asruw.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
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000
Email: ldraustralia@lloyds.com

Telephone: (02) 8298 0783

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:

Telephone: 1800 931 678

Email: info@afca.org.au

Post: GPO Box 3 Melbourne VIC 3001

Website: 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.

The Underwriters of the Policy agree that:

- a. if a dispute arising under the Policy, the Policy will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b. Any summons notice or process to be served upon the Underwriters may be served upon Lloyd's Underwriters' General Representative in

Australia
Suite 1603, Level 16
1 Macquarie Place
Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf;
- c. if a suit is instituted against any of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under the Policy immediate notice should be given to:

ASR Underwriting Agencies Pty Ltd
25 Main Street Beenleigh QLD 4207
P.O. Box 491 Beenleigh Queensland 42047
Ph 07 3442 3333 FAX 0738076839

12. Several Liability Notice

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 Lloyd's Underwriters of the syndicate taken together) is shown in the Policy Schedule.

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

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

A Lloyd's Underwriter is liable only for that Lloyd's Underwriter's proportion.

A Lloyd's Underwriter is not jointly liable for any other Lloyd's Underwriter's proportion. Nor is any Lloyd's Underwriter otherwise responsible for any liability of any other Underwriter that may underwrite this contract. The business address of each Lloyd's Underwriter is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each Lloyd's Underwriter 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.

13. Goods And Services Tax

The premium includes an amount for GST.

We shall only be liable to bear GST to the extent that GST is irrecoverable by the Insured. For the avoidance of doubt, any amount of GST which We are obliged to pay shall be included within, and not in addition to, the Indemnity Limits.

Our liability to the Insured in respect of a claim or loss under the Policy is calculated less any input tax credit to which the Insured is entitled for any acquisition which is relevant to the claim or loss, or to which the Insured would have been entitled had the Insured made a relevant acquisition. The Insured must inform Us of the extent to which the Insured is entitled to an input tax credit, and any GST liability arising from your provision of incorrect advice is payable by the Insured.

14. Policy Interpretation

- a. headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- b. 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, re-enactments and replacements;
- c. a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- d. "includes" in any form is not a word of limitations; and
- e. a reference to "\$" or "dollar" is to Australian currency.

15. The insolvency, bankruptcy, or any refusal or inability to pay of the Insured or any Primary Insurer or Underlying Excess Insurer shall not operate to:

- a. reduce or exhaust the Primary and Underlying Excess Insurers Policy Limits; or
- b. increase the Underwriters liability under the Policy.

16. Privacy Collection Statement

ASR is bound by the obligations of the Privacy Act 1988 (Cth) (as amended) regarding the collection, use, disclosure and handling of personal information. We are committed to protecting Your privacy and Your personal information.

We collect personal information about You to enable Us to provide You with relevant products and services, to assess Your application for insurance and, if a contract is entered, to enable Us to provide, administer, and manage Your policy. We may disclose Your information to third parties (who may be located overseas), such as certain Underwriters at Lloyd's, lawyers, claims adjusters, and others appointed by ASR or by certain Underwriters at Lloyd's to assist Us and them in providing relevant products and services. We may disclose Your information to the providers of Our policy administration and underwriting systems which may be supported and maintained by various overseas organisations and Your information may be disclosed to these organisations, it should be noted that the Australian Privacy Act and Privacy Principles may not apply to these organisations. We may also disclose Your information to people listed as co-insured on Your policy and to Your agents. By providing Your personal information to Us, You consent to Us making these disclosures.

If You do not provide all or part of the information required, We may not be able to provide You with Our products and services, consider Your application for insurance, administer Your policy, and You may breach Your Duty of Disclosure.

When You provide Us with personal information about other individuals, We rely upon You to have made them aware of these disclosures and to obtain their consent to, the terms of the ASR Privacy Statement.

For a full copy of the ASR Privacy Policy Statement or to request access to Your personal information, You may contact Our Privacy Officer at ASR by email: enquiries@asruw.com.au or by mail at the address shown on page 4 of the Policy.

17. When We can refuse to pay or reduce the amount We pay under a claim

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

The situations in which We may refuse to pay or reduce the amount We pay under a claim under the Policy include (but are not limited to):

- when the Insured applies for cover (this includes new business, variations, extensions, reinstatements and renewals) and they do not comply with their obligations regarding pre contractual disclosures and representations to Us under the Insurance Contracts Act 1984 (Cth) (including where applicable the Duty of Disclosure); or
- if You do not comply with or meet a term or condition (including where an exclusion applies or other limitation) of the Policy (All referred to as "terms" when used in this clause 17) – See "If You do not comply with or meet any Policy term" below for more detail;
- if You make a fraudulent claim – See "Fraudulent Claims" below;
- 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" below.

