



**Care Providers  
Industrial Special Risks  
Mark IV (Modified)  
Policy Wording  
vXLICSE1120**



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

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Current as at November 2020

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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.

### The Insurer

This Policy is issued by Pen Underwriting Pty Ltd ABN 89 113 929 516 as agent for the Insurer pursuant to the terms of a Binding Authority Agreement. The Insurer is XL Insurance Company SE, Australia Branch (ABN 36 083 570 441).

### Contacting the Insurer

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

XL Insurance Company SE, Australia Branch's address is Level 28, 123 Pitt Street, Sydney NSW 2000.

[www.axaxl.com](http://www.axaxl.com)

### Duty of Disclosure

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

You have this duty until the Insurer agrees to insure you.

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

You do not need to tell the Insurer anything that:

- reduces the risk the Insurer insures you for; or
- is common knowledge; or
- the Insurer knows or should know as an insurer; or
- the Insurer waives your duty to tell the Insurer about.

### If you do not tell the Insurer something

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

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

### Co-Insurance

A co-insurance clause applies to this Policy. This means that if you underinsure, you will become your own insurer for a portion of the damage. Please check your policy wording for the co-insurance percentage.

### 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 Collection Statement

The Insurer and Pen Underwriting (referred to together in this Statement as 'we, our, us') are committed to safeguarding and protecting your privacy. We are bound by the provisions of the Privacy Act 1988 (Cth) which sets out the standards to meet in the collection, use and disclosure of personal information. We will only collect personal information from you to allow us to quote on and insure your risks and matters incidental thereto, including investigating, processing and managing claims.

We may provide your personal information to others, such as our related bodies corporate, other insurers or our reinsurers, claims investigators, lawyers and other professionals, and government bodies. Some of these recipients may be outside of Australia, such as the United Kingdom, India, Poland and the United States. Any disclosure outside Australia will be in compliance with the Privacy Act. We will not under any circumstances trade, rent or sell your information.

If you do not provide us with complete, accurate and up-to-date information, we cannot properly quote for your insurance and we cannot insure you. If you provide us with personal information about anyone else, we will rely on you to have told them that you will provide their information to us, to whom we may provide it, the purposes for which we will use it and that they can access it. If the information is sensitive, we rely on you to have obtained their consent on these matters.

If you wish to access or correct your personal information, or wish to raise any concerns as to how we handle your personal information, please write to:

The Privacy Officer  
XL Insurance Company SE, Australia Branch  
Level 28, 123 Pitt Street  
Sydney NSW 2000  
[privacyaustralia@axaxl.com](mailto:privacyaustralia@axaxl.com)

### General Insurance Code of Practice

The Insurer supports and has adopted the General Insurance Code of Practice. The Code aims to:

- Promote more informed relations between insurers and their customers;
- Improve customer confidence in the general insurance industry;
- Provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- Commit insurers and the professionals they rely upon to higher standards of customer service.

The Code confirms details of the policies specifically covered by the Code and it may be that your policy is an excluded policy and therefore outside the requirements of the Code.

### Claims

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

Pen Underwriting Claims  
GPO Box 541  
Brisbane QLD 4001  
Email: [claims.au@penunderwriting.com](mailto:claims.au@penunderwriting.com)

### Complaints Handling Process

#### Stage One

Any enquiry or complaint relating to this insurance should be referred to Pen Underwriting in the first instance. If you are dissatisfied with a decision Pen Underwriting makes, our service, the service of others We appoint to discuss insurance matters with You, or a claim settlement, We have an internal dispute resolution process to assist You. For further information, ask for a copy of Our Complaints and Disputes Resolution Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au).

#### Stage Two

If Pen Underwriting are unable to resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

The Complaints Officer  
XL Insurance Company SE, Australia Branch  
Level 28, 123 Pitt Street  
Sydney NSW 2000  
Email: [apacompliance@axaxl.com](mailto:apacompliance@axaxl.com)

#### Stage Three

If your dispute remains unresolved after 45 days you may be referred to the Australian Financial Complaints Authority 'AFCA' (subject to its Terms of Reference).

AFCA can be contacted by post:

GPO Box 3  
Melbourne VIC 3001

(T) 1800 931 678  
(E) [info@afca.org.au](mailto:info@afca.org.au).

More information can be found on their website: [www.afca.org.au](http://www.afca.org.au)

AFCA provides fair and independent financial services complaint resolution that is free to consumers. Determinations made by AFCA are binding upon the Insurer.

Your dispute must be referred to AFCA within 2 years of the date of the Insurer's final decision.

For further information, ask for a copy of the Pen Underwriting Complaints and Disputes Resolution Policy or visit [www.penunderwriting.com.au](http://www.penunderwriting.com.au).

### Financial Claims Scheme

This Policy may be a protected Policy under Federal Government's Financial Claims Scheme (FCS), which is administered by APRA.

The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies a person who is entitled to make a claim under this Policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria.

You may obtain further information about the FCS from <http://www.fcs.gov.au> and the APRA hotline on 1300 55 88 49.

### Commission

Pen Underwriting Pty Ltd may be entitled to receive a profit commission from the Insurer under the Binding Authority Agreement, details of which commission shall be provided to the Insured upon request.

### 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.

## INDUSTRIAL SPECIAL RISKS

This Policy incorporates the Schedule, Sections, Definitions, Conditions, Exclusions, Endorsements, Memoranda and Warranties (if any) and any other terms herein contained which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

Whereas the Insured named in the Schedule has paid or agreed to pay to the Insurer(s) specified below the Premium shown on the Schedule, now the Insurer(s) agree(s), subject to the terms, Conditions, Exclusions, Memoranda, Warranties, limitations, and other provisions contained herein or endorsed hereon, to indemnify the Insured as specified herein against loss arising from any insured events which occur during the Period of Insurance stated in the Schedule or any renewal thereof.

Provided that the total liability of the Insurer(s) at any one Situation hereunder shall not exceed the appropriate Limit or Sub-Limit(s) of Liability as stated in the Schedule or such amount(s) as may be substituted therefor by endorsement or memorandum hereon or attached hereto and that each Insurer specified in the Schedule shall only be liable to contribute to any loss covered by this Policy that proportion of the loss as is specified beside its name.

## DEFINITIONS

The following definitions shall apply unless a more specific definition is provided elsewhere in this Policy.

### Accidental Damage (Unspecified Damage)

means damage to the Property Insured (subject to the Exclusions Applicable to all Sections) arising out of any one original source or cause other than fire, lightning, thunderbolt, explosion, implosion or collapse, smoke and/or steam, spontaneous fermentation or heating, spontaneous combustion, earthquake, subterranean fire, volcanic eruption, subsidence, earth movement or collapse resulting therefrom or landslip, impact by any waterborne craft, land vehicles or animals, aircraft and/or other aerial devices and/or articles dropped or falling therefrom and/or impact by space debris, sonic boom, Burglary/Theft, loss of Money, fraudulent or dishonest acts, the acts of persons taking part in riots or civil commotions or of strikers or locked-out workers or of persons taking part in labour disturbances or of malicious persons or the acts of any lawfully constituted authority in connection with the foregoing acts or in connection with any conflagration or other catastrophe, fusion, Flood, water from or action by the sea, tsunami, tidal wave or high water, storm, tempest wind, hail and/or rainwater, water and/or other liquids or substances discharged overflowing or leaking from apparatus, appliances, pipes, sprinkler and/or any other system at the Situation or elsewhere or any other events or circumstances more specifically mentioned under any other Sub-Limit of Liability and/or Deductible.

