



**Contractors Pollution
Liability Policy**

v11.15



Pen Underwriting Pty Ltd
ABN 89 113 929 516 AFSL 290518

Our name comes from the expression 'to pass the pen'. It reflects what we do and what we bring to the insurance industry – specialist expertise and quality underwriting. We strive to exceed the expectations of brokers by providing professional and flexible solutions for their clients' risks across a wide range of major and boutique general insurance products.

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SECTION I. 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 a contract of general insurance with an insurer, you have a duty, under the *Insurance Contracts Act 1984*, to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer.

Non-disclosure

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce his liability under the contract in respect of a Claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

GST

Where 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 the Insurer 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 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.

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.

General Insurance Code of Practice

Pen Underwriting and Underwriter's at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. A copy of the Code can be obtained from www.codeofpractice.com.au or from us upon request.

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 any or all of the Insurer(s) have 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.

SECTION II. COVERAGES

In consideration of the premiums paid and upon our reliance on the statements made in the Application to this policy, including any supporting documentation or information submitted in connection with the Application, and in accordance with all the terms, conditions, exclusions and limitations contained in this policy, **we** agree to provide the following coverage to the insured.

These coverage sections apply only if specified with limits in the Schedule:

1. Third-Party Claims for Bodily Injury, Property Damage or Clean-up Costs

We will pay on behalf of the insured those sums the insured becomes legally obligated to pay as **loss** resulting from any **claim(s)** for **bodily injury, property damage or clean-up costs** where such **bodily injury, property damage or clean-up costs**:

- A. occur during the **policy period**; and
- B. are caused by a **pollution incident** resulting from **contracting operations or completed operations**; and
- C. are both unexpected and unintended from the standpoint of the insured.

2. Emergency Costs

We will pay those sums that **you** first incur as **emergency costs** responding to a **pollution incident** that:

- A. results from **contracting operations or completed operations**; and
- B. is both unexpected and unintended from the standpoint of the insured.

SECTION III. COVERAGE EXCLUSIONS

This policy does not cover:

1. Asbestos and Lead-based Paint

any **loss** or **emergency costs** based upon or arising out of any asbestos, or asbestos-containing materials, or lead-based paints, in, upon or applied to any man-made structures, objects or features. However, this exclusion does not apply to:

- A. any asbestos abatement activities performed on **your** behalf by a sub-contractor as part of **contracting operations**, providing such sub-contractor is suitably qualified and licensed to perform such activities and holds valid insurance covering liability for **bodily injury and property damage** arising therefrom;
- B. **clean-up costs** for asbestos, asbestos-containing materials, or lead-based paints in soil, groundwater or any other water body;
- C. the inadvertent disturbance of asbestos or asbestos containing materials or lead-based

paint during the course of **contracting operations** performed by **you**.

2. Aircraft and Watercraft

any **loss** or **emergency costs** based upon or arising out of the ownership, maintenance, use, loading, unloading, or entrustment to others of any watercraft or aircraft.

3. Automobile Liability

bodily injury or **property damage** for which insurance is compulsory to comply with highways, road traffic or similar legislation relating to the use of **vehicles**.

4. Contractual Liability

liability of others assumed by any insured in a contract or agreement. This exclusion does not apply to liability that **you**:

- A. would have in the absence of the contract or agreement;
- B. assume in a written contract or agreement, provided the **pollution incident** commences subsequent to the execution of the contract or agreement and the **loss** or **emergency costs** arise as a direct result of **contracting operations**;
- C. assume in a written contract or agreement with **your** client for any **pollution incident(s)** that result from the **contracting operations** of **your** subcontractors and commence subsequent to the execution of the contract or agreement provided always that liability does not arise due to the sole negligence of **your** client;

and subject always to the terms, conditions and exclusions of the policy.

5. Damage to Own Property

any **loss** based upon or arising out of physical damage to or destruction of real or personal property of the insured. This exclusion does not apply to a **jobsite**.

6. Damage to Vehicles

costs of repair or replacement of any **vehicle** following physical damage to or destruction thereof.

7. Employer's Liability

bodily injury to:

- A. **your** employee arising out of and in the course of:
 - I. employment by **you**; or
 - II. performing duties related to the conduct of **your** business; or
- B. the spouse, child, parent, brother or sister of that employee as a consequence of subpart A. immediately above.

This exclusion applies whether **you** may be liable as an employer or in any other capacity and to any

obligation to share damages with or repay someone else who must pay damages because of the injury.

8. Fines and Penalties

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

9. Insured versus Insured

any **loss** or **emergency costs** based upon or arising out of any **claim(s)** made by an insured against any other insured, however this exclusion shall not apply to **your** clients who are considered insureds under this policy.

