



**Annual Contract Works (Turnover)  
and Construction Liability  
Policy Wording  
v1116**



**Pen Underwriting Pty Ltd**  
ABN 89 113 929 516 AFSL 290518

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## IMPORTANT INFORMATION

### This Policy

This Policy is an important document and should be kept in a safe place. Please read it carefully so that you understand the insurance provided.

### 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.

### Average/Underinsurance

The additional insured items for Existing Structure and for items of Equipment and Hoists, Cranes and Mobile Construction Plant are subject to average / underinsurance. The Named Insured must insure for Existing Structure the full replacement value and for items of Equipment and Hoists, Cranes and Mobile Construction Plant the current market value and if the Named Insured does not the Insurer will only pay the proportion of the claim that the Sum Insured bears to that market value.

### Preventing Our Right of Recovery

If the Insured has agreed not to seek compensation from another person who is liable to compensate them for any loss, damage or liability which is covered by Section Two of this Policy, the Insurer will not provide cover under Section Two of this Policy for that loss, damage or liability.

### GST

The Premium includes an amount for GST.

The Insurer's liability to indemnify the Insured under this Policy is calculated less any Input Tax Credit to which the Insured is entitled for any relevant Acquisition, or to which the Insured would have been entitled had it made a relevant Acquisition. The Insured must inform Underwriters of the extent to which it is entitled to an Input Tax Credit for that GST, and any GST liability arising from the Insured's provision of incorrect advice is payable by the Insured.

GST, Input Tax Credit and Acquisition have the meaning given to those words in A New Tax System (Goods and Services Tax) Act 1999.

### Privacy

Pen Underwriting handles your personal information with care and in accordance with the Privacy Act 1988 and the Australian Privacy Principles. We collect personal

information about you to provide you with insurance and insurance related services. We may disclose your personal information to third parties for the purposes described in our Privacy Policy, including related entities, insurers, reinsurers, agents and service providers, some of whom may be located in the United States of America, United Kingdom and India. By asking us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure (including overseas disclosure) of your personal information for the purposes described in our Privacy Policy. Where you provide personal information about others, you represent to us that you have made them aware of that disclosure and of our Privacy Policy and that you have obtained their consent. If you do not consent to provide us with the personal information that we request, or withdraw your consent to the use and disclosure of your personal information at any stage, we may not be able to offer you the products or provide the services that you seek. For information about how to access and or correct the personal information we hold about you or if you have any concerns or complaints, ask us for a copy of our Privacy Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au).

### Claims

In the event of a claim arising under this insurance, IMMEDIATE NOTICE should be given to:

Pen Underwriting

GPO Box 541

Brisbane QLD 4001

Email: [claims.au@penunderwriting.com](mailto:claims.au@penunderwriting.com)

### Complaints Handling

If you are dissatisfied with a decision Pen Underwriting makes, our service, the service of others we appoint to discuss insurance matters with you, or a claim settlement, we have an internal dispute resolution process to assist you. For further information, ask for a copy of our Complaints and Disputes Resolution Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au).

### Several Liability Notice

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract. The proportion of liability under this contract underwritten by an insurer (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 this contract. In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. 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 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 points 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.

#### **Australian Terrorism Insurance Act**

The Insurer has treated this insurance (or part of it) as an insurance to which the Australian 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 Policy 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 Policy is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insurance coverage and exclusions of this Policy including applicable limits and excesses remain unchanged.

If the Insurer has reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Insurers will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Insurer's liability for payment for "eligible terrorism losses".

#### **Further Information**

Your insurance broker has arranged this insurance on your behalf. If you have any questions or need further information concerning your insurance, you should contact your insurance broker to assist you with your enquiry. You should direct all of your correspondence to us through your insurance broker as he is your agent for this insurance.

#### **Premium**

The amount of Premium specified herein is the amount due to the Insurer and any commission allowed by them is to be regarded as remuneration of Pen Underwriting.

#### **Agreement**

In consideration of the payment of the Premium and in reliance on the contents of the Proposal, the Insurer will indemnify the Insured in accordance with the terms of this Policy.

## DEFINITIONS

### 1.1. Additional Insureds

Where the Named Insured is contractually obligated to provide insurance but subject always to the extent of coverage and the Sum(s) Insured, Total Sum(s) Insured and Limit of Liability under this Policy:

- (a) every principal, in respect of that principal's vicarious liability for the acts or omissions of the Named Insured or of the parties shown in Insured Definition 1.17(b) in the performance by them of work for that principal;
- (b) financiers of the principal;
- (c) every architect and engineer and all other consultants as may be required by contract for their manual physical activities at the Contract Site; and
- (d) every subcontractor or supplier of materials for incorporation into the Contract Works but only to the extent required by contract.

### 1.2. Aircraft

Any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

### 1.3. Breakdown

Sudden and unforeseen physical damage caused by:

- (a) the actual breaking, failure, seizing, distortion, burning out or derangement of any part of any Equipment or any Hoists, Cranes and Mobile Construction Plant;
- (b) the rupture and/or explosion of any boiler, pressure vessel, pressure piping or internal combustion engine subject to internal gas or fluid pressure,

necessitating repair or replacement before normal working can resume.

### 1.4. Construction Contracts

All Contract Works undertaken by or for the Named Insured during the Policy Period and in respect of which the Named Insured is contractually obligated to provide insurance, including all contracts partially completed prior to the Policy Period.

### 1.5. Construction Period

The period commencing on the first day of the Policy Period or the date of possession of each Contract Site during the Policy Period by the Named Insured and ending at the earlier of:

- (a) the time of Practical Completion and including up to fourteen (14) days exceeding Practical Completion; or
- (b) when completed portions of the Contract Works are taken over, occupied or put into use; or
- (c) 4.00pm on the end date of the Policy Period.

### 1.6. Contract Price

The value(s) of the Contract Works (including Principal Supplied Materials at the commencement of the Construction Period.

### 1.7. Contract Site

The location(s) where work is performed by or on behalf of the Named Insured for or in connection with the Contract Works.

### 1.8. Contract Works

The whole of the works whether permanent or temporary including all materials (and Principal Supplied Materials) incorporated or to be incorporated therein including all formwork, false work, scaffolding, hoardings and security fencing owned by or in the care, custody or control of the Named Insured for the Construction Contracts.

Contract Works does not include Existing Structure(s) unless specified in the Schedule.

**For the purposes of Section Two, Contract Works also includes:**

- (a) all incidental and ancillary activities performed by the Named Insured in the carrying out of the works, either in connection with the Construction Contracts or such contracts for works yet to be successfully awarded, including but not limited to:
  - (i) the application for building permits or seeking public information from government and/or public authorities;
  - (ii) visiting professional building consultants, suppliers premises;
  - (iii) preparing tenders or quotations including visits to work sites;
  - (iv) attending trade fairs, exhibitions, building industry functions
- (b) the ownership and or occupation of premises by the Named Insured directly used in connection with the Named Insured's construction business where the principle activity is as:
  - (i) a registered business office;
  - (ii) a workshop;
  - (iii) a permanent storage yard or compound providing such yard or storage compound is completely secured with fencing and gates.

