



**Construction Plant and Equipment
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.

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

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.

Litigation Dispute Resolution

Lloyd's Underwriters agree that:

- (i) In the event of a dispute arising under this Insurance, 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.
- (ii) Any summons notice or process to be served upon Lloyd's Underwriters may be served upon:
*Lloyd's General Representative in Australia,
Lloyd's Australia Limited
Level 9, 1 O'Connell St
Sydney NSW 2000
Telephone: (02) 8298 0700
Facsimile: (02) 8298 0788*

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.

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

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".

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.

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.

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.

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.

DEFINITIONS

- 1.1. Aircraft**
Any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 1.2. Breakdown**
Sudden and unforeseen physical damage caused by:
- (a) the actual breaking, failure, seizing, distortion, burning out or derangement of any part of any Insured Item;
 - (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.
- 1.3. Business**
The business of the Named Insured specified in the Schedule.
- 1.4. Deductible**
The amount(s) specified in the Schedule which will be deducted from the amount payable to the Named Insured under Section One.
- 1.5. 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.
- 1.6. 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.
- 1.7. 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.
- 1.8. Healthcare Professionals**
Qualified nurses, dentists and first aid attendants (not being qualified medical practitioners).
- 1.9. Indemnity Period**
The period beginning with the occurrence of Insured Damage and ending on the earlier of:
- (a) ninety (90) days thereafter;
 - (b) the date on which the results of the Business are no longer affected by the Insured Damage.
- The Indemnity Period includes the Time Deductible Period.
- 1.10. 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) any person, partnership or company that has a financial and insurable interest in the Insured Item.
- 1.11. Insured Damage**
Sudden and unforeseen physical loss of or damage to an Insured Item from any cause not excluded occurring during the Period of Insurance.
- 1.12. Insured Item**
Any construction plant and equipment as specified in the Schedule including any spare parts, tools and attachments directly related to such items but excluding any item designed for the sole purpose of conveying passengers or goods.
- Insured Item also includes construction plant and equipment acquired by the Named Insured during the Period of Insurance which are similar in make and model to the Insured Item for a maximum of sixty (60) days following the date of purchase and provided that the value of the item is less than \$250,000.
- 1.13. Insurer**
The Insurer(s) specified in the Schedule.
- 1.14. 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.

- 1.15. Limit of Liability**
The limit of liability applicable to Section Two specified in the Schedule.
- 1.16. Market Value**
The cost to buy an item of similar make, model, age and condition as the Insured Item, as determined by the Insurer in its sole discretion.
- 1.17. Named Insured**
The individual(s), company(ies) or firm(s) specified in the Schedule.
- 1.18. 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.
- 1.19. Period of Insurance**
The period specified in the Schedule.
- 1.20. Pen Underwriting**
Pen Underwriting Pty Ltd ABN 89 113 929 516 AFSL 290518.
- 1.21. 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.
- 1.22. Policy**
This policy wording, the Schedule and any endorsements.
- 1.23. 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.
- 1.24. 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.
- 1.25. 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.
- 1.26. Revenue**
Money received or receivable by the Named Insured for the conduct of the Business.
- 1.27. Schedule**
The policy schedule issued by Pen Underwriting which is current at the time that the Insured Damage occurs and is discovered.
- 1.28. Sum(s) Insured and Total Sum Insured**
Under Section One, the sum(s) insured and total sum insured specified in the Schedule.
- 1.29. Territorial Limits**
The territorial limits specified in the Schedule applicable to each Section.
- 1.30. Time Deductible**
The number of days specified in the Schedule during which the Named Insured must bear the loss for any increased cost of working or loss of Revenue for each and every loss following Insured Damage.
- 1.31. Vehicle**
Any item 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 item.
- 1.32. Watercraft**
Any vessel, craft or thing made or intended to float on or in or travel on or through or under water.

SECTION ONE: MATERIAL DAMAGE

1. SCOPE OF COVER

1.1. Insured Damage

The Insurer will indemnify the Named Insured for Insured Damage to an Insured Item located within the Territorial Limits while it is:

- (a) used in the manner in which it was designed to be used;
- (b) at rest;
- (c) being cleaned, overhauled, repaired, reassembled, maintained or serviced; or
- (d) in transit by land or air.

1.2. Removal of Debris

The Insurer will also indemnify the Named Insured for costs and expenses necessarily and reasonably incurred in the clean up and removal of debris resulting from Insured Damage to the Insured Item up to the Sum Insured specified in the Schedule.