10. Intentional Acts

any **loss** or **emergency costs** based upon or arising out of:

- A. a dishonest, fraudulent, malicious, or knowingly wrongful act;
- B. the wilful or deliberate failure to comply with any material statute, regulation, ordinance, administrative complaint, notice of violation, directive, order, or instruction made by or on behalf of any governmental body or agency.

11. Microbial Matter

any **loss** or **emergency costs** based upon or arising from any **microbial matter**.

12. Naturally Occurring Substances

any **loss** or **emergency costs** based upon or arising out of the presence of or cost to abate, remediate, or mitigate any naturally occurring substances. This exclusion does not apply when the amounts or concentrations of any substance discovered exceed the amounts or concentrations naturally present in the environment as a result of **contracting operations**.

13. Nuclear Liability

- A. liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
- B. **bodily injury** or **property damage** with respect to which an insured under this policy is also insured under a contract of nuclear energy liability insurance (whether the insured is unnamed in such contract and whether or not it is legally enforceable by the insured) or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
- C. any **loss** or **emergency costs** resulting directly or indirectly from the **nuclear energy hazard** arising from:
 - I. the ownership, maintenance, operation or use of a **nuclear facility** by or on behalf of an insured;
 - II. the furnishing by an insured of services, materials, parts or equipment in

connection with the planning, construction, maintenance, operation or use of any **nuclear facility**; and

- III. the possession, consumption, use, handling, disposal or transportation of **fissionable substances**, or of other **radioactive material** (except radioactive isotopes, away from a **nuclear facility**, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

14. Products

any **loss** or **emergency costs** based upon or arising out of the sale, supply, manufacture, handling or distribution of the insured's goods or products. However this exclusion does not apply where such goods or products:

- A. are being installed or repaired by **you** as part of **contracting operations** and the **claim** alleges liability against **you** for negligent installation or repair;
- B. are at a **jobsite** prior to their usage, installation or application as part of **contracting operations** and are in **your** care custody or control;
- C. are **cargo** during **transportation activities**.

15. Professional Liability

any **loss** or **emergency costs** based upon or arising out of the rendering of or failure to render any professional services by or on behalf of an insured including, but not limited to, providing engineering, architectural or surveying services to others; preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and supervisory or inspection activities performed as part of any related architectural or engineering activities.

16. Related Entities and / or Individuals

any **loss** or **emergency costs** based upon or arising out of any **claim** made against **you** by any person, entity or organization:

- A. that is owned, managed, or controlled by **you** or in which **you** have an ownership interest in excess of twenty five percent (25%);
- B. of which **you** are an officer, partner, or director; or
- C. that owns, operates, or manages **you**.

17. Separately Insured Project

any **loss** or **emergency costs** based upon or arising out of any project that is insured by **us**, or by **our affiliates**, under a contractor's pollution liability policy issued for a specific project or projects. This exclusion does not apply to any

project **we** expressly schedule in an endorsement to this policy as an insured project.

18. Terrorism

any **loss** or **emergency costs** based upon or arising directly or indirectly as a result of or in connection with **terrorism**, including, but not limited to any contemporaneous or ensuing liability or **loss** caused by fire looting or theft.

19. Transported Cargo

any **loss** based upon or arising from **cargo** once such **cargo** is no longer in the control of the insured or the carrier undertaking **transportation activities** on behalf of the insured or such **cargo** has been finally surrendered to a third party.

20. War

any **loss** or **emergency costs** based upon or arising out of, be it directly or indirectly, any act of war or warlike action, whether declared or undeclared, any invasion, insurrection, act of a foreign enemy, civil war, rebellion, revolution, usurped power, strike, riot or civil commotion, regardless of any other cause or event that contributes concurrently or in any sequence to the **claim** or **loss**.

21. Waste Disposal Sites

any **loss** based upon or arising out of any **waste disposal site**.

22. Wrongful Delivery

any **loss** based upon or arising out of the delivery of any goods, products, wastes or materials into the wrong tank, vessel or container.

SECTION IV. WHO IS AN INSURED

Where applicable, the following person(s) or entity(ies) are an insured under this policy:

1. Named Insureds

A. First Named Insured

The person or entity stated in Item 2 of the Schedule is the **first named insured** and is responsible for payment of the policy premium and for any policy Deductible. The **first named insured** shall also serve as the sole agent acting on behalf of all insureds with respect to receipt of notice(s), including notice of cancellation or non-renewal, receipt and acceptance of any endorsement(s) or any other change(s) to this policy, return of any premium, and assignment of any interest(s) under this policy, unless any such responsibilities are otherwise designated by endorsement.