### 1.9. Deductible

The amount(s) specified in the Schedule which will be deducted from the amount payable under Section One of this Policy.

### 1.10. Employee

Any person engaged under a contract of service or apprenticeship provided that they fall within the definition of 'worker' under any workers' compensation legislation.

### 1.11. Employment Practices

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.

**1.12. Equipment**

Plant, equipment and tools not including Hoists, Cranes and Mobile Construction Plant.

**1.13. Excess**

The first amount the Named Insured must contribute to any claim made under Section Two. If more than one Excess is payable for any claim, or series of claims arising from the one Occurrence, the Named Insured must pay the highest Excess, but only one Excess is payable under Section Two.

**1.14. Existing Structure**

Any building or structure specified in the Schedule including all permanent attachments but excluding contents, wall or floor finishes or coverings, fencing, paths, driveways and all exterior paved areas.

**1.15. Healthcare Professionals**

Qualified nurses, dentists and first aid attendants (not being qualified medical practitioners).

**1.16. Hoists, Cranes and Mobile Construction Plant**

Vehicles, hoists, cranes, earth- moving equipment and other similar plant whether self-propelled or non self-propelled.

**1.17. Insured**

- (a) the Named Insured;
- (b) all the subsidiary companies (now or subsequently constituted) of the Named Insured provided their places of incorporation are within Australia.
- (c) every director, executive officer, Employee, partner or shareholder of the Named Insured or of the parties specified in paragraph (b) above, but only while acting within the scope of their duties in such capacity;
- (d) every office bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with the consent of the Named Insured in respect of claims arising from their duties connected with the activities of any such club, organisation or service. This insurance will not apply to Personal Injury or to Property Damage of any participants of any game, match, race, practice or trial;
- (e) each partner, joint venturer, co-venturer or joint lessee of the Named Insured but only if the Insurer agrees to insure them and the Named Insured agrees to pay the premium the Insurer requires;
- (f) any director or senior executive of the Named Insured or one of the parties specified in paragraph (b) of this Definition in respect of private work undertaken by Employees of the Named Insured for such director or senior executive; and
- (g) Additional Insureds.

**1.18. Insured Damage**

Sudden and unforeseen physical loss of or damage to:

- (a) the Contract Works;
- (b) Hoists, Crane and Mobile Equipment;
- (c) Existing Structure; and or
- (d) Temporary Buildings, from any cause not excluded.

**1.19. Insurer**

The Insurer(s) specified in the Schedule.

**1.20. Interference**

Interference with traffic or to property or the enjoyment of use of property by:

- (a) obstruction;
- (b) trespass;
- (c) loss of amenities;
- (d) nuisance.

**1.21. Limit of Liability**

The limit of liability applicable to Section Two specified in the Schedule.

**1.22. Maintenance Period**

The maintenance period commencing at Practical Completion and ending at the earlier of:

- (a) 4:00pm on the last day of the Maximum Maintenance Period specified in the Schedule; or
- (b) the expiration of the maintenance/defects liability period stated in the Construction Contract; or
- (c) 4:00pm on the end date of the Policy Period.

**1.23. Major Peril**

Insured Damage caused by:

- (a) earthquake;
- (b) fire;
- (c) storm;
- (d) flood;
- (e) water;
- (f) snow;
- (g) ice;
- (h) frost;
- (i) landslip;
- (j) erosion;
- (k) subsidence; or
- (l) collapse.

**1.24. Minor Peril**

Insured Damage caused by any cause other than a Major Peril.

**1.25. Named Insured**

The individual(s), company(ies) or firm(s) specified in the Schedule.

**1.26. Occurrence**

An event which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured. All Personal Injury or Property Damage arising out of continuous or repeated exposure to substantially



the same general conditions will be construed as arising out of one Occurrence.

**1.27. Period of Insurance**

- (a) Under Section One, the twelve (12) month or other period stated in the Schedule during which Contract Works are performed.
- (b) Under Section Two, the period specified in the Schedule.

**1.28. Pen Underwriting**

Pen Underwriting Pty Ltd ABN 89 113 929 516 AFSL 290518.

**1.29. Personal Injury**

- (a) bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury;
- (b) the effects of false arrest, wrongful detention, false imprisonment or malicious prosecution;
- (c) the effects of wrongful entry or eviction;
- (d) the effects of publication or utterance of defamatory or disparaging material; or
- (e) the effects of assault and battery not committed by or at the direction of the Insured unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

**1.30. Policy**

This policy wording, the Schedule and any endorsements.

**1.31. Policy Period**

The twelve (12) month or other period stated in the Schedule during which Contract Works are performed.

**1.32. Pollutants**

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

**1.33. Practical Completion**

The earlier of:

- (a) when the Contract Works have been completed except for minor omissions and minor defects which do not prevent the Contract Works from being capable of being occupied or used for its intended purpose; or
- (b) when the Certificate of Practical Completion is issued.

**1.34. Principal Supplied Materials**

All materials or components supplied by the principal for incorporation into the Contract Works.

**1.35. Products**

Anything (after it has ceased to be in the physical custody of or under the control of the Named Insured) manufactured, produced, supplied, distributed, sold, imported, repaired, serviced, installed, assembled, erected or constructed by

the Named Insured, including packaging and containers.

**1.36. Property Damage**

- (a) physical damage to or loss or destruction of tangible property including any resultant loss of use of that property; or
- (b) loss of use of tangible property which has not been physically damaged, lost or destroyed provided such loss of use is caused by an Occurrence.

**1.37. Provisional Premium**

The amount payable by the Named Insured as a deposit and shall be calculated by applying the agreed rate to the estimated Turnover of all Construction Contracts and shall be adjusted in accordance with the General Conditions Premium Adjustment Clause.

**1.38. Schedule**

The policy schedule issued by Pen Underwriting which is current at the time that the Insured Damage occurs and is discovered.

**1.39. Sum(s) Insured and Total Sum Insured**

The sum(s) insured and total sum insured specified in the Schedule.

**1.40. Temporary Buildings**

Temporary site buildings and their contents not including Equipment or Hoists, Cranes and Mobile Construction Plant.

**1.41. Territorial Limits**

The territorial limits specified in the Schedule applicable to Section Two.

**1.42. Testing and Commissioning Period**

The testing and commissioning period within the Construction Period commencing on the first day of testing and commissioning and ending on the earlier of:

- (a) 4:00pm on the last day of testing and commissioning; or
- (b) 4:00pm on the last day of the Maximum Testing and Commissioning Period specified in the Schedule; or
- (c) 4:00pm on the end date of the Policy Period.

**1.43. Total Contract Price**

The estimated full value of the Contract Works at completion of the Construction Period inclusive of contract price, all materials to be incorporated in the works (including Principal Supplied Materials) wages, freight and customs duties and dues.

**1.44. Turnover**

The value of all work performed for all Contract Works undertaken during the Policy Period, including all materials, components and Principal Supplied materials.