1.3. Insurer's Liability

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

2. OPTIONAL EXTENSIONS

The Optional Extensions apply where they are specified in the Schedule and only where the Insured Item is indemnified under this Section, provided that the liability of the Insurer will not exceed the Sum Insured for the applicable Optional Extension. Indemnity is subject to the applicable Deductible or Time Deductible specified for each Optional Extension.

2.1. Dry Hire

The Insurer will indemnify the Named Insured for Insured Damage to an Insured Item:

- (a) while it is on hire from the Named Insured to a third party (other than an Insured); and
- (b) where the Named Insured has not supplied an operator for the Insured Item,

provided that this Optional Extension does not cover Insured Damage resulting from theft by any third party to whom the Insured Item is hired:

- (c) unless the Named Insured has taken all reasonable precautions to ensure that the hirer and operator are authorised to operate the Insured Item under any relevant legislation;
- (d) unless the Named Insured has provided the hirer and operator with adequate operating instructions; or
- (e) to the Insured Item where the contract for hire of that item states that the hirer is responsible to effect insurance cover. However, the Insurer will pay for Insured Damage covered under this Policy for which indemnity is not provided by the policy effected by the hirer.

2.2. Dual and Multiple Lifting

The Insurer will indemnify the Named Insured for Insured Damage arising out of the operation of an Insured Item in connection with dual or multiple lifting provided that:

- (a) the dual or multiple lift operation is rehearsed without load prior to the actual lifting or lowering;
- (b) the dual or multiple lift operation is performed under the direct supervision of a qualified engineer;
- (c) the supervising engineer and all operators are in direct audio communication for the duration of the dual or multiple lift operation; and
- (d) any of the items involved in the dual or multiple lift operation are not loaded to more than seventy (70) percent of rated capacity at any stage of the dual or multiple lift operation.

2.3. Goods Lifted

The Insurer will indemnify the Named Insured for accidental damage to property of the Named Insured while the property is being lifted, lowered or otherwise handled by Insured Item(s) designed to lift the property provided that the Insurer will not pay for any damage to property arising from any

fault in or the fragility of such property or their container or packaging.

2.4. Increased Cost of Working

The Insurer will indemnify the Named Insured for any increase in the cost of working necessarily and reasonably incurred by the Named Insured during the Indemnity Period in consequence of Insured Damage to an Insured Item for the purpose of avoiding or diminishing a reduction in Revenue and or resuming and or maintaining normal business operations and or services.

2.5. Lease Payment

Following Insured Damage to an Insured Item, the Insurer will pay the monthly lease cost for that Insured Item provided that:

- (a) there is no indemnity available for the first fourteen (14) days;
- (b) where the repair or replacement period exceeds fourteen (14) days, the amount payable is calculated on a daily pro-rata basis commencing with the fifteenth (15th) day following Insured Damage up to a maximum of the Lease Payment Sum Insured;
- (c) payments will be made until the Insured Item is repaired or replaced or the lease is terminated, whichever occurs earlier to a maximum of twelve (12) consecutive months;
- (d) the Insurer will not pay for any balloon or residual value payments which may be due to be paid.

2.6. Loss of Revenue

The Insurer will pay for loss of Revenue incurred during the Indemnity Period in consequence of Insured Damage to an Insured Item for the purpose of resuming and or maintaining normal business operations and or services.

2.7. Mechanical Breakdown

Notwithstanding anything to the contrary in this Policy, the Insurer will pay for Breakdown of an Insured Item up to the Sum Insured.

Basis of Settlement

- (a) The Insurer will pay the reasonable costs of repair or replacement (including transportation costs) necessary to return the Insured Item to its former normal working state provided that all Insured Damage which can be repaired must be repaired.
- (b) For any part of any Insured Item which is no longer available to effect a repair, the amount payable shall be the manufacturer or supplier's last published price for that part.
- (c) Where the Insured Item is uneconomical to repair (at the sole discretion of the Insurer) solely due to the nature of the Breakdown:
 - (i) the Insurer shall deduct from the delivered cost of the replacement Insured Item eight (8) percent per annum for each year of service of the Insured Item exceeding two (2) years following initial commissioning or

replacement to a maximum of seventy (70) percent;

- (ii) the amount payable will be reduced by the amount recoverable under manufacturer's warranty.

2.8. Recovery Costs

The Insurer will pay the costs necessarily and reasonably incurred to recover an Insured Item which is unintentionally immobilised on or about any site where that Insured Item was working for the Business, provided that the Named Insured shall bear the first ten (10) percent of the recovery costs or the Deductible specified in the Schedule, whichever is the greater.