B. Named Insured

The person(s) or entity(ies) expressly listed as **named insured** in Item 4 of the Schedule has the same rights under this policy unless specified otherwise, or unless such rights have

been given specifically to the **first named insured** in this policy or any endorsement hereto.

2. Other Insureds

A. Employees, Officers and Directors

Any of **your** directors, officers, partners, members or employees as applicable, while acting within the scope of his or her duties as such.

B. If You Are an Individual

If the **first named insured** designated in the Schedule is an individual, then **you** and **your** spouse are insureds, but only with respect to the liability arising out of a business in which **you** are the sole owner and only with respect to **your contracting operations** as part of said business.

C. Joint Ventures

Any joint venture in which **you** participate and are named as a co-venturer, but only with respect to the liability arising out of **your contracting operations**.

3. Additional Insureds

A. Limited Liability Company

Any limited liability company in which **you** are a member, but only with respect to the liability arising out of **your contracting operations**.

B. Owned Entity(ies)

Any entity or organization in which, as of the **inception date** of this policy, **you** have an ownership interest of fifty percent (50%) or more, but only with respect to the liability arising out of **your contracting operations**.

C. Your Clients

The clients for whom **you** perform **contracting operations** but only when required by written contract with **your** client provided it is executed and effective prior to the date the **pollution incident** first commenced, and only for the lesser of the amount stated in the contract or the applicable Limits of Liability in this policy.

SECTION V. LIMITS OF LIABILITY; DEDUCTIBLE

The Limits of Liability shown in the Schedule and the rules below fix the most **we** will pay regardless of the number of **claims**, persons or organizations making **claims**, insureds or **pollution incidents** under this policy.

1. Related or Continuous Pollution Incidents

When multiple **claims** or types of **loss(es)** or **emergency costs** arise out of the same, related or continuous **pollution incident(s)**, then the following will apply:

- A. all such same, related or continuous **pollution incident(s)** will be treated as a single **pollution incident**;
- B. all such **claims** will be treated as a single **claim**; and
- C. all such **claims** and **loss(es)** or **emergency costs** will be subject to one Each Incident Limit and one Deductible as outlined in Paragraph 2. and 5. below, respectively.

2. Each Incident Limit

Subject to Paragraphs 3. and 4. below, the Each Incident Limit shown in Item 7 of the Schedule is the most **we** will pay under this policy for all **loss** and **emergency costs** arising out of one **pollution incident**, or out of the same, related or continuous **pollution incident(s)**.

3. Coverage Section Aggregate Limit

Subject to Paragraph 4. below, the Coverage Section Aggregate Limits shown in Item 7 of the Schedule is the most **we** will pay for all **loss** and **emergency costs** under that particular coverage section.

4. Policy Aggregate Limit

The Policy Aggregate Limit shown in Item 6 of the Schedule is the most **we** will pay for the sum total of all **loss** and **emergency costs** under this policy. **We** shall not be obligated to defend any **claim** or pay any **loss** or **emergency costs** once the Policy Aggregate Limit has been exhausted.

5. Deductible

The Deductible shown in Item 7 of the Schedule applies to all **loss** and **emergency costs** arising out of one **pollution incident**, or out of the same, related or continuous **pollution incident(s)**. This policy applies to **loss** and **emergency costs** only in excess of the Deductible, which shall be paid by the **first named insured** and remain uninsured.

If, in the defence or settlement of a **claim** or in the payment of **loss** or the reimbursement of **emergency costs**, **we** pay any part or all of the Deductible, then, upon our notification to **you** of such action taken, **you** are responsible to promptly reimburse **us** for such part of the Deductible amount that has been paid by **us**.

SECTION VI. CONDITIONS OF INSURANCE

1. Applicable Law

We agree that in the event of a dispute arising under this policy, **we** at the request of the **first named insured** will submit to the jurisdiction of any competent Court in **Australia**. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

2. Assignment

The interest of any insured under this policy is not assignable, unless and until **our** consent to such assignment is endorsed hereon.

3. Cancellation

- A. The **first named insured** may cancel this policy at any time by notifying **us** in writing stating the effective date of such cancellation.
- B. **We** may cancel this policy at any time where:
 - I. **we** are entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto, or;
 - II. the insured has failed to notify **us** of any specific act or omission where such notification is required under the terms or conditions of this policy, or;
 - III. the insured has acted in contravention of or omitted to act in compliance with any term of this policy, which empowers the **us** to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by the **us** shall take effect either at the time when another contract of insurance between the insured and the **us** or some other insurer (being a contract that is intended by the insured to replace this policy) is entered into or otherwise as prescribed by the *Insurance Contract Act 1984* or any amendments thereto.

4. Changes to Policy

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop **us** from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance and signed by **us**.