**1.45. Vehicle**

Any type of machine on wheels or self laid track made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.

#### 1.46. Watercraft

Any vessel, craft or thing made or intended to float on or in or travel on or through or under water.

locked receptacle on the Contract Site or at the Named Insured's premises, or is secured and out of sight within a locked Vehicle.

## SECTION ONE: MATERIAL DAMAGE

### 1. SCOPE OF COVER

#### 1.1. Construction Period

The Insurer will indemnify the Insured against Insured Damage occurring and discovered at the Contract Site during the Construction Period.

#### 1.2. Maintenance Period

The Insurer will indemnify the Insured against Insured Damage discovered during the Maintenance Period and which originates from:

- (a) a cause (unless excluded) arising out of the Contract Works carried out by the Named Insured at the Contract Site during the Construction Period; or
- (b) a cause (unless excluded) arising out of and occurring during the operations carried out by the Named Insured in complying with the requirements of the Maintenance Clause(s) of the Construction Contract.

### 2. ADDITIONAL ITEMS

Provided a separate Sum Insured is specified in the Schedule for any of these additional items the Insurer will also indemnify the Insured for costs and expenses necessarily and reasonably incurred for:

#### 2.1. Existing Structure

Insured Damage to Existing Structure located on or about the Contract Site and belonging to the Named Insured or in the care, custody or control of the Named Insured and provided that the Existing Structure are made waterproof and secured at the close of each day's work.

#### 2.2. Hoists, Cranes and Mobile Construction Plant

Insured Damage to Hoists, Cranes and Mobile Construction Plant owned or hired by the Named Insured whilst on or about the Contract Site, in storage at the Named Insured's premises or whilst in transit.

#### 2.3. Materials in Storage

Insured Damage to materials and components to be used for or incorporated in the Contract Works whilst in storage within Australia during the Construction Period, for a period not exceeding ninety (90) days duration in total.

#### 2.4. Temporary Buildings and Equipment

Insured Damage to:

- (a) Temporary Buildings owned or hired by the Named Insured whilst at the Contract Site; and
- (b) Equipment owned or hired by the Named Insured whilst on or about the Contract Site, in storage at the Named Insured's premises or whilst in transit provided that when not in use, such Equipment is either secured in a

#### 2.5. Testing and Commissioning

Insured Damage during testing and commissioning of the Contract Works by their own electrical or mechanical Breakdown which occurs during the Testing Period and arises out of testing and commissioning of the Contract Works at the Contract Site. Simple functional checks of components of individual machines which do not involve any loading will not be testing for the purposes of this Additional Item.

#### 2.6. Transit

Insured Damage to materials and components to be used for or intended to be incorporated in the Contract Works whilst in transit within mainland Australia and Tasmania during the Construction Period arising from fire, flood, collision and overturning of the conveyance or by theft or malicious damage while the materials are being transported to the Contract Site:

- (a) beginning with loading in an undamaged condition;
- (b) continuing during transit by road, rail, internal waterway, by ship from port to port or by licensed airline operating a regular scheduled service (including incidental transshipment); and
- (c) ending with unloading at the Contract Site.

### 3. ITEMS FOLLOWING INSURED DAMAGE

Following Insured Damage during the Construction Period or Maintenance Period and provided a Sum Insured is specified for the respective item(s) in the Schedule, indemnity is extended to include costs and expenses necessarily and reasonably incurred for the following items.

#### 3.1. Demolition and Removal of Debris

The cost of demolition and disposal of damaged or undamaged Contract Works and the removal of debris as a result of Insured Damage to the Contract Works where necessary to enable the Contract Works to be restored or replaced.

#### 3.2. Expediting Expenses

The costs of express delivery within Australia, extra costs of overtime rates of wages, the hire of additional labour, equipment and the costs of purchasing resources necessary to urgently restore or replace the Contract Works following Insured Damage. Express delivery will include carriage by air freight within Australia by use only of licensed airline(s) operating a regular scheduled service, but not Aircraft chartered specifically for such carriage.

Expediting expenses will not include reimbursement of costs to compensate for delay in completion of the Contract Works.

#### 3.3. Professional Fees

The costs of architects, surveyors, consulting engineers and other professional consultants



necessarily incurred in the restoration or replacement of the Contract Works following Insured Damage but excluding any fees for the preparation of a claim or estimate of fees or any legal fees.

Professional fees will not exceed those authorised under the scales of the various professional institutes regulating such professional charges and prevailing at the time of the Insured Damage.

#### **4. ADDITIONAL COVERS**

##### **4.1. Contract Price Increase/Escalation**

If during the Construction Period there is an increase in the Contract Price then the Sum Insured for the Contract Price shall be increased by the same proportion, provided the amount of such increase shall not exceed fifteen (15) percent of the Contract Price, unless expressly agreed upon and specified in the Schedule at Escalation as a percentage figure.

##### **4.2. Dewatering**

The Insurer will pay for the cost of dewatering necessary to provide initial access to and allow repairs to be effected to previously completed sections of the Contract Works whether damaged or undamaged following Insured Damage.

##### **4.3. Floor Space Ratio Indemnity**

In the event of the Contract Works suffering Insured Damage and as a result of the exercise of statutory powers and/or authority by any Government Department, Local Government or any other Statutory Authority replacement of the Contract Works as before is prohibited and reinstatement is only permissible subject to a reduced floor space ratio index and/or the payment of certain fees and contributions as a prerequisite to replacement.

The Insurer will pay in addition to any amount payable on replacement of the Contract Works the difference between:

- (a) the actual cost of replacement incurred in accordance with the reduced floor space ratio index; and
- (b) the cost of replacement which would have been incurred had a reduced floor space ratio index not been applicable.

In arriving at the amount payable under Clauses 4.3(a) and 4.3(b) any payments made by the Insurer shall include the additional costs of replacement, including demolition or dismantling of the damaged Contract Works, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made there under or any By-law or Regulation of any Municipal or other Statutory Authority.

Any payment made for the difference between Clauses 4.3(a) and 4.3(b) shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on behalf of the Named Insured in the replacement of the Contract Works.

Subject to the Sum Insured specified in the Schedule the Insurer will also pay:

- (c) the amount of any fees, contributions or any other impost payable to any government departments, local government or any other statutory authorities where such fees, contributions or any impost is a condition precedent to consent being given for the replacement of the Contract Works; and
- (d) the amount of any additional costs and expenses incurred by or on behalf of the Named Insured arising from alterations to the specifications of the Contract Works brought about by the reduced floor space ratio index.

##### **4.4. Undamaged Foundations**

The Insurer will pay the original cost of constructing building foundations forming part of the Contract Works which are undamaged but subsequently abandoned following Insured Damage to the balance of the Contract Works and a government department or local government or other statutory authority directs that reinstatement of the Contract Works must be carried out at another site.