### Burglary / Theft

means Damage to property insured as a result of:

- (a) forcible entry into or exit from the Situation;
- (b) any person:
  - (i) unlawfully concealed on the Situation;
  - (ii) who threatens or commits violence against you, an employee or other person(s); or
  - (iii) who breaks into any locked cabinet located at the Situation.

Provided that cover is only afforded to property insured, within the boundaries of the Insured's Situations.

Excluding:

- (a) You voluntarily parting with title or possession if induced to do so by false pretence;
- (b) burglary or theft of Money; or
- (c) loss of or damage caused by You, a director, committee member or an employee of the Insured.

### Business Hours

means the period during which the Situation is actually occupied for business purposes and during which the Insured or employees of the Insured are in the Situation.

### Consolidated Period

means the sum of the number of weeks specified in the Schedule applicable to clause (a)(i) of Item No. 3 and the percentage specified in the Schedule of the remaining portion of the Indemnity Period applicable to clause (a)(ii) of Item No. 3.

### Flood

means the covering of normally dry land by water that has escaped or been released from the normal confines of any of the following:

- (a) a lake, river, creek or another natural watercourse, whether or not it has been altered or modified;
- (b) a reservoir;
- (c) a canal; or
- (d) a dam.

### Gross Profit

means the amount by which:-

- (a) the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed.
- (b) the sum of the amount of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses as set out in the Schedule.

**Note:** The amounts of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with the Insured's normal accountancy methods, due provision being made for depreciation.

### Indemnity Period

means the period beginning with the occurrence of the damage and ending not later than the number of months specified in the Schedule thereafter, during which the results of the Business shall be affected in consequence of the damage.

### Indemnity Value

means the value of the damaged property at the time of loss, which takes into account the age, wear, tear, depreciation and an adjustment for the general condition and remaining useful life of the property.

### Insured Payroll

means the declared value of estimated Pay-Roll in respect of the Consolidated Period referred to in Item No. 3 and specified in the Schedule, declarable as at the day of commencement of the Period of Insurance.

### Land Value

The sum certified by the Valuer General as being the value of the land so described in this Policy after due allowance has been made for variations in, or other circumstances affecting, such value either before or after the damage or which would have affected the value had the damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the true Land Values pertaining both before and after the damage.

### Limit of Liability

means the maximum amount payable to You for any one loss or series of losses arising out of any one event at any one Situation subject to any lesser limit(s) of liability specified elsewhere in this Policy, but the Limit(s) or any lesser limit(s) of liability shall only be applied in excess of the relevant deductible.

### Money

means current coin, bank notes, currency notes, cheques, credit card sales and/or discount house vouchers, postal orders, money orders, travellers cheques unused postage and revenue stamps and including the value of stamps contained in franking machines.

### Payroll

means the remuneration (including but not limited to payroll tax, fringe benefits tax, bonuses, holiday pay, sick pay, long service leave, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) paid to all employees of the Insured.

### Pollution or Contamination

means Damage or loss arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, atmosphere or any water course or body of water (including ground water).

### Shortage in Turnover

means the amount by which the Turnover during a period shall, in consequence of the damage, fall short of the part of the Standard Turnover which relates to that period.

### Schedule

means the Schedule attached to this Policy or any later Schedule issued by way of endorsement or otherwise.

### Situation

means the location(s) specified in the Schedule of Declared Assets in the Policy Schedule.

### Sub Limit(s) of Liability

means the Insurers liability shall be further limited in respect of any one loss or series of losses arising out of any one event at any one Situation. It is understood and agreed that such sub limits shall not increase the liability of the Insurer beyond the Limits / Sub Limits of Liability shown in the Schedule and also the deductible(s) shall apply in respect of such sub limit(s) but shall not be cumulative.

### Turnover

- (a) the Money (less discounts, if any allowed) paid or payable to the Insured for goods sold and delivered and for services rendered in course of the Business at the Situation;
- (b) financial incentives or concessions granted to the Insured by any Australian or State Government Department in recognition of specific performance in the development of market opportunities or employment of disadvantaged persons.

which relates to that period.

**Rate of Gross Profit:** The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the damage.

**Annual Turnover:** The Turnover during the 12 months immediately before the date of the damage.

**Standard Turnover:** The Turnover during that period in the 12 months immediately before the date of the damage which corresponds with the Indemnity Period.

**Rate Of Payroll:** The rate of Payroll to Turnover during the financial year immediately before the date of the damage.

To which such adjustments shall be made to Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Payroll may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the damage or which would have affected the Business had the damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which, but for the damage, would have been obtained during the relative period after the damage.

## SECTION 1 – MATERIAL LOSS OR DAMAGE

### The Indemnity

In the event of any physical loss, destruction or damage (hereinafter in Section 1 referred to as “damage” with “damaged” having a corresponding meaning) not otherwise excluded happening at the Situation to the property insured described in Section 1 the Insurer will, subject to the provisions of this Policy including the limitation of the Insurer liability, indemnify the Insured in accordance with the applicable Basis of Settlement.

Subject to the liability of the Insurer not being increased beyond the Limit(s) of Liability already stated herein, the Insurer will also indemnify the Insured for:

### Costs and expenses necessarily and reasonably incurred by the Insured:

The liability of the Insurer shall not exceed the Sub-Limit of Liability shown in the Schedule against each item.

#### (a) Alarm Re-Setting Costs

to switch off and re-set alarms following an occurrence caused by an insured peril.

The indemnity under this clause shall apply whether or not damage occurs to property insured in circumstances giving rise to indemnity under Section 1 of this Policy.

#### (b) Claims Preparation Costs

in the preparation of a claim under Section 1: Material Damage.

#### (c) Cost of Clearing Blocked Drains, Pipes, Filters and Pumps

in the clearance of blocked pipes, drains, gutters, sewers, filters, pumping equipment and the like during the Period of Insurance, including exploratory costs, at the Situation as a direct result of damage as insured herein.

#### (d) Damage Diminution Costs

for the purpose of preventing imminent damage or minimising damage to property Insured (including travelling expenses);

The indemnity under this clause shall apply whether or not damage occurs to property insured in circumstances giving rise to indemnity under Section 1 of this Policy.

#### (e) Emergency Evacuation

for emergency evacuation of residents in connection with damage or the threat of damage to the Situation by an insured peril or where the evacuation is ordered by a civil authority.

#### (f) Expediting Expenses

for express carriage rates and extra payments for overtime, night, Sunday or holiday working incurred in connection with the repair or reinstatement of the property insured directly or indirectly from an event insured by this Policy.

#### (g) Exploratory Costs

to prevent imminent damage or diminish damage to property insured by any peril insured against by this Policy.

**(h) Fire Extinguishment and Other Costs**

- (i) for the purpose of extinguishing fire at or in the vicinity of property hereby insured or threatening to involve such property insured, including damage to gain access and the cost of replenishment of firefighting appliances and charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge or escape of any such substance occurring during the Period of Insurance, whether from any fire protective equipment or otherwise.
- (ii) for any statutory liability incurred by the Insured for fire brigade attendance fees for services rendered in connection with any peril insured by this Policy including a chemical emergency threatening to involve the property insured or for the purpose of minimising damage or imminent damage.