5. Confidentiality

The insured will not disclose the terms, conditions, exclusions, Limit of Liability of this policy or the amount of the premium paid, to any third party except to the extent that they are required by law to do so or **we** consent, in writing, to such disclosure.

6. Consent

Where **our** consent or **your** consent is required under this policy, such consent shall not be unreasonably withheld, delayed, conditioned or denied.

7. Dispute and Complaint Resolution

This policy is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside **Australia**. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this policy should be referred to the Lloyd's Coverholder. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative
in Australia

Suite 2, Level 21, Angel Place, 123 Pitt Street
Sydney NSW 2000 Australia

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

who will refer your dispute to the Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by the Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

In the event that a dispute arises between **us** and the insured out of or otherwise in relation to this agreement, then:

A. Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;

B. If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:

I. A process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (LEADR) (or other appropriate professional body as agreed by the parties); or

II. Referral of the matters in dispute to an independent expert to an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:

a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);

b) will act as an expert and not as an arbitrator;

c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;

d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and

e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause 9.8.3 below) without first pursuing such informal resolution techniques in good faith.

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

C. Following either a mediation or an expert determination pursuant to clause 7.B.II. of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

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

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

Lloyd's Underwriters' General Representative
in Australia

Suite 2, Level 21, Angel Place, 123 Pitt Street
Sydney NSW 2000 Australia

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

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

If proceedings are instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision

of such Court or any competent Appellate Court.

- D. Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- E. Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the policy.
- F. Notwithstanding anything in this Condition of Insurance 7 either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the policy where the party seeks urgent interlocutory relief.

8. Data Protection

We will record and hold data in accordance with strict security procedures in relation to the storage and disclosure of information provided to prevent unauthorised access or loss of such information. It may be necessary for **us** to pass data to third parties supplying products or services in connection with **your** policy or as otherwise required or permitted by law (e.g. fraud investigation, regulatory reporting or subpoena).

By accessing and updating various databases, **we** may share information with third parties, including the police in order to substantiate the information and detect or prevent fraud. If false or inaccurate information is provided and fraud suspected, this fact will be recorded and the information will be available to third parties with access to those databases. Details of databases accessed or contributed to are available on request.

9. Entire Agreement

By acceptance of this policy, **you** agree with **us** that this policy and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this policy can be waived or changed only by written endorsement.

10. Headings

Any headings or sub-headings that appear in this policy are intended for convenience only and in no way form a part of the terms, conditions or substance of the policy.

11. Inspection and Audit

By acceptance of this policy, **you** agree that **we** have the right, but not the obligation, to inspect or monitor on a continuing basis **your contracting operations** at any reasonable time of business. If **we** decide to exercise this right, **we** will provide **you** or **your** broker or agent with reasonable notice as to the time and place of **our** inspection or monitoring, and **we** will seek **your** assistance with

providing access to any locations, operations, books and records **we** intend to inspect or monitor.

We may, subject to **our** sole discretion, report orally or in writing to **you** on the conditions **we** find and recommend changes. Any such reports or recommendations relate only to insurability and the premiums to be charged. **We** do not make safety inspections, nor do **we** undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. Further, nothing in **our** inspection, monitoring or reports shall constitute an undertaking, on behalf of or for the benefit of the insured or others, to determine whether any conditions are safe, or whether any operations or facilities are in compliance with laws, regulations, codes or standards.

12. Material Change

You will provide **us** with written notice of any change in **contracting operations** which materially increases the risk under the policy. Until **you** have received **our** written consent to the change in **contracting operations**, no cover will be provided for any **loss** or **emergency costs** based upon or arising out of such change.

13. Observance

The due observance and fulfilment of the provisions of this policy insofar as they may relate to anything to be done or complied with by **you** and are not described in the policy as conditions precedent, will be a condition of this policy. Any waiver by **us** of any provision will not prevent **us** from relying on such term or condition or condition precedent in the future.

In the event of a breach of any condition in the policy, and without prejudice to any of **our** other rights, **we** may reject or reduce payments relating to **loss**, **emergency costs** or **claims** connected with the breach providing **we** can demonstrate some prejudice.

In the event of a breach of any condition precedent in the policy, and without prejudice to any of **our** other rights, **we** may reject or reduce payments for **loss**, **emergency costs** or **claims** connected with the breach, and continue the **policy** on such terms as **we** may determine and if any payment on account of any such **loss**, **emergency costs** or **claim** has already been made **you** will repay forthwith all payments on account to **us**.

14. Other Insurance

With respect to any insured, this insurance will apply in excess of any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, unless such other insurance is written only as specific excess insurance over the Limit of Liability of this policy.