##### **4.5. Underpinning of Existing Structures**

The Insurer will indemnify the Insured for Insured Damage to Existing Structures caused by excavation or underpinning work carried out by the Named Insured provided that:

- (a) such work strictly complies with the plans, specifications and recommendations of the qualified design engineer and is carried out under the direct supervision of the qualified design engineer; and
- (b) any Existing Structure shall have, prior to any excavation or underpinning work commencing, a conditions report produced which details the existing condition of such Existing Structure.

#### **5. OPTIONAL COVERS**

These optional covers only apply where specified with a sub-limit in the Schedule and consequent upon Insured Damage. The Insurer's liability will not exceed the sub-limit specified in the Schedule for that item for the Policy Period.

##### **5.1. Claims Preparation Costs**

Consequent upon Insured Damage the Insurer will pay the costs and expenses necessarily and reasonably incurred by or on behalf of the Named Insured in the preparation of claims by external accountants, auditors or similarly qualified professional consultants for submission to the Insurer provided that this Optional Cover does not extend to legal costs.

##### **5.2. Mitigation Expenses**

The Insurer will pay the costs and expenses necessarily and reasonably incurred by or on behalf of the Named Insured in mitigating, containing, eliminating, preventing, avoiding or suppressing Insured Damage.

Such costs and expenses shall include but not be limited to:

- (a) the payment for additional labour (including the Named Insured's Employees), services or resources; and
- (b) the cost of replenishing firefighting appliances or systems and costs and charges incurred for the purpose of shutting off the supply of water or any other substance following the accidental discharge or escape from intended confines of any such substance, whether from protective equipment or otherwise.

### 5.3. Plans and Documents

Consequent upon Insured Damage, the Insurer will pay the costs and expenses necessarily and reasonably incurred by or on behalf of the Named Insured anywhere within Australia (including remuneration to any of the Named Insureds for supervising and/or for actual work) re-writing and/or reproducing files, plans, drawings, designs, specifications, documents, manuscripts, business and other books and systems, media and records directly relating to the Contract Works.

### 5.4. Public Authorities

Consequent upon Insured Damage the Insurer will pay the costs and expenses necessarily and reasonably incurred by or on behalf of the Named Insured in order to comply with the requirements of any Act of Parliament or Regulation made there under or any By-Law or Regulation of any Municipal or other Statutory Authority.

### 5.5. Temporary Protection and/or Government Expenses

The Insurer will pay the costs and expenses necessarily and reasonably incurred by or on behalf of the Named Insured for:

- (a) shoring up, propping, underpinning or other temporary protection of the Contract Works, deemed necessary by the Named Insured to avoid further Insured Damage occurring; and
- (b) any fee, contribution or other impost (excluding fines and/or penalties) payable to any government, local government or statutory authority for services rendered or equipment supplied for the purpose of helping to prevent further, mitigate or confine Insured Damage at the Contract Site or at the Named Insured's premises.

## 6. INSURER'S LIABILITY

The liability of the Insurer under this Policy will not exceed the Sum(s) Insured specified in the Schedule for the respective Item(s) and Optional Covers and the maximum liability of the Insurer will not exceed in all the Total Sum Insured.

## 7. BASIS OF SETTLEMENT

In the event of Insured Damage, the basis of any settlement will be:

### 7.1. Contract Works and Existing Structure

For Insured Damage to Contract Works and Existing Structure:

- (a) in the case of Insured Damage which can be repaired, the cost of repairs necessary to restore the damaged section to its condition immediately before the occurrence of the Insured Damage, less any salvage.
- (b) If the repairs are carried out by the Named Insured the Insurer will pay the reasonable cost of materials and wages incurred by the Named Insured for the purpose of the repairs, plus a reasonable margin for profit and overheads.
- (c) in the case of a total loss, the actual value of the damaged section immediately before the occurrence of the Insured Damage, less any salvage.

### 7.2. Equipment and Hoists, Cranes and Mobile Construction Plant

For Insured Damage to Equipment and Hoists, Cranes and Mobile Construction Plant insured under this Policy:

- (a) in the case of Insured Damage which can be repaired, the Insurer will pay all costs reasonably incurred to repair the damaged item to its condition immediately prior to the loss including the costs of dismantling, re-erection, ordinary freight to and from a repair workshop customs duties and other imposts if levied provided that the Sum Insured is not otherwise exhausted.

If the repairs are carried out by the Named Insured the Insurer will pay the reasonable cost of materials and wages incurred by the Named Insured for the purpose of the repairs, plus a reasonable margin for profit and overheads. No deduction will be made for depreciation of replaced parts but the value of any salvage will be taken into account.

If the estimated costs of repairs exceeds or equals the actual value of the damaged item immediately before the loss or damage occurred then the Insurer will consider the item destroyed and settlement will be made on the basis provided in Clause 7.2(b).

- (b) in the case where the item is destroyed or lost the Insurer will pay the value of the item, having regard to its market value and its state and condition immediately prior to the Insured Damage, plus the reasonable costs of freight and erection of a replacement item less the value of any salvage.

However, only to the extent to which the costs claimed had to be borne by the Named Insured and to the extent to which they are included in the Sum(s) Insured.

All Insured Damage which can be repaired must be repaired, but if the cost of repairing any damage equals or exceeds the value of the items immediately before the occurrence of the Insured Damage, settlement will be made on the basis provided for in Clause 7.2(b).

The Insurer will not be liable to make any payment under this Policy unless the Named Insured has produced to the reasonable

satisfaction of the Insurer all accounts, invoices, receipts and other documentation indicating that repairs have been effected or replacement has taken place, as the case may be.

The Insurer will not pay for the cost of any alterations, additions and/or improvements.

The amount of the Deductible will be subtracted from the amount payable by the Insurer. Should more than one Deductible apply, the highest Deductible will be the only Deductible payable.

## 8. EXCLUSIONS

Section One of this Policy does not cover:

### 8.1. Cash and Securities

loss of or damage to cash, bank-notes, treasury-notes, cheques, money-orders, stamps, deeds, bonds, bills of exchange, promissory-notes and securities.

### 8.2. Cessation of Work

loss of or damage to the Contract Works following any cessation of work which exceeds thirty (30) consecutive days or immediately following abandonment.

### 8.3. Consequential Loss

consequential loss or loss of use.

### 8.4. Defective Works

all costs rendered necessary by defects of materials, workmanship, design, plan or specification and should damage occur to any portion of the Contract Works containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the said section of the Contract Works has been put in hand immediately prior to the said damage.

For the purpose of this Section and not merely this Exclusion it is understood and agreed that any section of the Contract Works shall not be regarded as damaged solely by virtue of the existence of any defect of materials, workmanship, design, plan or specification.

Any claim under this Clause will be subject to the Major Peril Deductible.

### 8.5. Dewatering

the costs of:

- (a) additional expenses incurred for dewatering because the quantities of water to be removed exceed the quantities allowed for in the Construction Contract;
- (b) repairing damage arising out of the failure of dewatering plant if such damage could reasonably have been avoided by the provision of additional standby dewatering plant;
- (c) additional expenses incurred for the discharge of run-off or groundwater; or
- (d) any expenses incurred for grouting or other measures necessary to prevent the leaking of water into excavations, foundations or basements unless such leaking is a result of Insured Damage.