**(i) Government Fees**

Any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any building(s) insured hereunder; provided that the Insurer shall not be liable for payment of any fines and/or penalties imposed upon the Insured by any such Authorities.

**(j) Liability for Duty**

for liability for customs, excise and other duties which the Insured becomes liable to pay in the event of damage to property Insured.

**(k) Liability to Make Enquiries**

in respect of any legal liability to make enquiries consequent upon damage to property insured.

**(l) Professional Fees**

Architects', surveyors', consulting engineers', legal and other fees and clerks' of works', salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon damage to property hereby insured but not such costs, fees and salary for preparing any claim hereunder.

**(m) Removal of Debris**

in respect of:

- (i) the removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to property insured by this Policy and occasioned by a peril insured against;
- (ii) the Insured's legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 8 in relation to premises, roadways, services, railways or waterways of others, consequent upon damage to the property Insured by a peril hereby insured against, for such costs together with the cost of cleaning provided that such liability was not assumed by the Insured under

an agreement entered into after the commencement of the period of insurance or any renewal thereof unless liability would have attached in the absence of such agreement.

Provided that the insurance under this section does not extend to any liability that the Insured may incur as a consequence of Pollution of any kind.

- (iii) the demolition and removal of any property belonging to the Insured, providing such demolition and removal is necessary for the purpose of the reinstatement or replacement of property insured under this section and is consequent upon damage to property insured by a peril insured against.

**(n) Replacement of Locks and Keys**

in replacing locks and/or keys and/or combinations and/or access/swipe cards where if as a result of Burglary / Theft the keys and/or combinations and/or access/swipe cards are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations.

**(o) Statutory Inquiries**

in connection with Statutory Inquiries following damage to property insured. The term "Statutory Inquiries" shall mean any judicial, coronial or other form of inquiry or hearing established by or at the direction of any government, semi-government, local or planning authority as a direct result of damage to property insured.

**(p) Temporary Protection**

for the temporary protection and safety of property insured pending repair or replacement consequent upon damage recoverable hereunder.

**(q) Unpacking Expenses**

in taking inventory (including unpacking, repacking and restocking) to identify, quantify and value any property physically lost, destroyed or damaged by any peril insured against by this Section, including examination of property not belonging to, but in the care, custody or control, of the Insured.

**Costs and expenses necessarily and reasonably incurred for damage to:**

The liability of the Insurer shall not exceed the Sub-limit of Liability noted in the Schedule against each item.

**(a) Accompanied Baggage in Australia**

personal property (excluding Money) of directors employees, and committee members of the Insured whilst they are engaged on the business of the Insured anywhere in the Commonwealth of Australia other than at the Situation of the Insured to the extent that such property is not otherwise insured.

**(b) Burglary / Theft**

property insured as a result of Burglary / Theft from the Situation.



**(c) Customers Goods**

goods belonging to the Insured's customers (excluding Residents) at the Situation, to the extent that such goods are not otherwise Insured.

**(d) Fusion**

any part or parts of the electrical, electro-mechanical and electronic machines, switchboards, installations or apparatus forming part of the property insured (excluding rectifiers, radio, television or amplifying equipment of any description) caused by the actual burning out of such part or parts by the electric current therein.

The Insurer shall not be liable under this endorsement for:

- (a) loss of use, depreciation, wear and tear.
- (b) loss, destruction of or damage to:
  - (i) lighting or heating elements, fuses or protective devices;
  - (ii) electrical contacts at which sparking or arcing occurs in ordinary working.
- (c) any Consequential Loss.

**(e) General Property**

portable electronic equipment anywhere within the Commonwealth of Australia. Cover is limited to damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage, storm and/or tempest, Flood, theft from securely locked vehicles, and/or collision and/or overturning of conveying vehicles.

**(f) Personal Property of Directors, Employees, Committee Members & Voluntary Workers**

personal property of directors, employees, committee members and voluntary workers of the Insured whilst at the Situation or at work sites or whilst in direct transit between the Situation and their residence.

Provided that damage occurring whilst contained in a vehicle, must be as the result of forcible and violent entry evidenced by visible damage to the vehicle.

The indemnity under this Sub-Limit of Liability shall apply whether or not damage occurs to property insured in circumstances giving rise to indemnity under Section 1 of this Policy, but only to the extent that such property is not otherwise insured.

The words "jewellery, furs" in Property Exclusion 3 shall not apply to this clause.

**(g) Personal Property of Residents**

personal property of Residents whilst at the Situation, but only to the extent that such property is not otherwise insured.

The words "jewellery, furs" in Property Exclusion 3 shall not apply to this clause.

**(h) Property of Welfare, Sports and Social Clubs**

property of welfare, sports and social clubs of the Insured, whilst at the Situation.

The indemnity under this Sub-Limit of Liability shall apply whether or not damage occurs to property

insured in circumstances giving rise to indemnity under Section 1.

**(i) Sports Playing Surfaces**

Notwithstanding Property Exclusion 8, sports playing surfaces.

The Basis of Settlement under this clause shall be Indemnity Value.

**(j) Storm damage to Gates, Fences, Retaining Walls, Textile Awnings and Blinds**

gates, fences, retaining walls, textile awnings and blinds caused by wind, rainwater or hail.

The Basis of Settlement under this clause shall be Indemnity Value.

**The Property Insured**

All tangible property both real and personal of every kind and description (except as hereinafter excluded) belonging to the Insured or for which the Insured is responsible, or has assumed responsibility to insure prior to the occurrence of any damage, including all such property in which the Insured may acquire an insurable interest or for damage to which the Insured becomes responsible or assumes responsibility to insure, after the commencement of the Period of Insurance.

It is understood and agreed that the term "personal property" shall include Money whilst contained in the Situation(s) and whilst in transit to and from Situation(s) anywhere in Australia, including whilst contained in the night safe of any Bank or financial institution where the Insured transacts business, and in the personal custody of the Insured and/or persons authorised by the Insured whilst contained in their private residences.

**Basis Of Settlement**

- (a) On buildings, machinery, plant and all other property and contents (other than those specified below); the cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement and Replacement and Extra Cost of Reinstatement Memoranda set out herein.

For the purpose of ascertaining the classification under which any property is insured, the Insurer agrees to accept the designation applied to such property by the Insured.

Provided that if the Insured elects to claim the Indemnity Value of any damaged property, the Insurer will pay to the Insured the value of such property at the time of the happening of the damage or at its/their option reinstate, replace or repair such property or any part thereof. In any event the Insurer will pay costs incurred by the Insured in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.

Provided further that if the Insured elects to claim the Indemnity Value of any damaged property, the Insurer shall be liable for no greater proportion of the loss of such property than the amount that the Insured's declaration, made at the time of commencement of the Period of Insurance, of the value of such property, bears to eighty per cent (80%) of the actual value of such property at the time of

commencement of the Period of Insurance, but not exceeding the Limit of Liability expressed in the Schedule. Any amount recoverable under the Extra Cost of Reinstatement Memorandum shall not be taken into account in determining the Insurer's proportion of the loss of such property.