When both this insurance and other insurance apply to any **claim**, **loss** or **emergency costs** on the same basis, then **we** will not be liable under this policy for a greater proportion of the **loss** or **emergency costs** than the lower of either (1) the

Limits of Liability shown in the Schedule or (2) the amount determined by contribution amongst the policies, as follows:

- A. Contribution by Equal Shares - if all of the other insurance permits contribution by equal shares, **we** will also follow this method. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the **loss** and **emergency costs** remain, whichever comes first.
- B. Contribution by Limits - if any other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

Notwithstanding the foregoing, with respect to any policy issued for a specific project or projects, including, but not limited to, any owner or contractor controlled insurance program(s), owner's protective policy, wrap-up policy or similar insurance, the insurance afforded by this policy will apply only in excess and will not contribute with such other insurance.

15. Privacy

Lloyd's and its agents are bound by the obligations of the Privacy Act 1988 as amended by the Privacy Amendment Private Sector Act 2000 (the Act). This sets out basic standards relating to the collection, use, disclosure and handling of personal information.

"Personal information" is essentially information or an opinion about a living individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Information will be obtained from individuals directly where possible. Sometimes it may be collected indirectly (e.g. from your representatives).

Only information necessary for the arrangement and administration of Lloyd's business by Lloyd's, its agents and their representatives will be collected. This includes information necessary to accept risk, to assess a claim, to determine competitive and appropriate premiums, etc.

Lloyd's and its agents disclose personal information to third parties who they believe are necessary to assist them in doing the above. These parties will only use the personal information for the purposes we provided it to them for (or if required by law).

When you give Lloyd's and its agents personal information about other individuals, we rely on you to have made or make them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it. If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of

these things, you must tell us before you provide the relevant information.

You are entitled to access your information if you wish and request correction if required.

16. Representations

By accepting this policy, **you** understand and agree that the statements in the application, including any supporting documentation or information submitted in connection with the application for this insurance, are hereby made a part of this policy; are accurate and complete; that those statements are based upon representations **you** made to **us**; and that **we** have issued this policy in reliance upon **your** representations.

17. Sanctions and embargo

Notwithstanding anything to the contrary in the policy the following condition shall apply:

- A. If, by virtue of any law or regulation which is applicable at the inception of this policy or which becomes applicable at any time thereafter, providing coverage to the insured and/or paying a claim and/or providing a benefit under the policy directly or indirectly breaches an embargo or sanction, **we** shall not make any payment or provide any economic benefit to the insured under this policy to the extent that it would be in breach of such law or regulation.
- B. In circumstances where the payment or provision of a valid and otherwise collectable claim, or other benefit may directly or indirectly breach an embargo or sanction, then **we** will take all reasonable measures to obtain the necessary authorisation to make such payment or provision.

18. Separation of Insureds / Severability

Except with respect to the Limits of Liability, or any rights or duties specifically assigned to the **first named insured**, this insurance applies:

- A. as if each **named insured** were the only **named insured**; and
- B. separately to each insured that receives a **claim for loss** covered under this policy.

19. Subrogation

In the event of any payment under this insurance by **us**, **we** shall be subrogated to all the insured's rights of recovery against any person or organization. **You** agree to cooperate with **us** and to execute and deliver all instruments and papers and do whatever else is necessary to enforce such rights. No insured shall do anything after the payment of **loss** or **emergency costs** by **us** to prejudice such rights.

After the deduction of any expenses incurred by **us** in making a subrogation recovery, any remaining monies shall first accrue to **you** to the extent of any payment in excess of the Limits of Liability, then to **us** to the extent of **our** payment under the policy,

then to **you** to the extent of **your** payment of the Deductible.

20. Subscribing Insurer

Our obligations under this policy are several and not joint and are limited solely to the extent of **our** individual subscription. **We** are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

21. Territory

This policy applies only to those **claims** that are first made or brought in **Australia**. Solely with respect to any **loss** that **you** first incur as **emergency costs**, this policy applies only to those costs that are actually incurred within **Australia**.

SECTION VII. POLICY DEFINITIONS

1. **Australia** means the Commonwealth of Australia
2. **Bodily injury** means the following injury(ies) as sustained by any person, including, if applicable, death resulting therefrom:
 - A. physical injury, sickness, disease, or illness, including, but only in the presence of at least one of the aforesaid physical injuries, the cost of medical monitoring; and/or
 - B. mental anguish, emotional distress, or shock.
3. **Cargo** means **your** goods, products or wastes.
4. **Claim** means a written demand or notice received by an insured alleging liability on **your** part for **bodily injury, property damage, or clean-up costs** caused by a **pollution incident** to which this insurance applies.
5. **Claim expenses** means:
 - A. all reasonable and necessary fees charged by legal counsel designated by **us**, or, with **our** prior written consent, by **you**; and/or
 - B. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defence and appeal of any **claim**, suit or proceeding arising in connection therewith, if incurred by **us**, or, with our prior written consent, by **you**.