### 8.6. Electronic Data

- (a) loss, damage, destruction, distortion, erasure, corruption or alteration of electronic data from any cause whatsoever (including but not limited to computer virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
- (b) provided that in the event that fire or explosion results from any of the matters described in Clause (a), this Policy covers Insured Damage occurring during the Period of Insurance to Insured Items directly caused by fire or explosion.

Should electronic data processing media insured under this Policy suffer Insured Damage, then the basis of valuation shall be the cost of the blank media plus the costs of copying the electronic data from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such electronic data. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such electronic data to the original Insured or any other party, even if such electronic data cannot be recreated, gathered or assembled.

For the purpose of this Exclusion:

- (a) Electronic data means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.
- (b) Computer virus means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer virus includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

### 8.7. Inventory Shortage

loss or damage discovered only at the time an inventory is taken unless such damage can be attributed to burglary.

### 8.8. Legal Liability

legal liability arising from any event.

### 8.9. Mechanical or Electrical Breakdown

loss of or damage to Temporary Buildings and Equipment or Hoists, Cranes and Mobile Construction Plant caused by:

- (a) mechanical and/or electrical Breakdown;

- (b) the freezing of any coolant or other fluid;
- (c) defective lubrication or lack of oil or coolant.

**8.10. Parts Requiring Periodic Repair or Maintenance**

the cost of replacing or repairing parts requiring periodic or frequent replacement, repair or maintenance including but not limited to fuses, shear pins, rupture plates or other load limiting devices, bits, drills, knives, saw blades and other cutting devices, dies, moulds, patterns, templates, pulverising and crushing surfaces, screens, sieves, filters, ropes, belts, chains, elevator and conveyor belts, batteries, flexible pipes, seals, glands, jointing, packing material, tyres and tracks.

**8.11. Piling, Foundation and Retaining Wall Works**

expenses incurred:

- (a) for replacing or rectifying piles or retaining wall elements:
  - (i) which have become misplaced or misaligned or jammed during their construction;
  - (ii) which are lost or abandoned or damaged during driving or extraction; or
  - (iii) which have become obstructed by jammed or damaged piling equipment or casings;
- (b) for rectifying disconnected or declutched sheet piles;
- (c) for rectifying any leakage or infiltration of material of any kind;
- (d) for filling voids or for replacing lost bentonite;
- (e) as a result of any piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity;
- (f) for reinstating profiles or dimensions, provided that this Exclusion will not apply to such expenses incurred as a result of natural perils.

**8.12. Temporary Repairs**

the cost of temporary repairs subsequent to Insured Damage unless such repairs:

- (a) are necessary to prevent further Insured Damage to the Contract Works; or
- (b) constitute part of the final repairs and do not increase the total repair costs.

**8.13. Testing and Commissioning**

the costs of repairing, replacing or rectifying loss or damage caused by mechanical or electrical Breakdown during testing or commissioning:

- (a) caused by intentional overloading or experiments;
- (b) of property which is second-hand or used; or
- (c) for which the manufacturer or supplier is responsible under manufacturer's warranty,

under contract or by law.

**8.14. Upkeep**

the cost of normal upkeep or routine making good.

**8.15. Vehicle**

loss of or damage to any Vehicle registered for road use unless the Vehicles are on the Contract Site in connection with the Contract Works and are specified as insured Hoists, Cranes and Mobile Plant in the Schedule.

**8.16. Watercraft, Aircraft and Aerial Devices**

loss of or damage to Watercraft over 6m in length, Aircraft and other aerial devices.

**8.17. Wear and Tear, Erosion and Gradual Deterioration**

the costs of rectifying wear and tear, corrosion, oxidation, erosion, abrasion or other gradual deterioration including that caused by atmospheric conditions.

**9. CONDITIONS**

**9.1. Adequacy of Sums Insured**

It is a condition of this Policy that the Sums Insured specified in the Schedule for the following items, are not less than:

- (a) for Existing Structures the replacement value;
- (b) for items of Equipment and Hoists, Cranes and Mobile Construction Plant the actual current market value at the commencement of the Construction Period.

In the event of Insured Damage it is found that the Sum Insured is less than ninety (90) percent of the amounts required to be insured the amount payable by the Insurer in respect of these items will be reduced by such proportion as the Sum Insured bears to ninety (90) percent of the amounts required to be insured.

Provided further that the above Clause shall not apply if the amount of Insured Damage does not exceed five (5) percent of the value of the item insured.

**9.2. Internal Finishes**

Prior to the installation of any internal finishes including but not limited to floor coverings, wall and ceiling panels, ceiling tiles and other linings, the Contract Works must be made weather proof by the sealing of all windows, glazing, external walls, roof and floor openings against the ingress of water.

**9.3. Loss Accumulation**

For the purpose of the application of the Deductible, any Insured Damage arising during any one period of seventy two (72) consecutive hours caused by natural perils, shall be deemed to be a single event and therefore to constitute one loss. The Named Insured may select the time from which any such period shall commence but no two such selected periods shall overlap.

**9.4. Reinstatement of Sum(s) Insured**

Following any Insured Damage, the Insurer will



reinstate the Sum(s) Insured, provided the Named Insured pays any additional premium calculated on the amount of Insured Damage applied to a rate not less than pro-rata of the rate agreed for the Period of Insurance calculated from the date of such Insured Damage to the expiry of the Period of Insurance.

#### 9.5. Run-Off Coverage

Where Run-Off cover:

- (a) is requested by the Named Insured; and
- (b) is agreed by the Insurer,

this Policy will continue in full force and effect for any Contract Works commenced during the Policy Period and insured under this Policy in accordance with the Maximum Construction Period. The Named Insured is required to supply the Insurer with a list of all incomplete contracts and Contract Works to run off along with projected completion date and the estimated value of outstanding work, pay any additional premium required and comply with such additional terms and conditions as the Insurer considers appropriate. The Insurer is under no obligation to agree Run-Off coverage.