- (b) On computer systems records, computer software and all Business Records of every description

The cost of collecting information, preparing, rewriting and/or replacing same, but excluding the value to the Insured of the said information or, if repair, replacement, reproduction or restoration is not carried out with reasonable despatch, the replacement cost of materials as blank stationery at the time and place of the damage. Including remuneration to the Insured for supervising and/or for actual work.

The liability of the Insurer shall not exceed the Sub-Limit of Liability noted in the Schedule against Rewriting of Records.

- (c) On glass:

The cost incurred in repairing or replacing the broken glass in accordance with Australian Standard AS 1288-2006 or its current equivalent, including:

- (i) temporary shuttering and/or hiring of security service pending replacement of broken glass; and
- (ii) sign-writing or ornamentation on glass, replacement burglar alarm tapes or protective films on glass, removing and re-fixing of window and show-case frames and fittings, heat reflecting material or process on glass

- (d) On personal property of directors, employees, committee members and voluntary workers and Residents and property of welfare, sports and social clubs, the replacement or repair cost at the time of replacement or repair subject to due allowance for wear and tear, depreciation and betterment.

- (e) On empty premises awaiting demolition; the salvage value of the building materials and/or landlords fixtures and fittings.

- (f) On landscaping; which term shall mean lawns and garden plots including rockwork, paving and ornamentation plants, shrubs and trees.

The liability of the Insurer shall not exceed the Sub-Limit of Liability noted in the Schedule against Landscaping.

The cover provided is restricted to fire, lightning, earthquake, storm, tempest, malicious damage and theft.

- (g) On works of art, antiques and curios, none of which form part of the stock in trade or merchandise of the Business:

Notwithstanding the first paragraph of Basis of Settlement (a), the cost of restoring and repairing to a condition substantially the same as before the damage plus any reduction in market value caused

by the damage. If restoration or repair is not possible, the market value immediately before the damage

The liability of the Insurer shall not exceed the Sub-Limit of Liability noted in the Schedule against works of art, antiques and curios.

- (h) Securities

In the case of Securities (which shall mean certificates of stock, bonds, coupons and all other types of securities), the basis of valuation shall be:

- (a) if, with the approval of the Insurer, the Securities can be replaced, the cost of replacement paid or payable by the Insured; or
- (b) if the Securities cannot or are not to be replaced by the Insured, the greater of:
  - (i) the price for which the Insured purchased them; and
  - (ii) the closing market value on the last business day prior to the date of discovery by the Insured of the loss or destruction of the Securities or, if the time of discovery by the Insured is after the close of the market, their closing market value on the day of discovery by the Insured of the loss or destruction of the Securities;
- (c) in the case of a loss of subscription, conversion or redemption privileges through the loss of any Security, the value of such privileges immediately preceding the expiration thereof;

such valuation being in the currency in which the loss was sustained. Losses sustained in currencies other than Australian dollars shall be settled by converting the amount of loss to Australian dollars at the market rate as set by the Reserve Bank of Australia at the time of settlement of the loss or such other rates as may be expressly agreed with the Insurer.

If there is no market price or value on the relevant day stated herein, then the value shall be agreed between the Insured and the Insurer, or in default thereof, the Insured and the Insurer shall submit to arbitration and be bound by the decision of the Umpire.

The Liability of the Insurer shall not exceed the Sub-Limit of Liability noted in the Schedule against Securities.

- (i) Buildings of Architectural and Historic Interest

In consideration of the architectural features or structural materials of any building(s) insured under this Policy possessing a particularly ornamental, antiquarian or historical character or in consideration of the architectural features now being outdated or the materials not being readily available or in consideration of the said building(s) now being too large for the needs of the Insured, it is agreed that in the event of that building being damaged and the amount of such damage exceeds the declared value of the said building(s), the basis upon which the amount payable under this Policy is to be calculated

shall be the cost of erecting a similar type of building of current design and modern materials but not necessarily as large as the damaged building and it is further agreed that the declared value has been based accordingly. Subject to the following special provisions and subject also to the terms and conditions of this Policy except insofar as the same may be varied hereby:

### Special Provisions

1. In no case shall the Insurers' liability under this memorandum exceed the amount which would have been payable in erecting a new building in the same condition, size and style as the damaged building when new.
2. The work of erecting a new building (which may be carried out upon another site or sites and in any manner suitable to the requirements of the Insured but subject to the liability of the Insurer not being thereby increased) must be commenced and carried out with reasonable despatch, failing which the Insurer shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated therein.
3. When any building insured under this memorandum sustains damage and where the amount of such damage is less than the declared value of that building, the rights and liabilities of the Insurer and the Insured in respect of such damage shall be subject to the terms and conditions of this Policy, as if this memorandum had not been incorporated therein.
4. No payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated therein shall be made until a sum equal to the cost of erecting the new building (as defined in the first paragraph of this memorandum) shall have been actually incurred.
5. All other insurances covering the property insured affected by or on behalf of the Insured shall be on a similar reinstatement basis.

Provided that this memorandum shall not apply to any building registered for preservation under any National or State Act.

### MEMORANDA TO SECTION 1

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, conditions and limitations of this Policy shall apply.

#### Abandoned Undamaged Portion of a Building

If any building is damaged and due to the exercise of statutory powers or delegated legislation or authority by any government department, local government or other statutory Authority, reinstatement of such building is carried out upon another site, then the abandoned undamaged portion of such building shall be deemed to have been destroyed; provided that if the presence of such abandoned undamaged portion of the building increases the sale value of the original site, the increase in sale value shall be regarded as salvage and the amount thereof shall be payable to the Insurer by the Insured upon completion of any sale of the site or shall be deducted from the total amount otherwise payable by the Insurer under this Policy, whichever shall occur later.

All differences relating to the amount of such increase in site value shall forthwith be referred to the decision of two registered valuers; one to be appointed by each of the parties to this Policy. If the two valuers do not agree, their differences shall be referred to the decision of a third valuer, appointed by the President of the Australian Institute of Valuers as an expert, whose decision shall be binding.

#### Application of Deductibles/Excesses

Deductibles/Excesses shall apply to the Limits and Sub-Limits of Liability in accordance with the Schedule but the Limits and Sub-Limits of Liability shall only be applied in excess of the relevant deductible/excess.

#### Branded Goods

Any salvage of branded goods and/or merchandise, the Insured's own or held by the Insured in trust or on commission, and/or goods sold but not delivered, shall not be disposed of by sale without the consent of the Insured. If such salvage is not disposed of by sale then the damage will be assessed at the value agreed between the Insured and the Insurer after brands, labels or names have been removed by or on behalf of the Insured.

#### Co-insurance/Average/Under-insurance

Unless otherwise stated herein to the contrary, this Policy is subject to the following Co-insurance memorandum:

The Insured is required to insure for full value calculated in accordance with the appropriate Basis of Settlement Clauses, as at the commencement of the Period of Insurance and, in relation to any property insured acquired after the commencement of the Period of Insurance, as at the time of acquisition of that property.

In the event of a claim, the moneys otherwise payable under Section 1 of this Policy shall be the proportion that the Insured's declaration at the time of the commencement of the Period of Insurance of the value of all property insured at the Situation to which the damaged item or items belong bears to 80% of the value of all such property as at the time of the commencement of the Period of Insurance calculated in accordance with the appropriate Basis of Settlement Clauses.

This Memorandum shall not apply if the amount of the damage does not exceed 10% of the amount of the Insured's declaration of value for that Situation.