Claim expenses do not include any salary, overhead or other charges by an insured for any time spent in cooperating in the defence and investigation of any **claim** or circumstance which might lead to a **claim** notified under this insurance, except as outlined in Section VII., paragraph 2. Your Assistance and Cooperation.
6. **Clean-up costs** means:
 - A. reasonable and necessary expenses to investigate, test, monitor, abate, remove, remediate, neutralize, clean or dispose of soil, groundwater, surfacewater, or other contamination arising from a **pollution incident**:

- I. to the extent required by **environmental law**; or
- II. incurred by a **regulator** or third party;

B. Restoration costs

7. **Completed operations** means those **contracting operations** that have been completed, including those that may need service, maintenance, correction, repair or replacement, but which are otherwise complete. **Completed operations** do not include those **contracting operations** that have not been completed or have otherwise been abandoned. **Contracting operations** will be deemed complete at the earliest of the following times:
 - A. when all of the **contracting operations** called for in **your** work contract have been completed; or
 - B. when all of the **contracting operations** to be performed at the **jobsite** have been completed if **your** contract calls for work at more than one **jobsite**; or
 - C. when that part of the **contracting operations** performed at the **jobsite** has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
8. **Contracting operations** means:
 - A. those operations or activities as listed in Item 4 of the Schedule, performed by **you** or on **your** behalf during the **policy period**, at a **jobsite**; and
 - B. **Transportation activities**.
9. **Emergency costs** means reasonable and necessary costs incurred by **you** in response to a **pollution incident** that presents an imminent and substantial danger to human health and the environment and requires an immediate response in order to mitigate or reduce potential **loss** hereunder.
10. **Environmental law** means any Federal, Provincial, or local law, including, but not limited to, statutes, rules, regulations, ordinances, guidance documents, governmental, judicial, or administrative orders or directives applicable to the **pollution incident**.
11. **First named insured** means the person or entity stated in Item 2 of the Schedule, and subject to the responsibilities outlined in Section V., Paragraph 1.A. of this policy.
12. **Fissionable substance** means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
13. **Inception date** means the first date set forth in Item 1 of the Schedule.

- 14. Insured contract** means:
- A. **your** obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - B. that part of any other contract or agreement pertaining to **your contracting operations** (including an indemnification of a municipality in connection with work performed for a municipality) under which **you** assume the tort liability of another party to pay for **bodily injury, property damage or clean-up costs** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
 - C. a written contract or agreement submitted to and approved by **us**, and listed on a Schedule of Insured Contracts endorsement attached to this policy.
- 15. Jobsite** means a location where **contracting operations** are performed, but does not include any location(s) owned, operated, leased, rented, managed or occupied by an insured, or any subsidiary or affiliate of an insured, except for any location that is either owned, operated, leased, rented, managed or occupied by **your** client who is also considered an insured under this policy, or leased temporarily by **you** solely for the purpose of staging materials or equipment used in the performance of **contracting operations** at an adjacent site.
- 16. Loss** means:
- A. monetary awards or settlements of compensatory damages for **bodily injury, property damage or clean-up costs**;
 - B. **clean-up costs** arising from **natural resource damage** to which this insurance applies; or
 - C. **claim expenses**.
- 17. Microbial matter** means any form of mould, mildew, or fungi, including mycotoxins, spores or byproducts produced or released by fungi.
- 18. Named insured** means the person(s) or entity(ies) stated in Item 4 of the Schedule, as outlined in Section IV. paragraph 1. Named Insureds, and referred to as **you** or **your** throughout this policy.
- 19. Natural resource damages** means injury to or destruction of land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by any federal, state, local, provincial, territorial or municipal government or any foreign government, including any reasonable costs of damage assessment and the cost of restoring injured resources to their baseline condition prior to the **pollution incident** giving rise to **loss** or **emergency costs** hereunder.
- 20. Nuclear energy hazard** means the radioactive, toxic, explosive, or other hazardous properties of radioactive material.
- 21. Nuclear facility** means:
- A. any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - B. any equipment or device designed or used for:
 - I. separating isotopes of plutonium, thorium and uranium or any one or more of them;
 - II. processing or utilising spent fuel, or
 - III. handling, processing or packaging waste;
 - C. any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - D. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;
- and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.
- 22. Our affiliates** means any parent, subsidiary, affiliate, division, related companies, holding companies, merged companies, acquired companies, predecessors-in-interest and/or successors-in-interest of the company, as set forth in Item 9 of the Schedule, providing this insurance.
- 23. Policy period** means the period set forth in Item 1 of the Schedule, or if this policy is cancelled by either the **first named insured** or by **us**, any shorter period as a result of such cancellation.
- 24. Pollution incident** means the discharge, dispersal, release, seepage or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to, smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, petroleum hydrocarbons, low level radioactive materials, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater.
- 25. Property damage** means:
- A. Physical injury to or destruction of tangible property owned by third parties, including any resulting loss of use and diminution in value thereof;
 - B. Loss of use of tangible property owned by third parties that has not been physically injured or destroyed; or

C. Natural resource damage.

For the purposes of this definition, third parties include **your** clients who are considered insureds under this policy. **Property damage** does not include **clean-up costs**.