- (ii) other costs and expenses incurred by the Insured, including loss of earnings, due to the Insured's attendance, at the Insurer's request, for the provision of statements and affidavits, and at coronial inquests or inquiries, mediations, hearings and trials up to \$25,000 in the aggregate for the Period of Insurance;
- (iii) reasonable professional fees and other expenses incurred by the Insured for the preparation of a claim under this Section up to \$25,000 any one Occurrence;
- (d) pay all interest, including pre-judgement accruing on the Insurer's portion of any judgement until the Insurer has paid, tendered or deposited such part of the settlement or judgement that does not exceed the Limit of Liability;
- (e) pay premiums on:
  - (i) bonds to release attachments for amounts not exceeding the applicable Limit of Liability of this Policy but the Insurer shall have no obligation to apply for or furnish any such bond;
  - (ii) appeal bonds and or security for costs required in any legal action but the Insurer shall have no obligation to apply for or furnish such bonds and or security for costs;
- (f) pay expenses incurred by the Insured for first aid, surgical, medical and or therapeutic relief rendered to others at the time of Personal Injury caused by an Occurrence (other than any medical expenses which the Insurer is prohibited from paying by law);
- (g) pay legal costs, incurred with the Insurer's consent, for the representation of the Insured at any:
  - (i) coronial inquest or inquiry;
  - (ii) proceedings in any court or tribunal;
  - (iii) Royal Commission or Government Enquiry arising out of any alleged breach of statutory duty, or other similar judicial enquiry;
  - (iv) enquiry, prosecution or hearing of a disciplinary nature held before a legally constituted enquiry board, committee, licensing authority or the like,

provided that the matter relates to an Occurrence, claim or potential claim which would be the subject of indemnity under Insuring Clause 1.1 Liability and up to a maximum of \$250,000 any one Occurrence;
- (h) pay expenses incurred by the Insured for temporary repairs, shoring up or protection of damaged or undamaged property of others made necessary by an Occurrence (provided that such expenses are not covered under Section One).

## SECTION TWO: LEGAL LIABILITY

### 1. SCOPE OF COVER

#### 1.1. Liability

The Insurer will indemnify the Insured for all sums which they become legally liable to pay as compensation (including costs awarded against the Insured) in respect of:

- (a) Personal Injury;
- (b) Property Damage;
- (c) Interference,

happening during the Period of Insurance and caused by an Occurrence within the Territorial Limits in connection with the Contract Works.

#### 1.2. Costs, Expenses and Interest

With respect to the indemnity provided by Insuring Clause 1.1 Liability, the Insurer will:

- (a) defend, in the Insured's name and on the Insured's behalf, any claim or legal action against the Insured, even if any of the allegations are groundless, false or fraudulent, and the Insurer shall have full discretion in the defence, investigation, negotiation and settlement of any claim or legal action;
- (b) pay all charges, expenses and legal costs recoverable from or awarded against the Insurer in any claim or legal action;
- (c) pay:
  - (i) legal costs and expenses incurred by the Insurer and or by the Insured, with the Insurer's written consent in the defence, investigation, negotiation or settlement of any claim or legal action, including any appeal in connection with such legal action;

The Insurer's liability to pay costs, expenses and interest under this Clause is in addition to the Section Two Limit of Liability, provided that:

- (a) the Insurer will not be obliged to pay any claim or judgement or to defend any claim or legal action after the Limit of Liability has been exhausted by payment of judgements or settlements.
- (b) if a payment exceeding the Limit of Liability has to be made to dispose of a claim or legal action, the Insurer's liability to pay any costs, expenses and interest under Clauses 1.2(a) to (h) will be limited to that proportion of those costs, expenses and interest as the Limit of Indemnity bears to the amount paid to dispose of the claim.

### 1.3. Limit of Liability

The maximum liability in respect of any claim or any series of claims for Personal Injury, Property Damage or Interference caused by or arising out of one Occurrence will not exceed the Limit of Liability.

### 1.4. Application of Excess

The Insured shall be liable to pay the amount of the Excess stated in the Schedule in respect of each Occurrence. The Excess shall also apply to Clause 1.2.

## 2. EXCLUSIONS

Section Two of this Policy does not cover liability in respect of:

### 2.1. Aircraft, Watercraft and Hovercraft

- (a) the ownership, maintenance, operation or use by the Insured or on behalf of the Insured of:
  - (i) any Aircraft;
  - (ii) any Watercraft exceeding six (6) metres in length, except where such Watercraft are owned or operated by others and used by the Named Insured for business entertainment; or
  - (iii) hovercraft.
- (b) Products that are Aircraft component parts where such component parts affect the safety, flight controls or take-off or landing of an Aircraft.

### 2.2. Assault and Battery

Personal Injury, Property Damage or Interference caused by or arising from assault and battery committed by or at the direction of the Insured unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

### 2.3. Contractual Liability

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

- (a) the liability would have been implied by law in the absence of the agreement or contract;
- (b) the liability 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 in respect of the subject matter of that contract;

- (c) the liability is assumed by the Insured under a warranty of fitness or quality as regards to Products,

provided that this Exclusion will not apply to liabilities assumed under the contracts specifically designated in the Schedule or in any Endorsement for the purposes of Section Two Contractual Liability cover.

### 2.4. Defamation

defamation:

- (a) prior to the commencement of the Period of Insurance; or
- (b) by or at the direction of the Insured with knowledge of its falsity; or
- (c) related to advertising, broadcasting or telecasting activities conducted by or on behalf of the Insured.

### 2.5. Demolition Exceeding 15 Metres

Personal Injury, Property Damage or Interference arising out of, caused by or in connection with the demolition of any structure exceeding fifteen (15) metres in height.

### 2.6. Employment Liability

Personal Injury:

- (a) imposed by any workers' compensation law;
- (b) imposed by the provision of any industrial award, agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement; or
- (c) arising out of or in respect of Employment Practices,

provided that if the Insured is:

- (d) 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
- (e) 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 worker's compensation law or the Personal Injury is not an injury which is subject to such law,

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

### 2.7. Exports to the USA or Canada

claims in respect of Personal Injury or Property Damage caused by or arising out of Products knowingly exported by the Insured, its agents or servants, to United States of America or Canada or any territory coming within the jurisdiction of



the Courts of the United States of America or Canada.

**2.8. Faulty Workmanship**

the cost of making good, replacing, repairing, re-performing, correcting, improving or reinstating any work performed by or on behalf of the Insured which is defective or deficient.

Provided that this Exclusion shall not exclude liability for costs incurred to rectify any part or parts of the property which itself are free of defect and deficiency, but are damaged as a consequence.

**2.9. Information Technology Hazards, Computer Data, Program and Storage Media**

- (a) Personal Injury, Property Damage or Interference arising, directly or indirectly out of or in any way involving the internet operations of the Insured; or
- (b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
  - (i) the use of any computer hardware or software;
  - (ii) the provision of computer or telecommunication services by or on behalf of the Insured;
  - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

But this exclusion does not apply to:

- (c) Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its products, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its website; or
- (d) liability which arises irrespective of the involvement of the internet operations of the Insured.

**2.10. Loss of Use**

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

- (a) a delay in or lack of performance by or on the behalf of the Insured of any agreement; or
- (b) the failure of Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured, but this Exclusion does not apply to the loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss of destruction of the Products after they have been put to use by any person or organisation other than the Insured.

**2.11. Pollution**

- (a) Personal Injury, Property Damage or Interference caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water, but this Exclusion does not apply if such discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.
- (b) any costs and expenses incurred in the prevention, removal, nullifying or cleaning-up of such contamination or Pollutants but this exclusion does not apply to the clean-up, removal or nullifying expenses, which are solely consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage.
- (c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others.
- (d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants in the United States of America or Canada or in any other state or territory to which the laws of the United States of America or Canada apply.