This Co-Insurance Memorandum shall not apply to any claim for Burglary/Theft or Money to which a Sub-Limit(s) of Liability has been stated in the Schedule.

For the purpose of the application of this Memorandum, the Insured's Declared Values at any Situation shall not include any allowance for Extra / Additional Costs of Reinstatement.

### Declared Values

The Schedule of Declared Values at each Situation (in accordance with the applicable Basis of Settlement) attaches to and forms part of this Policy for the purpose of the application of Co-insurance.

If asset movements between Situations used by the Insured have resulted in an under-declaration of value(s) at a Situation and an offsetting over-declaration of value(s) at one or more other Situation(s), then such factors shall be taken into account when calculating the test for the application of Co-insurance.

Declared values shall not include any allowance for Extra Cost of Reinstatement nor any of the costs and expenses referred to under any of the clauses, of 'The Indemnity'.

### Extra / Additional Costs of Reinstatement

(Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (m) under Basis of Settlement).

This Policy extends to include the extra / additional costs of reinstatement (including demolition or dismantling) of the damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy.

### Provisions

- (i) The work of reinstatement (which may be carried out wholly or partially upon any other site(s), subject to the liability of the Insurer not being thereby increased, must be commenced and carried out with reasonable despatch, failing which the Insurer shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein.
- (ii) The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Insured had been required to comply prior to the happening of the damage.
- (iii) Co-insurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for co-insurance purposes in terms set out in any clause contained in this Policy.
- (iv) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property

affected by or on behalf of the Insured shall be on a similar basis.

- (v) If the cost of reinstatement of the damaged property insured is less than fifty per cent (50%) of that which would have been the cost of reinstatement if such property had been destroyed, the amount recoverable shall be limited to:
  - (a) the extra / additional cost necessarily incurred in reinstating only that portion damaged; or
  - (b) whilst applying to such property insured, the Sub Limit stated herein,
 whichever is the greater.

The Liability of the Insurer shall not exceed the Sub-Limit of Liability shown in the Schedule against Extra / Additional Costs of Reinstatement.

### Floor Space Ratio Index (Plot Ratio)

Subject to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy, if any building(s) being property insured is/are damaged and the cost of reinstatement is more than 50% of the cost of reinstatement if the building(s) had been totally destroyed and as a result of the exercise of statutory powers and/or authority by any Government Departments, Local Government or any other Statutory Authorities reinstatement of such building(s) as before is prohibited and reinstatement is only permissible subject to a reduced floor space ratio index:-

the Insurer agrees to pay in addition to any amount payable on reinstatement of the such building(s) the difference between:-

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

In arriving at the amount payable under (a) and (b) above any payments made by the Insurer shall include the extra cost of reinstatement, including demolition or dismantling of the property insured, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority.

Any payment made for the difference between (a) and (b) above shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on behalf of the Insured in the reinstatement of the building(s).

### Loss of Land Value

Notwithstanding the provisions of Perils Exclusion 9 and Property Exclusion 8:

- (a) in the event of the absolute refusal by the competent local or government Authority to allow the reconstruction of the Premises following damage, the Insurer shall pay by way of indemnity the amount of excess of the Land Value before the damage to improvements, over the Land Value after, the damage to improvements; or

- (b) in the event of the competent local or government Authority allowing only partial reconstruction of the Premises after damage, the Insurer shall pay by way of indemnity the deficiency between the Land Value after such reconstruction and the Land Value before the damage;

less any sum paid by way of compensation by such Authority arising out of the action referred to in (a) or (b) above.

The liability of the Insurer shall not exceed the Schedule against this item in the Sub-Limit of Liability.

#### Special Conditions

1. Settlement shall be made following the ruling of the competent local or government Authority resulting in the loss of Land Value. Should settlement have been made, however, and subsequently the ruling of the competent local or government Authority be changed prior to completion of the reconstruction, resulting in an increase in the Land Value, that part of the claim paid in excess of the revised Land Value shall be refunded to the Insurer.
2. All differences relating to the Land Value arising out of this Policy shall forthwith be referred to the decision of two registered valuers; one to be appointed by each of the parties and in case the two registered valuers do not agree, of a third valuer, appointed by the President of the Australian Institute of Valuers as an expert, whose decision shall be binding.

#### Pecuniary or Economic Interest

The insurable interest of only those lessors, financiers, trustees, mortgagees, owners, and all other parties specifically noted in the records of the Insured shall be automatically included without notification or specification; the nature and extent of such interest to be disclosed in event of damage.

Where the insurance covers the interest of more than one party, any act or neglect of an individual party will not prejudice the rights of the remaining party/parties, provided the remaining party/parties shall immediately, on becoming aware of any act or neglect whereby the risk of damage has increased, give notice in writing to the Insurer and on demand pay such reasonable additional premium as the Insurer may require.

Notwithstanding the foregoing paragraph it is understood and agreed that, in the event of any of the parties referred to herein being entitled to the benefits of any 'Concessions Agreement', which it may have entered into with the Insurer, the said 'Concessions Agreement' will take precedence over the foregoing paragraph.

#### Reinstatement or Replacement

Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (j) under Basis of Settlement.

The basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the damaged property insured at the time of its reinstatement,

subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy.

For the purpose of the insurance under this memorandum, 'reinstatement' shall mean:

- (a) Where property is lost or destroyed; in the case of a building, the rebuilding thereof, or in the case of property other than a building, the replacement thereof, by similar property; in either case in a condition equal to but not better or more extensive than its condition when new.
- (b) Where property is damaged the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.

#### Provisions

- (i) The work of rebuilding, replacing, repairing or restoring, as the case may be (which may be carried out wholly or partially upon any other sites and in any manner suitable to the requirements of the Insured, but subject to the liability of the Insurer not being thereby increased), must be commenced and carried out with reasonable despatch, failing which the Insurer shall not be liable to make any payment greater than the Indemnity Value of the damaged property at the time of the happening of the damage.
- (ii) When any property insured to which this memorandum applies is damaged in part only, the liability of the Insurer shall not exceed the sum representing the cost which the Insurer could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- (iii) No payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred; provided that where the Insured reinstates or replaces any lost or destroyed property at a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.
- (iv) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property affected by or on behalf of the Insured shall be on a similar reinstatement basis.
- (v) If the Insured elects to reinstate destroyed property with dissimilar property whether or not to be used for a similar purpose as the destroyed property, the Insurer shall pay the lesser of:
  - (a) the cost of the dissimilar property; or
  - (b) an amount equal to the replacement cost that would have been payable if the destroyed property had been reinstated by similar property in a condition equal to but not better or more extensive than its condition when new.

### Reinstatement of Damage by the Insured

If the Insured shall, after obtaining the consent of the Insurer, reinstate damaged property insured, the Insurer shall pay the cost of such reinstatement including the value of labour and other overhead charges expended thereon together with a reasonable margin for profit. The liability of the Insurer shall not exceed the amount that would otherwise have been payable hereunder had such reinstatement been carried out by outside contractors.

### Undamaged Ancillary and/or Peripheral Equipment

If plant and/or machinery is destroyed and its ancillary and/or peripheral equipment is not destroyed but, upon replacement of the destroyed plant and/or machinery, the ancillary and/or peripheral equipment is rendered superfluous, then such equipment shall be deemed to be destroyed and its salvage value shall be payable to the Insurer by the Insured upon completion of any sale, or shall be deducted from the total amount otherwise payable by the Insurer under the policy, whichever shall occur later.