26. **Radioactive material** means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by or pursuant to any law, act or statute, or law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy.
27. **Regulator** means any legal body, authority, agency or other person or any court of law or tribunal in each case having authority under **environmental law**.
28. **Responsible insured** means any of the following individual(s): all of **your** owners, officers, directors, or partners; or any of **your** managers, supervisors, or employees that are responsible for environmental affairs, control, or compliance.
29. **Restoration costs** means reasonable and necessary expenses incurred by an insured with **our** written consent, to repair, replace, or restore real or personal property to substantially the same condition it was in prior to being damaged in the course of responding to a **pollution incident**. Such expenses will not include any costs associated with any improvements or betterments.
30. **Transportation activities** means the movement of **cargo** by **you**, or performed under contract on your behalf by a third-party properly licensed to carry **cargo**:
 - A. while in due course of transit beyond the legal boundaries of a **jobsite**;
 - B. from the point of origin until the point of final destination, including the loading and unloading of **your** cargo when the point of origin or final destination is any location other than a **jobsite**,
 - C. excepting therefrom, any **cargo** at rest for a period longer than forty-eight (48) hours.
31. **Vehicle** means a land motor vehicle and any trailer, machinery or equipment attached thereto designed for travel on public roads and used for **transportation activities**.
32. **Waste disposal site** means any locations to which **your** waste or materials are sent for treatment, storage, processing, recycling or disposal.
33. **We, Us** and **Our** means the company, listed in the Schedule, providing this insurance.
34. **You** and **your** means the **first named insured** shown in the Schedule, and any other person(s) or entity(ies) qualifying as a **named insured** under this policy.

SECTION VIII. DUTIES IN THE EVENT OF A CLAIM

The following sections outline the insured's duties in the event of a **claim** or **loss** which, as a condition precedent to coverage under this policy, must be reported to us as follows:

1. Claim Reporting

In the event that an insured receives a **claim** or becomes aware of a **pollution incident** which may give rise to **loss** under this policy, the insured must notify **us** as soon as practicable.

Notice to **us** should contain the following information:

- A. The current contact information of the person(s) giving notice to **us**;
- B. The time and location of the **pollution incident**;
- C. A description of the circumstances giving rise to the **pollution incident** including how and when **you** become aware of the **pollution incident**;
- D. The names and addresses of any injured persons or witnesses; and
- E. All other information which is relevant to the **claim, pollution incident, or loss**.

Thereafter, the insured is required to submit to **us** as soon as practicable, but in no event longer than sixty (60) days from the date of our request, any information related to the notice which **we** may reasonably request including but not limited to any relevant contracts, technical reports, laboratory data, field notes, or documents generated by an insured in the investigation of any potential **loss** hereunder, whether or not these materials are deemed by any insured to be relevant. If a **claim** is made against any insured, **you** must immediately send **us** copies of any demands, notices, summonses or legal papers received in connection therewith.

If any insured makes any claim under this policy knowing such claim to be false or fraudulent, as regards to the amount or otherwise, this policy shall become null and void, and all coverage hereunder shall be forfeited.

2. Your Assistance and Cooperation

Without any charge to **us**, any and all insureds who may have any information related to a notice of a **claim** or **loss** submitted to **us** are required to cooperate with **us** in all investigations, securing and giving evidence, and, with respect to depositions, hearings, arbitrations, mediations, trials and any other legal proceedings, including their own personal attendance and the assistance in securing the attendance of witnesses. In the event that **you** or any of **your** principals, partners, executives, officers, directors or employees are required to personally attend any legal proceeding at **our** request, then **you** are entitled to receive reimbursement from **us** of up to \$500 per day for each individual, subject to a policy limit of \$5,000,

to cover their travel and lodging expenses directly related to their attendance at such proceedings. These allowable expenses are subject to and will erode both the Limit of Liability and the Deductible set out in the Schedule.