The liability of the Insurer under Clauses 2.11(a) and 2.11(b) in respect of any discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases and escape of Pollutants during any one Period of Insurance will not exceed the Limit of Liability.

**2.12. Product Defect**

Property Damage to Products if the Property Damage is attributed to any defect in them or to their harmful nature or unsuitability.

**2.13. Product Recall**

claims arising out of or resulting from any loss, cost or expense incurred by the Insured for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of Products or of any property of which they form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them.

**2.14. Professional Liability**

the rendering of or failure to render professional advice or service by the Insured or any related error or omission, but this Exclusion does not apply to the rendering of or failure to render professional advice by Healthcare Professionals employed by the Insured to provide first aid on the premises of the Insured.

## 2.15. Property in Care, Custody or Control

Property Damage to:

- (a) property owned by or leased or rented by the Insured; or
- (b) property in the physical or legal control of the Insured.

But this exclusion does not apply to liability for Property Damage to:

- (a) premises (including landlord's fixtures and fittings) which are leased or rented by the Insured;
- (b) premises (or their contents) not owned, leased or rented but temporarily occupied by the Insured for the business therein;
- (c) Vehicles (not belonging to or used by the Insured) in the physical or legal control of the Insured where the Property Damage occurs while the Vehicles are in a car park owned or operated by the Insured for the business, unless the Insured owns or operates the car park for reward;
- (d) the property of an Employee or of Employees of subsidiaries of the Insured;
- (e) other property (excluding any Vehicle which is registered or which is required under any legislation to be registered) temporarily in the physical or legal control of the Insured provided no indemnity is granted for liability in respect of Property Damage to that part of any property upon which the Insured is or has been working. The sub-limit under this Clause shall not exceed the amount specified in the Schedule for any one Occurrence and in the aggregate for any one Period of Insurance.

Provided that the Insurer will not indemnify the Insured under Section Two in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods which are not owned by the Insured.

## 2.16. Territorial Limits

- (a) claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance; or
- (b) claims made and actions instituted within the United States of America or Canada or any other state or territory coming within the jurisdiction of the courts of the United States of America or Canada; or
- (c) claims or actions to which the laws of the United States of America or Canada apply.

Provided that:

- (d) Clauses 2.16(b) and 2.16(c) do not apply to claims and actions arising from the presence outside Australia of any Employees and/or directors, partners or proprietors of the Insured who are normally a resident in Australia and who are not

undertaking manual work or supervision of work of any kind while in the United States of America or Canada.

- (e) the Limit of Liability in respect of coverage provided under Clause 2.16(d) is inclusive of all costs, expenses and interest as set out in Clause 1.2.

## 2.17. Tobacco

Personal Injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke; or
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

## 2.18. Underground Services

Property Damage to underground services unless prior to the commencement of work the Insured has inquired with the relevant authorities about the exact position of all underground services and has taken all reasonable precautions to prevent such Property Damage.

## 2.19. Vehicles

Personal Injury, Property Damage or Interference arising out of the ownership, possession, operation, maintenance or use by or on behalf of the Insured of any Vehicle:

- (a) which is registered or which is required under any legislation to be registered; or
- (b) in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Clauses 2.19(a) and 2.19(b) do not apply to:

- (c) Personal Injury where:
  - (i) that compulsory liability insurance or statutory indemnity does not provide indemnity; and
  - (ii) the reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by the Insured of legislation relating to Vehicles.
- (d) Property Damage arising out of and during the loading or unloading of goods to or from any Vehicle at, or adjacent to, the Contract Site or the Insured's premises; or
- (e) Property Damage caused by or arising from the operation or use of any Vehicle which is designed primarily for lifting, lowering, loading, unloading, while being operated or used by or on behalf of the Insured at the Contract Site or the Insured's premises; or
- (f) Property Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any Vehicle (excluding while the Vehicle is travelling, transporting or carting goods) at the Contract Site.

### 3. CONDITIONS

#### 3.1. Discharge of Liabilities

The Insurer may at any time pay to the Insured in respect of all claims arising from an Occurrence the balance of the Limit of Liability or any lesser amount for which the claim or claims can be settled and upon that payment the Insurer will relinquish conduct and control of and be under no further liability under this Section in connection with those claims except for costs, charges and expenses:

- (a) recoverable from the Insured for all or part of the period to the date of such payment;
- (b) incurred by the Insurer;
- (c) incurred by the Insured with the written consent of the Insurer prior to the date of such payment.

#### 3.2. Excavation and Underpinning

The Insurer will only be liable for claims for Personal Injury, Property Damage or Interference arising as the result of an Occurrence happening in connection with any excavation or underpinning work carried out by the Insured subject to the following conditions:

- (a) the excavation or underpinning work is carried out in strict accordance with the plans and specifications for such work and at the direction of a qualified design engineer; and
- (b) any surrounding structures that could be affected by such excavation or underpinning work have, prior to the commencement of such work, a conditions report produced which details the existing condition of such structures.

#### 3.3. Joint Insureds

Where more than one party comprises the Insured each of the parties will be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of them provided that nothing in this Clause will result in an increase in the limit of liability in respect of any one Occurrence or Period of Insurance.

#### 3.4. Preventing Our Right of Recovery

If the Insured has agreed not to seek compensation from another person (other than an Insured) who is liable to compensate them for any loss, damage or liability which is covered by this Policy, the Insurer will not provide cover under this Policy for that loss, damage or liability.

## SECTION THREE: GENERAL

### 1. EXCLUSIONS

This Policy does not cover:

#### 1.1. Asbestos and Toxic Mould

any loss, damage or liability arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:

- (a) asbestos, or any materials containing asbestos in whatever form or quantity;
- (b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind;
- (c) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release, or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
- (d) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release, or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.

#### 1.2. Biological or Chemical Materials

any liability, loss, cost or expense of whatsoever nature directly or indirectly caused by, arising from, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto. This exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to pathogenic or poisonous biological or chemical materials.

#### 1.3. Cyber Attack

- (a) subject only to Clause 1.3(b), loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means of inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
- (b) where this Policy is deemed to cover any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA, Clause 1.3(a) shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

#### 1.4. Fines, Penalties and Punitive Damages

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

**1.5. Hotwork**

loss, damage or liability arising from or caused by welding, cutting, grinding or any process requiring the application of heat unless performed in accordance with Australian Standard AS1674.1-1997 Safety in Welding and Allied Processes.

**1.6. Prohibited by Law**

any claims for losses prohibited by law.

**1.7. Radioactivity**

any loss, damage, cost, liability or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.

**1.8. Sanctions**

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

**1.9. Vermin, Pests, Termite or Other Insects**

damage caused by the action of vermin, pests, termites, moths or other insects or animals.

**1.10. War and Terrorism**

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

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) any act of terrorism.

For the purpose of this exclusion an act of terrorism means an act, including but not limited

to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(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. This exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to Clause 1.10(a) and/ or Clause 1.10(b).