### Undamaged Foundations

When property insured is damaged but its foundations are not destroyed and, due to the exercising of statutory powers or delegated legislation or authority by any government department, local government or other statutory Authority, reinstatement, of the property insured is carried out upon another site or sites, then the abandoned foundations shall be deemed to have been destroyed. If the presence of the abandoned foundations increases the sale value of the original site, then such increase shall be regarded as salvage and shall be payable to the Insurer by the Insured upon completion of the sale or shall be deducted from the total amount otherwise payable by the Insurer under this Policy, whichever shall occur later.

All differences relating to the amount of such increase in site value shall forthwith be referred to the decision of two registered valuers; one to be appointed by each of the parties to this Policy. If the two valuers fail to agree, their differences shall be referred to the decision of a third valuer, appointed by the President of the Australian Institute of Valuers as an expert, whose decision shall be binding.

The term 'foundations' shall be deemed to include services, such as but not limited to conduits, pipes, cables and wiring, which are built in to footings, foundations or concrete floor slabs.

## SECTION 2 – CONSEQUENTIAL LOSS

### The Indemnity

In the event of any building or any other property or any part thereof used by the Insured at the Situation for the purpose of the Business being physically lost, destroyed or damaged by any cause or event not otherwise excluded by this Policy (physical loss, destruction or damage so caused being hereinafter termed 'damage') and the Business carried on by the Insured being in consequence solely thereof interrupted or interfered with, the Insurer will, subject to the provisions of this Policy including the limitation on the Insurer liability, pay to the Insured the amount of loss directly arising solely from such interruption or interference in accordance with the applicable Basis of Settlement.

Provided that the Insurer will not be liable for any loss under this Section unless the Insured's property lost, destroyed or damaged is insured against such damage (loss arising out of destruction or damage by the explosion, implosion, rupture, collapse, bursting, racking or overheating of any boiler, economiser or other pressure vessel, including pipes, valves and other apparatus forming part of any of these and in respect of any of which a certificate is required to be issued under the terms of any statute or regulation being excepted from this provision) and the Insurer by which such property is insured shall have paid for or admitted liability in respect of such damage unless no such payment shall have been made or liability shall not have been admitted therefore solely owing to the operation of a provision in such insurance excluding liability for loss below a specific amount.

### Basis of Settlement

For Item No.s 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12, the liability of the Insurer shall not exceed the Sub-Limit of Liability shown in the Schedule.

Provided that the insurance under Item No.s 2, 4, 5, 6, 7, 8 and 9 shall not be subject to the application of any Co-insurance Memorandum.

### Item No. 1 - Gross Profit

The insurance under this item is limited to actual loss of Gross Profit due to: (a) Reduction in Turnover and (b) Increase in Cost of Working and the amount payable as indemnity thereunder shall be:

- (a) **In respect of Reduction in Turnover:**  
the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the damage, fall short of the Standard Turnover; and
- (b) **In respect of Increase in Cost of Working:**  
the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure would have taken place during the Indemnity Period in consequence of the damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the

Business payable out of Gross Profit as may cease or be reduced in consequence of the damage. Provided that if the estimated value of Gross Profit declared at the commencement of the Period of Insurance is less than eighty per cent (80%) of the sum produced by applying the Rate of Gross Profit to the Annual Turnover (appropriately increased if the Indemnity Period exceeds twelve months) which would have been achieved if the damage had occurred on the day of commencement of the Period of Insurance, the amount payable hereunder shall be proportionately reduced.

This provision shall not apply if the amount of the loss does not exceed ten per cent (10%) of the estimated value of Gross Profit declared at the commencement of the Period of Insurance.

#### **Item No. 2 - Claims Preparation Costs**

The insurance under this item is to cover such reasonable professional fees as may be payable by the Insured, and such other reasonable expenses necessarily incurred by the Insured and not otherwise recoverable, for the preparation of claims under the Insured's Material Damage and Consequential Loss insurance policies and the Insurer shall indemnify the Insured for such reasonable fees and expenses.

#### **Item No. 3 - Payroll**

The insurance under this item is limited to loss in respect of Payroll and the amount payable as indemnity thereunder shall be:

##### **(a) In respect of Reduction of Turnover:**

- (i) during the portion of the Indemnity Period beginning with the occurrence of the damage and ending not later than the number of weeks thereafter specified in the Schedule: the sum produced by applying the Rate of Payroll to the Shortage in Turnover during the said portion of the Indemnity Period less any saving during the said portion of the Indemnity Period, through reduction in consequence of the damage, in the amount of Payroll paid.
- (ii) during the remaining portion of the Indemnity Period: the sum produced by applying the Rate of Payroll to the Shortage in Turnover during the said remaining portion of the Indemnity Period less any saving during the said remaining portion of the Indemnity Period, through reduction in consequence of the damage, in the amount of Payroll paid; but not exceeding the sum produced by applying the percentage of the Rate of Payroll specified in the Schedule to the Shortage in Turnover during the said remaining portion of the Indemnity Period, increased by such amount as is deducted for savings under the terms of Clause (a)(i).

#### **Note:**

At the option of the Insured the number of weeks referred to in Clause (a) (i) above may be increased to the number of weeks specified in the Schedule under the heading 'Consolidated Period' provided that the amount arrived at under the provisions of Clause (a) (ii) shall not exceed such amount as is deducted under Clause (a) (i) for

savings effected during the said increased number of weeks.

##### **(b) In respect of Increase in Cost of Working**

So much of the additional expenditure described in clause (b) of Item 1 as exceeds the amount payable thereunder, but not more than the additional amount which would have been payable in respect of Reduction in Turnover under the provisions of clauses (a)(i) and (ii) of this item had such expenditure not been incurred.

Provided that if the estimated value of Insured Pay-Roll declared at the commencement of the Period of Insurance is less than eighty per cent (80%) of the sum produced by applying the Pay-Roll Limits set out in the Schedule to the amount produced by applying the Rate of Pay-Roll to the Annual Turnover (appropriately increased if the Indemnity Period exceeds twelve months) which would have been achieved if the damage had occurred on the day of commencement of the Period of Insurance, the amount payable hereunder shall be proportionately reduced.

This provision shall not apply if the amount of the loss does not exceed ten per cent (10%) of the estimated value of Insured Pay-Roll declared at the commencement of the Period of Insurance. Insured

#### **Item No. 4 - Additional Increased Cost of Working**

The Insurance under this item is limited to increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of the damage for the purpose of avoiding or diminishing the reduction in Turnover and/or resuming and/or maintaining normal business operations and/or services.

#### **Item No. 5 - Accommodation Bonds - Interest Costs**

The Insurance under this item is limited to the loss of interest payable to the Insured from Accommodation Bonds paid back to residents in consequence of the damage. The amount payable as Indemnity hereunder shall be the amount of interest which would have been reasonably earned on Accommodation Bonds during the Indemnity Period had the damage not occurred.

#### **Item No. 6 - Accommodation Bonds - Refinancing Costs**

The insurance under this item is limited to additional interest payments and cost incurred in connection with refinancing the capital necessary to refund Accommodation Bonds and/or entry fees paid to residents which you are contractually required to refund under the terms of any occupancy agreement in consequence of the damage.