2.9. Transit by Waterway

- (a) The Insurer will indemnify the Named Insured for Insured Damage to an Insured Item located within the Territorial Limits while it is in transit on inland and coastal waterways and by sea between mainland Australia and Tasmania caused by:
 - (i) fire, flood, hail or explosion;
 - (ii) collision of the conveying vehicle with any external object;
 - (iii) impact of the Insured Item with something that is not on or part of the conveying vehicle;
 - (iv) jack-knifing, overturning or derailment of the conveying vehicle;
 - (v) sinking, capsizing or stranding of any vessel.
- (b) The Insurer will pay general average and salvage charges in full even if the amount insured is less than the contributory value, without applying the Deductible, provided that the Insured must obtain the Insurer's consent prior to signing any general average bond/guarantee.
- (c) The Insurer will not pay for:
 - (i) delay, rejection, loss of profits, loss of market or any consequential loss;
 - (ii) moths, mould, mildew, insects, rats or other vermin;
 - (iii) a reduction in value of an Insured Item because of repairs;
 - (iv) inherent vice or nature of the Insured Item;
 - (v) mechanical or electrical Breakdown, unless there is visible external physical damage;
 - (vi) rust, oxidation and or discolouration unless caused by an insured event;
 - (vii) the insolvency or financial default of the carrier unless these circumstances were outside the control of the Named Insured and the Named Insured could not reasonably be expected to have knowledge of it in the normal course of the Business.

3. BASIS OF SETTLEMENT

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

3.1. Repairable Insured Damage

In the case of Insured Damage that can be repaired, the cost of repairs necessary to restore the Insured Item to its condition immediately prior to the Insured Damage including:

- (a) the cost of dismantling and re-assembly incurred for the purpose of effecting repairs;
- (b) charges for overtime and work on public holidays where reasonably necessary, limited to twenty-five (25) percent of the cost of normal repairs or ten thousand dollars (\$10,000), whichever is the lesser;
- (c) recovery and transportation costs for the Insured Item (where covered); where the repairs are carried out by the Named Insured, the reasonable cost of materials and wages incurred by the Named Insured,

less the value of any salvage. No deduction will be made for depreciation of replaced parts.

Where any required parts are unobtainable in Australia, the Insurer will reimburse the Named Insured for the costs of the parts including customs duties and air freight by a regular scheduled service, other than air freight chartered for the purpose.

3.2. Total Loss

In the case of Insured Damage resulting in the total loss of an Insured Item (as determined by the Insurer in its sole discretion):

- (a) for Insured Items less than two (2) years old from the date of commissioning, the lesser of the cost of replacement with an item of similar type, function, quality and capacity in a condition equal to but not better than the Insured Item when new or the Sum Insured for the Insured Item;
- (b) for Insured Items two (2) years or older from the date of commissioning, the lesser of the Market Value immediately prior to the Insured Damage together with the reasonable costs of freight and erection of the replacement item or the Sum Insured for the Insured Item,

less the value of any salvage.

3.3. Signage, Spare Parts and Tools

In the case of either repairable Insured Damage or a total loss:

- (a) fixed sign writing or advertising to a maximum of \$5,000 any one Insured Item and any one event.
- (b) spare parts and non-standard tools to a maximum of \$5,000 any one Insured Item and any one event.

3.4. Deductible

The Deductible shall be subtracted from the amount payable by the Insurer under this Section.

4. EXCLUSIONS

Section One of this Policy does not cover:

4.1. Alteration or Modification

Insured Damage resulting from alteration or modification of an Insured Item by the hirer.

4.2. Concrete Mixers

- (a) Insured Damage to any concrete pump, agitator, barrel, bowl, mixer or attached fittings;
- (b) the costs of or associated with the removal of hardened or set concrete.

4.3. Consequential Loss

consequential loss other than as indemnified under Optional Extension(s) 2.4 Increased Cost of Working, 2.5 Lease Payment, 2.6 Loss of Revenue and or 2.8 Recovery Costs, if specified as insured in the Schedule or any endorsement.

4.4. Damage after Incident

Insured Damage occurring after an accident or fire unless reasonable precautions have been taken to safeguard the Insured Item.

4.5. Delay

penalties for delay or non-completion or for guarantees relating to performance or efficiency.

4.6. Dry Hire

Insured Damage when the Insured Item is hired out without an operator, unless covered under Optional Extension 2.1 Dry Hire.

4.7. Dual and Multiple Lifting

Dual and or multiple lifting operations unless covered under Optional Extension 2.2 Dual and Multiple Lifting.

4.8. 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, grammatical 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'.

4.9. Inventory Shortage

Insured Damage discovered only at the time an inventory is taken unless such Insured Damage can be attributed to burglary.