If the Insurer alleges that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving to the contrary shall be upon the Insured. In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

**1.11. Wilful**

any liability, loss, cost or expense of whatsoever nature directly or indirectly caused by, arising from, resulting from or in connection with any wilful act, omission, criminal or recklessness of the Insured or their agents or Employees.

**2. CONDITIONS**

**The following conditions apply to this Policy:**

**2.1. Alteration of Risk**

The Named Insured must notify the Insurer immediately in writing of any material change in the risk or the nature of the risk insured by this Policy and provide full details in writing. In such event, the Named Insured must at its own expense, take such additional precautions to minimise the risk of any loss, Insured Damage or liability and must comply with any reasonable directions or requirements of the Insurer. The scope of cover and premium will, if necessary, be adjusted by the Insurer accordingly. No material alteration will be made or allowed by the Named Insured whereby the risk is increased unless agreed to in writing by the Insurer.

Material change will include (but not be limited to) alteration in design, materials, construction programme or the method of construction.

**2.2. Contracts Covered**

Contracts that are outside the categories of Construction Contracts or have an estimated value at commencement greater than the Total Contract Price specified in the Schedule will not be covered by this Policy, unless expressly agreed and specified in the Schedule.

**2.3. Contract Declaration**

The Named Insured shall, if required by the Insurer, submit within thirty (30) days of the commencement of each Construction Contract, a contract declaration in the required form.

**2.4. Due Observance**

If the Insured fails to comply with any term, condition or provision of this Policy the Insurer



may refuse to pay a claim but in any event the Insurer's rights will be subject to the provisions of Section 54 of the Insurance Contracts Act 1984 (Cth).

## 2.5. Insurer's Right of Inspection

The Insurer will at any reasonable time have the right to inspect and examine at the Contract Site and any other location, any item, plant or equipment associated directly or indirectly with a risk which is the subject of this Policy and the Named Insured must provide to the Insurer all information which they may reasonably require.

## 2.6. Interests of Other Parties

The Insurer will not be required to recognise the interests of any third party under this Policy unless written notice of such interest has been received and accepted by the Insurer in writing.

## 2.7. Jurisdiction

This Policy shall be interpreted in accordance with the laws of Australia and shall be subject to determination by any court of competent jurisdiction within Australia.

Lloyd's Underwriters agree that:

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

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

*Telephone Number: (02) 8298 0783*

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

- (c) if a suit is instituted against any one of the Lloyd's Underwriters, all Lloyd's Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

## 2.8. Notice and Claims

Following discovery of any loss or liability which might give rise to a claim under this Policy, the Named Insured must:

- (a) notify Pen Underwriting as soon as possible in writing;
- (b) within thirty (30) days after that notice, prepare at the Named Insured's own expense and provide a written statement to Pen Underwriting containing full details of the cause, description and amount of the loss;

- (c) take all steps within the power of the Named Insured to minimise the extent of the damage or loss and prevent further damage and loss;
- (d) preserve the sections affected and make them available for inspection by the Insurer;
- (e) furnish all such information and documentary evidence as the Insurer may reasonably require; and
- (f) notify the Police of any actual or attempted theft, burglary or malicious damage.

Upon notification of any loss or damage being given to the Insurer, the Named Insured may carry out repairs or make good any minor damage, but in all other cases the Named Insured must give the Insurer an opportunity to inspect the loss or damage before any repairs or alterations are effected. If no inspection is carried out by or on behalf of the Insurer within a period of time which is reasonable having regard to the location of the risk, weather conditions and any other relevant factors, the Named Insured may proceed with such repairs or replacement.

The Insurer will not pay for any additional damage to any item or section caused by the failure to repair that item or section properly and without delay.

## 2.9. Other Insurance

In the event of any claim being made under this Policy, the Named Insured must notify the Insurer of any other insurance covering the same loss or damage.

## 2.10. Partial Occupation

If the whole or part of the Contract Works are taken over, occupied or put into use by the Named Insured or by others with the permission of the Named Insured prior to Practical Completion, the Insurer shall not be liable for Insured Damage, loss or liability in respect of:

- (a) the occupants or their property;
- (b) the Contract Works; or
- (c) third parties or their property,

arising from the taking over, occupancy or use of such part of the Contract Works.

## 2.11. Policy Cancellation

This Policy may be cancelled:

- (a) by the Named Insured giving written notice to the Insurer such notice to be effective when received by the Insurer who may retain or be entitled to the premium for the period during which the Policy was in force plus ten percent (10%) of the premium for the unexpired Policy Period;
- (b) by the Insurer in accordance with the provisions of the Insurance Contracts Act 1984 and the Named Insured shall be entitled to a refund of the premium in respect of the unexpired Policy Period.

Provided that:

- (c) in the event that the Contract Works are completed prior to the end of the Construction Period as specified in the

Schedule, no refund premium will be allowed for the unexpired portion of the Construction Period; or

- (d) if a claim is made against this Policy, the Premium shall be deemed fully earned.

#### **2.12. Policy Interpretation**

- (a) Paragraph titles in this Policy are for descriptive purposes only and do not form part of this Policy for the purposes of its construction or interpretation.
- (b) In this Policy, the singular includes the plural and vice versa.

#### **2.13. Premium Adjustment**

Within thirty (30) days of expiry of the Policy Period or of cancellation or non-renewal, the Named Insured will declare the actual Turnover of all Construction Contracts insured under this Policy since the commencement of the Policy Period.

The adjusted premium will be determined by applying the rate specified in the Schedule to:

- (a) for Section One, the total value of contracts commenced; and
- (b) for Section Two, the actual Turnover,

and be compared with the Provisional Premium for each Section. The Named Insured will pay or the Insurer will refund the difference as the case may be.

Provided always that the Insurer will not be called upon to refund more than twenty five (25) percent of the Provisional Premium.

#### **2.14. Reasonable Care and Precautions**

The Insured must take reasonable care and precautions, and:

- (a) comply with all laws and statutory obligations, bylaws or regulations imposed by any public authority for the safety of persons or property;
- (b) comply with all recommendations of manufacturers or suppliers;
- (c) comply with all reasonable recommendations made by the Insurer to prevent loss or damage;
- (d) employ competent Employees;
- (e) maintain all premises, fittings and Equipment, Hoists, Cranes and Mobile Construction Plant and everything used in the Contract Works in sound condition; and
- (f) ensure at all times that the operations at the Contract Site are carried out so as to minimise the risk of any claim being made against this Policy.

#### **2.15. Subrogation**

In the event that the Insurer has a right to recover any monies payable under this Policy from any other person, the Insured must co-operate with the Insurer fully in any proceedings available at law, which the Insurer may take. The Insurer may take action before paying any claim and whether or not the Insured has been fully compensated for its actual loss.

#### **2.16. Waiver of Subrogation**

The Insurer agrees to waive its rights of subrogation under this Policy against any Insured other than:

- (a) any architect or engineer, except in relation to their manual activities associated with the Contract Works and only whilst at the Contract Site; and
- (b) any other consultant, except in relation to their manual activities associated with the Contract Works and only whilst at the Contract Site.