3. Your Duty and Our Right to Mitigate

Once **you** become aware of a **pollution incident**, **you** are required to make any reasonable attempt to mitigate any **loss** and to comply with all applicable laws. If, in **our** sole judgment, **you** or any insured fails to take reasonable steps to mitigate a **pollution incident** which may give rise to **loss** hereunder, **we** will have the right but not the duty to take such steps as **we** deem appropriate to mitigate the **pollution incident**. Any **clean-up costs** incurred by **us** will be deemed to have been incurred by the insured and will erode both the Limit of Liability and the Deductible set out in the Schedule.

4. Our Right to Approve Environmental Professionals

You, with **our** prior written consent and approval, have the right and duty to designate and retain competent environmental professionals or contractors to assist with the investigation or remediation of a **pollution incident** covered hereunder. **Our** written consent is not required in the case of **emergency costs** where it is not reasonably practicable to obtain such consent; however, **you** are still required to select a competent environmental professional or contractor to conduct any investigation or remediation on **your** behalf. Any costs or **loss** incurred by **you** prior to receiving **our** written consent and approval will not be covered under this policy or credited against the Deductible, except in the case of **emergency costs**.

SECTION IX. DEFENSE AND SETTLEMENT

1. Our Right and Duty to Defend

We will have the right and duty to defend the insured against any **claim(s)** for **bodily injury**, **property damage** or **clean-up costs** to which this insurance applies, but **we** will have no such duty to defend any insured against any **claim(s)** to which this insurance does not apply. Upon **your** satisfaction of any applicable deductible, **claim expenses** to which this insurance applies will be paid and will reduce the applicable Limits of Liability set out in the Schedule as described in Section V. LIMITS OF LIABILITY; DEDUCTIBLE. **Our** duty to defend ends once the applicable Limit of Liability has been exhausted by payment of any **loss** or **emergency costs**.

2. Our Right to Select Legal Counsel

We have the right to select legal counsel to defend the insured against any **claim(s)** for **bodily injury**, **property damage** or **clean-up costs** to which this insurance applies. Where allowable by law, **we** may appoint one counsel to represent or defend all

insureds against any **claim(s)** to which this insurance applies on a joint defence basis.

3. Settlement

The following paragraphs outline the rights and duties of the parties' to this policy with respect to any settlement(s) or payment(s) for **loss**:

A. Voluntary Payments

No insured shall incur any **loss** or admit liability, offer to settle, or agree to any settlement in connection with any **claim** without **our** prior written consent. When **our** written consent to a settlement is requested, **you** must promptly provide **us** with all information and particulars **we** may reasonably request, including, but not limited to, information which an insured may deem immaterial, in order to reach an informed decision as to such consent. Any **loss** resulting from any admission of liability or agreement to settle, including any **claim expenses**, incurred prior to **our** consent shall not be covered hereunder.

This provision does not apply to **emergency costs** to which this insurance applies, and that are first incurred by **you** and reported to **us** in accordance with all the terms and conditions of this policy.

B. Offers To Settle

If **we** present and recommend any offer(s) made by the claimant(s) to settle a **claim** and an insured refuses to consent to such settlement and elects to contest the **claim**, **our** Limit of Liability for any **loss** related to that **claim** will be limited to the sum of:

- I. the amount for which the **claim** could have been settled (the base amount);
- II. plus the **claim expenses** incurred up to the time of such refusal;
- III. plus twenty five percent (25%) in excess of the base amount of any **loss** awarded as damages for **bodily injury**, **property damage** or **clean-up costs** that are covered under this policy; and
- IV. less any remaining Deductible.

The amount calculated above is subject to and shall not exceed any applicable Limit of Liability of this policy. At such time as the insured refuses to settle a **claim**, **we** have the right to withdraw from the further defence thereof by tendering control of said defence to the insured and we shall no longer be liable for any **claim expenses** thereafter.

C. Transfer of Defence Duties

If **we** conclude that any applicable Limit of Liability of this policy has been, or soon will be, exhausted by the payment of **loss** or **emergency costs**, **we** will so notify the **first named insured** in writing as soon as possible. In the event that there are ongoing legal

proceedings with respect to any **claim(s)** against an insured, and any applicable Limit of Liability of this policy has been exhausted by the payment of **loss** or **emergency costs**, or if an insured has refused to consent to a settlement as outlined in paragraph IX. 3. B. Offers to Settle above, **we** will advise **you** that **our** duty to defend has ended and that **we** will no longer handle the defence of any ongoing **claim(s)** or new **claims** against an insured. Thereafter, **we** will initiate and cooperate in the transfer of control of the defence of all **claims** to any appropriate insured. The exhaustion of any applicable Limit of Liability by the payment of **loss** or **emergency costs** will not be affected by **our** failure to comply with any of the provisions of this section, nor will **we** be obligated by operation of any rights or duties in this paragraph to defend or continue to defend any **claim** or pay any **loss** or **emergency costs** after any applicable Limit of Liability of this policy is exhausted.