4.10. Known Defects

Insured Damage resulting from faults or defects known to the Insured as at the commencement of the Period of Insurance.

4.11. Lawful Seizure

Insured Damage resulting from lawful seizure.

4.12. Legal Liability

legal liability arising from any event.

4.13. Mechanical or Electrical Breakdown

Insured Damage caused by:

- (a) mechanical and or electrical Breakdown unless covered under Optional Extension 2.7 Mechanical Breakdown;
- (b) the freezing of any coolant or other fluid;
- (c) defective lubrication or lack of oil or coolant.

4.14. 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 unless damaged as a result of Insured Damage.

4.15. Rails

Any item running on rails, unless agreed by the Insurer and specified in the Schedule.

4.16. Recovery Costs

Costs associated with the recovery of an Insured Item unless following theft or covered under Optional Extension 2.8 Recovery Costs.

4.17. Temporary Repairs

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

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

4.18. Tyres and Self Laid Tracks

damage to tyres caused by the application of brakes or by punctures, cuts or bursting or damage to self laid tracks caused by the normal operations of the Insured Item.

4.19. Underground

any Insured Item while it is located underground, unless agreed by the Insurer and specified in the Schedule.

4.20. Watercraft, Aircraft and Aerial Devices

damage to Watercraft over six metres (6m) in length, Aircraft and other aerial devices.

4.21. 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.

5. CONDITIONS

5.1. Adequacy of Sums Insured

It is a condition of this Policy that the Sum Insured specified in the Schedule for the Insured Item is not less than the actual current Market Value at the commencement of the Period of Insurance.

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 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 Insured Item.

5.2. 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.

5.3. Maintenance

The Named Insured shall at the cessation of each day's work, remove any matter in or on the Insured Item resulting from its use or operation,

including but not limited to by-products of materials processed by the Insured Item.

5.4. 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.

5.5. Voluntary Abandonment

Following Insured Damage, the Insured shall not voluntarily abandon any Insured Item in the course of or following any unsuccessful salvage attempt without the prior written consent of the Insurer.

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 arising from:

- (a) the use, operation, driving, towing or ownership of an Insured Item;
- (b) goods falling from an Insured Item; or
- (c) the loading or unloading of an Insured Item in connection with the Business.

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;
 - (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;

The Insurer's liability to pay costs, expenses and interest under this Clause is in addition to the 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 (g) 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. OPTIONAL EXTENSIONS

The Optional Extensions apply only where they are specified in the Schedule and only where the Insured Item is indemnified under Section One, provided that the liability of the Insurer will not exceed the Limit of Liability specified in the Schedule for the applicable Optional Extension. Indemnity is subject to the applicable Excess specified in the Schedule for each Optional Extension.

2.1. Dual and Multiple Lifting

The Insurer will indemnify the Insured for legal liability arising out of the operation of Insured Item in connection with dual or multiple lifting provided that:

- (a) the dual or multiple lift operation is rehearsed without load prior to the actual lifting or lowering;
- (b) the dual or multiple lift operation is performed under the direct supervision of a qualified engineer;
- (c) the supervising engineer and all operators are in direct audio communication for the duration of the dual or multiple lift operation; and
- (d) any of the items involved in the dual or multiple lift operation are not loaded to more than seventy (70) percent of rated capacity at any stage of the dual or multiple lift operation.

2.2. On Hook Liability

The Insurer will indemnify the Insured under this Section for accidental damage to property in the custody or control of the Named Insured while the property is being lifted, lowered or otherwise handled by an Insured Item designed to lift the property provided that the Insurer will not pay for any damage to property arising from any fault in or the fragility of such property or their container or packaging.

3. EXCLUSIONS

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

3.1. 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.

3.2. 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.

3.3. 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.

3.4. 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.

3.5. 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.

3.6. 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.

3.7. Family Members

Personal Injury to any member of the Insured's family or any person with whom an Insured ordinarily resides.

3.8. 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.

3.9. Fertilisers, Herbicides and Pesticides

the application of chemicals, including but not limited to fertilisers, herbicides and pesticides, by the Insured to crops or land.

3.10. Flammable, Explosive and Toxic Substances

the transportation of compressed gases, corrosive substances, explosives, flammable liquids or other substances, petroleum products, toxic chemicals or any other substances which form explosive or toxic mixtures with organic or other oxidisable substances, provided that this Exclusion shall not apply to fuel sources carried by the Insured for the purposes of fuelling an Insured Item.

3.11. 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:

- (a) 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
- (b) liability which arises irrespective of the involvement of the internet operations of the Insured.