The amount of any claim entitlement can also be affected and/or reduced by any limits (including any time limits) or Excess(es) that apply and recoveries You or We might make relevant to a loss.

If You do not comply with or meet any Policy term

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 law (including Our right to refuse or reduce a claim noted above). We provide some key examples below. 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;
 - 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 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.

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 when the contract was entered into the Insured was 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 contract by reference to the condition, at a time before the Policy was entered into, of the thing. 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).

Terms allowing Us to refuse or reduce a claim because of a pre-existing sickness or disability existing before the Policy was entered into

Only where section 47 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim under the Policy is made in respect of a loss that occurred as a result, in whole or in part, of a sickness or disability to which a person was subject or had at any time been subject; and
- where, at the time when the contract was entered into, the Insured was not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the sickness or disability,

We may not rely on a provision included in the Policy that has the effect of limiting or excluding our liability under the Policy by reference to the sickness or disability to which You were subject at

a time before the Policy was entered into. (Refer to the Insurance Contracts Act 1984 (Cth) for full details).

18. 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 the Insured.

We may refuse payment of the claim to the extent permitted by 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).

19. Duty of Utmost Good Faith

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.

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).

20. Terms apply to extent enforceable

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

IV. EXCLUSIONS

The following exclusions apply to the Policy regardless of, and to the extent of any inconsistency prevail over, the provisions of the Primary Policy or any Underlying Excess Policy (as applicable).

The Policy does not cover any actual or alleged loss, damage, liability, compensation, injury, sickness, disease, death, medical payment, defence cost, other cost, expense or any other amount, fine or penalty, or claim directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, contributed by, resulting from, arising out of or in any way connected with:

1. Sanction Limitation And Exclusion Clause

any claim or any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us to any sanction, prohibition, or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

2. Cyber And Data Total Exclusion

- a. 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; or
- b. loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft

of any Data, including any amount pertaining to the value of such Data;

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

3. Communicable Disease Exclusion

- a. a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease; or
- b. any cost to clean-up, detoxify, remove, monitor, or test for a Communicable Disease.

V. DEFINITIONS

The following key words and terms used in the Policy when the word starts with a capital letter in this document (other than in headings) have a special meaning that appears below. Other words may be specially defined to have a meaning when used in relation to a Policy section, term or condition.

"ASR" means ASR Underwriting Agencies Pty Ltd ABN 84 113 542 233 AFSL 291522.

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

1. 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
2. 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
3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

"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.

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

"Cyber Incident" means:

1. 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
2. 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.

"Data" means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

"Insured" means the person(s), companies, organisations or other entities shown as the insured on the Policy Schedule. They are the contracting insured(s).

"Jurisdiction" means the jurisdiction specified in the Policy Schedule.

"Limit of Indemnity" means the maximum amount We will pay under the Policy as stated in the Policy Schedule.

"Lloyd's" means the society of that name incorporated by the Act of the United Kingdom known as Lloyd's Act 1871.

"Lloyd's Underwriter" means an underwriting member of Lloyd's.

"Period of Insurance" means the period shown in the Policy Schedule unless the Policy ends earlier in accordance with its terms or law, in which case the period of insurance ends at that earlier time. Each renewal results in a new contract and new Period of Insurance.

"Personal Injury and/or Property Damage" means events that are insured against under the terms, conditions, limits and exclusions of the Primary Policy and Underlying Excess Policies (as applicable).

"Policy" means this document (except to the extent part of it is expressly excluded), the Policy Schedule and any other documents We agree with the Insured will form part of the Policy that We issue. Together they form the Insured's contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

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

"Primary and Underlying Excess Insurers Policy Limits" means the limit(s) of indemnity payable under the Primary Policy and any Underlying Excess Policy before We are liable to make any payment in relation to a claim under the Policy.

"Primary Insurer" means the respective insurer(s) of the Primary Policy.

"Primary Policy" means the primary policy specified in the Policy Schedule which will be the first policy to pay a claim for a covered event where the Insured holds more than one insurance policy covering the same risks. We are not liable to make any payment under the Policy until all Primary and Underlying Excess Insurers Policy Limits have been reached or exhausted.

"Underlying Excess Policy" means any underlying excess policy specified in the Policy Schedule which will respond to pay a claim for a covered event after the Primary Policy limits have been reached or exhausted. We are not liable to make any payment under the Policy until all Primary and Underlying Excess Insurers Policy Limits have been reached or exhausted.

"Underlying Excess Insurer" means the respective insurer(s) of any Underlying Excess Policy.

"We, Us, Our, Underwriters" means certain Lloyd's Underwriters, including when acting through their agent ASR or any other agent appointed by them from time to time.



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