#### **Item No. 7 - Accounts Receivable**

The insurance under this item is limited to the loss sustained by the Insured in respect of all outstanding debit balances if the Insured is unable to effect collection thereof as a direct result of damage to records of accounts receivable.

The Insurer will also pay:

- (i) interest charges at the Reserve Bank of Australia rates on any loan to offset impaired collections

pending repayment of such amounts rendered uncollectible in consequence of the damage;

- (ii) interest lost by the Insured in consequence of such impaired collections;
- (iii) additional expenditure necessarily and reasonably incurred in tracing and establishing the amounts of accounts receivable; and
- (iv) collection expenses in excess of normal collection costs, incurred in consequence of the damage.

Where there is proof that a loss covered by this Policy has occurred, but the Insured cannot accurately establish the total amount of accounts receivable outstanding at the date of damage, such amount shall be computed as follows:

- (a) Determine the total amount of accounts receivable outstanding on the last working day of the fiscal month which ended twelve months before the beginning of the month in which the damage occurs.
- (b) Calculate the average increase or decrease in the monthly total amounts of accounts receivable outstanding on the last working day of each of the twelve months immediately preceding the month in which damage occurs.
- (c) The amount determined under paragraph (a), increased or decreased by the percentage calculated in accordance with paragraph (b) shall be deemed to be the total amount of accounts receivable outstanding at the time and date of the damage.
- (d) The amount determined under paragraph (c) shall be adjusted as may be necessary to provide for any demonstrable variance from the amount so determined occurring before but during the month in which the damage occurs; due consideration also being given to normal monthly trends in receipts.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the Insured, and an equitable amount to provide for doubtful debts.

#### **Item No. 8 – Temporary or Alternative Accommodation**

The insurance under this item indemnifies You for the reasonable cost of providing temporary or alternative accommodation, meals and transport for residents and employees directly arising solely from the compulsory closure or evacuation of whole or part of the Situation by order of a competent public authority authorised to prevent or restrict access to the Premises as a consequence of damage insured by this Policy.

The indemnity under this item also extends to cover those costs incurred in returning residents and employees to that Situation when declared habitable or relocating to a permanent Situation.

The indemnity payable under this item shall be limited to those costs incurred or arising within the Indemnity Period during which temporary or alternative accommodation

expenses are incurred and whole or part of the damaged property remains uninhabitable.

Should any costs payable under this item be recoverable by any other means then the amount payable to you shall be so reduced.

#### **Item No. 9 - Contractual Fines and Penalties**

The Insured is indemnified with respect to fines and penalties for breach of contract and the amount payable as indemnity hereunder shall be such sum(s) as the Insured shall be legally liable to pay and shall pay in discharge of fines and/or penalties incurred in consequence of the damage, for non-completion or late completion of orders, inability to meet contract specifications or cancellation of orders.

#### **Item No. 10 - Rent Payable**

The insurance under this item is in respect of rent and other expenses payable and insurable by the Insured in accordance with the terms of any lease agreement and the amount payable as indemnity hereunder shall be such sum as the Insured shall be legally liable to pay and the lessor shall be legally entitled to receive during the Indemnity Period under the terms of the lease.

#### **Item No. 11 - Rent Receivable**

The insurance under this item is limited to the loss of rent receivable (including amounts due for services rendered and recoverable expenses) and the amount payable as indemnity hereunder shall be the amount by which rent (including amounts for services rendered and recoverable expenses) received or receivable during the Indemnity Period shall fall short of the amount which it may be reasonably estimated would have been received during that period had the damage not occurred including the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of rent (including amounts for services rendered and recoverable expenses), less any sum saved during that period in respect of the charges or expenses payable out of rent as may cease or be reduced in consequence of the damage.

#### **Item No. 12 - Severance Pay**

The insurance under this item is limited to such further additional expenditure beyond that recoverable under Clause (a) of Item no. 3 as the Insured is obligated or has agreed to pay under industrial awards, determinations, decisions or agreements for severance pay and/or in lieu of notice to employees whose services are terminated during the Indemnity Period in consequence of the damage.



## MEMORANDA TO SECTION 2

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

### Books of Accounts

Any particulars or details contained in the Insured's books of account or other business books or documents which may be required by the Insurer for the purpose of investigating or verifying any claim hereunder may be produced and certified by the Insured's auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates.

The words and expressions used herein shall have the meanings usually attached to them in the books and accounts of the Insured unless otherwise defined in this Policy.

### Computer

This Policy extends to include loss (not otherwise recoverable) resulting from interruption of or interference with the Business occasioned by damage to computer installations, including ancillary equipment and data processing media utilised by the Insured anywhere in Australia.

### Departmental clause

If the Business is conducted in departments or business units the independent trading results of which are ascertainable, the provisions of Clauses (a) and (b) of Item nos. 1 and 3 shall apply separately to each department or unit affected by the damage.

### New business

In the event of damage occurring at the Situation before the completion of the first year's trading of the Business the terms 'Rate of Gross Profit', 'Annual Turnover', 'Standard Turnover' and 'Rate of Payroll' shall bear the following meanings and not as within stated:

**Rate Of Gross Profit:** The rate of Gross Profit earned on the Turnover during the period between the date of the commencement of the Business and the date of the damage;

**Annual Turnover:** The proportional equivalent, for a period of 12 months, of the Turnover realised during the period between the commencement of the Business and the date of the damage;

**Standard Turnover:** The proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the commencement of the Business and the date of the damage;

**Rate of Payroll:** The rate of Payroll to Turnover during the period between the date of the commencement of the Business and the date of the damage.

to which such adjustments shall be made to Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Payroll as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the damage or which would have affected the Business had the damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably

practicable the results which, but for the damage, would have been obtained during the relative period after the damage.

### Premises in the Vicinity (Prevention of Access)

Loss as insured by this Policy resulting from interruption of or interference with the Business directly arising solely from damage to property within one (1) kilometre of the Situation caused by a peril, damage as a result of which is insured hereunder, which shall prevent or hinder the use thereof or access thereto, whether the Situation or property of the Insured therein shall be damaged or not, shall be deemed to be loss resulting from damage to property used by the Insured at the Situation.

Loss as insured by this Policy resulting from interruption of or interference with the Business directly arising solely from damage to property within one (1) kilometre of and forming part of or contained in the complex of which the Situation forms part caused by a peril, damage as a result of which is insured hereunder, which results in a cessation or diminution of trade due to temporary falling away of potential custom whether the Situation or property of the Insured therein shall be damaged or not shall be deemed to be loss resulting from damage to property used by the Insured at the Situation.

The liability of the Insurer shall not exceed the sub-limit shown in the Sub-Limit of Liability as noted in the Schedule.

### Public Utilities Extension

Any loss resulting from interruption of or interference with the Business directly or indirectly in consequence of damage, anywhere in Australia to land based premises of any communication station, electric power station or sub-station, gasworks, waterworks, sewerage pumping or sewerage treatment works of a supply undertaking from which the Insured obtains communication services, electric current, gas, water or sewage service shall be deemed to be loss resulting from damage to property used by the Insured at the Situation. It shall not be a condition precedent to liability under this endorsement that payment shall be made or liability admitted for damage under Section 1 of this Policy.

The liability of the Insurer shall not exceed the sub-limit shown in the Sub-Limit of Liability as noted in the Schedule.