3.12. 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.

3.13. 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 3.13(a) and 3.13(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.

3.14. Product Defect

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

3.15. 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.

3.16. 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.

3.17. 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 this Section 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.

3.18. 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 3.18(b) and 3.18(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 3.18(d) is inclusive of all costs, expenses and interest as set out in Clause 1.2.

3.19. 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.

3.20. 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.

3.21. 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 3.21(a) and 3.21(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.

4. CONDITIONS

4.1. 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.

4.2. 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.

4.3. 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.

4.4. 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: ROAD RISK

1. SCOPE OF COVER

1.1. Road Risk 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 Personal Injury, Property Damage or Interference happening during the Period of Insurance caused by an Occurrence and arising from the driving, towing or ownership of an Insured Item on a road within the Territorial Limits in connection the Business, provided that the Insured Item is:

- (a) noted in the Schedule as covered under this Section; and
- (b) conditionally registered.

1.2. Costs, Expenses and Interest

With respect to the indemnity provided by Insuring Clause 1.1 Road Risk 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;

- (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 no 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;

The Insurer's liability to pay costs, expenses and interest under this Clause is in addition to the 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 (g) 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

2.1. Dangerous Goods

in connection with goods defined as dangerous goods in the Australian Code for the Transport of Dangerous Goods by Road and Rail.

2.2. Excessive Loads or Passengers

in respect of the use, operation, driving or towing of an Insured Item:

- (a) to carry or tow a load;
- (b) to carry a number of passengers, in excess of that allowed by law or by its specifications.

2.3. Racing

in respect of the use, operation, driving or towing of an Insured Item in a race, speed trial or reliability trial.

2.4. Statutory Indemnity

caused by, arising out of or in connection with Personal Injury, which liability is insured under any compulsory statutory insurance or scheme, or would have been insured but for a failure to insure the Insured Item, to lodge a claim or to comply with any term or condition of any such statutory insurance or scheme.

2.5. Tool of Trade

in respect of the use, operation, driving or towing of an Insured Item as a tool of trade.

SECTION FOUR: 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

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

1.5. Intoxication

loss, damage or liability arising from or caused by the use, operation, driving or towing of the Insured Item by or in the charge of any person whose faculties are impaired by any illegal drug or intoxicating liquor or any person with a blood, breath or urine alcohol or drug percentage in excess of the amount permitted by law in the state or territory in which the Insured Item was being used at the time that the Insured Damage occurred unless the Named Insured can establish to the satisfaction of the Insurer that consent was not given by any Insured for the Insured Item to be used by or in the charge of the person when so affected.

1.6. 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.

1.7. Manufacturer's Specifications

the use, operation, driving or towing of the Insured Item contrary to the relevant Australian standard, statutory regulations or the specifications of any relevant statutory authority or the manufacturer's guidelines.

1.8. Prohibited by Law

any claims for losses prohibited by law.

1.9. 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.

1.10. 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.

1.11. Sea Transit

the transit of the Insured Item in waters more than ten kilometres from mainland Australia and Tasmania, unless agreed by the Insurer and specified in the Schedule.

1.12. Testing and Commissioning

- (a) testing or commissioning or any intentional overloading or experiments; or
- (b) Insured Damage or liability for which the manufacturer or supplier is responsible under manufacturer's warranty, under contract or by law.

1.13. Unsafe or Unroadworthy

the use, operation, driving or towing of the Insured Item in an unsafe or unroadworthy condition unless that condition could not reasonably have been detected by the Insured.

1.14. Untrained or Unlicensed

the Insured Item being used, operated, driven, towed or in the charge of a person who is not trained, qualified, licensed or authorised to operate the Insured Item under any relevant law, provided that this Exclusion shall not apply where the Named Insured can establish to the satisfaction of the Insurer that the Insured Item was operated during a life threatening medical emergency or to prevent imminent physical damage to or loss of the Insured Item.

1.15. Vermin, Pests, Termite or Other Insects

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

1.16. 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 1.16(a) and or Clause 1.16(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.

1.17. **Water Immersion**

The wilful total or partial immersion of the Insured Item in water.

1.18. **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. **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).

2.3. **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.

2.4. **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.

2.5. **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.

2.6. **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.

2.7. **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.

2.8. **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 (10) percent 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 if a claim is made against this Policy, the Premium shall be deemed fully earned.

2.9. 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.

2.10. 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.

2.11. 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.

2.12. 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.

2.13. Waiver of Subrogation

The Insurer agrees to waive its rights of subrogation under this Policy against any Insured.