### Registered Vehicles and /or Trailers

Notwithstanding the provisions of Property Exclusion 5, this Policy extends to include loss resulting from interruption of or interference with the Business occasioned by damage to registered vehicles and/or trailers whilst such vehicles or trailers are at the Situation owned or occupied by the Insured; provided always that this Policy does not cover loss resulting from physical loss, destruction of or damage to such vehicles and/or trailers whilst they are being used on any public highway or thoroughfare.

### Salvage Sale

If, following damage giving rise to a claim under this Policy, the Insured shall hold a Salvage Sale during the Indemnity Period:

(i) Clause (a) of Item 1 of this Section shall, for the purpose of such claim, read as follows:

(a) In respect of Reduction in Turnover, the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale.

(ii) The definition of Shortage in Turnover shall, for the purpose of such claim, read as follows:

Shortage in Turnover shall mean: the amount by which the Turnover during a period (less the Turnover for the period of the salvage sale) shall, in consequence of the damage, fall short of that part of the Standard Turnover which relates to that period, from which shall be deducted the Pay-Roll paid out of the proceeds of the salvage sale.

#### Trade Exhibitions

Loss as insured by Section 2 of the policy resulting from interruption or interference with the Business due to curtailment of any trade exhibition anywhere in the world in consequence of damage thereat and/or to property exhibited therein by the Insured shall be deemed to be loss resulting from damage to property used by the Insured at the Premises.

The liability of the Insurer shall not exceed the Sub-Limit of Liability shown in the Schedule.

#### Turnover elsewhere after damage

If during the Indemnity Period goods shall be sold or services shall be rendered elsewhere than at the Situation for the benefit of the Business either by the Insured or by others on his behalf, the money paid or payable in respect of such sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

#### Unspecified Suppliers' and/or Customers' Premises Australia

Loss resulting from interruption of or interference with the business in consequence of damage to property at the premises, anywhere in Australia, of any direct producer or direct merchant shall be deemed to be loss resulting from damage to property used by the Insured at the Situation.

The liability of the Insurer shall not exceed the sub-limit shown in the Sub-Limit of Liability as noted in the Schedule.

For the purposes of this endorsement, the term 'premises of a producer' refers to premises, other than those described in the Public Utilities Extension to Section 2 of this Policy, at which any of the goods or services used directly by the Insured are produced, assembled or stored. The term 'premises of a merchant' refers to premises to which the Insured directly provides goods or services.

## EXCLUSIONS TO ALL SECTIONS

### Property Exclusions

The Insurer shall not be liable under Sections 1 and/or 2 in respect of:

1. Property (except Money) whilst in transit other than during the incidental movement of such property within Situations occupied by the Insured. This exclusion shall not apply during temporary removal of property (other than stock or portable electronic equipment), including unregistered motor vehicles other than where used as stock of the Business, to any situation within the Commonwealth of Australia and whilst at such situation. Whilst such property is in transit (excluding loading, unloading and storage in transit), cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest, Flood, theft from securely locked vehicles, and/or collision and/or overturning of conveying vehicles.

The liability of the Insurer on losses caused by or arising out of theft from securely locked vehicles, and/or collision and/or overturning of conveying vehicles shall not exceed the Sub-limit shown in the Schedule against Property in Transit.

For the purposes of the Property Exclusion, the term 'temporary removal' means removal for a particular purpose, other than property insured out on hire, with the intention that the property be returned to the place from which it has been removed when that purpose has been served.

2. Money

(a) whilst being carried by professional Money carriers, professional carriers or common carriers which is insured by any person or entity other than the Insured except to the extent of any damage in excess of the amount of that insurance.

Provided that where in the ordinary course of business the Insured enters into an agreement with such carriers and such agreement provides that the Insured shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result of any event hereby insured against. This insurance shall operate as if this Property Exclusion 2(a) had been deleted.

(b) stolen from an unlocked and unattended vehicle.

(c) stolen from a safe or strongroom opened by a key or by use of details of a combination, either of which has been left at the Situation outside Business Hours, unless such key or combination details have been properly secured.

(d) where the loss is not discovered within fifteen (15) working days of the event.

- (e) where the loss arises out of:
- (i) kidnapping;
  - (ii) bomb threat;
  - (iii) hoax;
  - (iv) extortion  
or any attempt thereat.
3. jewellery, furs, bullion, precious metals or stones other than as stock and/or merchandise of the Business
  4. (a) any locomotive or rolling stock or watercraft other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder whilst any watercraft is on water.  
  
(b) any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.
  5. vehicles or trailers registered or licensed to travel on a public road, provided this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any Situation occupied or used by the Insured.
  6. livestock, animals, birds or fish (other than birds or fish used solely for decorative purposes and only in respect of loss arising from fire only).  
  
The liability of the Insurer shall not exceed the Sub-limit shown in the Schedule for Decorative Livestock.
  7. standing timber, growing crops and pastures.
  8. land, provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy.
  9. (a) bridges, canals, roadways (other than driveways, vehicle parking or manoeuvring areas and other paved areas at the Situation used or occupied by the Insured for the purposes of its business) and tunnels, dams and reservoirs (other than tanks) and their contents.  
  
(b) railway tracks (other than on the Situation occupied or used by the Insured for the purpose of its business insured).
  10. docks, wharves and piers not forming part of any building.
  11. mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy.
  12. property during the course of, and as a result of, its processing.
  13. (a) property included in a project of construction, erection, alteration or addition, including the partial dismantlement of existing structures, where the total contract value of all work to be carried out at any one situation during such activity exceeds 10% of the Limit of Liability or \$500,000, whichever is the lesser.  
  
Provided that this Exclusion 13(a) shall apply only to the works comprising such construction, erection, alteration or addition and not to any original or existing structures.  
  
(b) empty premises undergoing demolition.
  14. oil and gas drilling and/or production rigs whilst offshore.
  15. all Machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electro-mechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.  
  
Provided that Property Exclusion 15 shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded herein which results from any of the events referred to in this exclusion.  
  
For the purpose of Property Exclusion 15, Machinery means:  
any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.
  16. any boiler (other than a boiler used for domestic purposes) economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such loss or destruction or damage. The provisions of this exclusion shall not apply to Section 2 of this Policy.  
  
Provided that the Insurer will indemnify the Insured for any damage to the aforementioned items caused directly by any circumstances not excluded under Section 1 of this Policy, notwithstanding that these circumstances may in turn have been caused by any of the circumstances specified in this Property Exclusion 16.
  17. physical loss, destruction or damage to overhead transmission and distribution lines and their supporting structures of power-generating authorities or companies and telecommunications companies, but this exclusion shall not apply in respect of the aforementioned lines (and their supporting structures) that extend from the public highway to the insured premises and are the responsibility of the insured.

It is understood and agreed that public utilities extension and/or suppliers extension and/or contingent business interruption coverages are not subject to this exclusion, provided that these are not a part of transmitters' or distributors' policy.

### Perils Exclusions

The Insurer shall not be liable under Sections 1 and/or 2 in respect of:

1. damage to property insured:
  - (a) directly or indirectly occasioned by or happening through or connected with war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.
  - (b) resulting from confiscation, nationalisation, requisition or damage to property by or under the order of any Government or Public or Local Authority, unless such order involves the demolition of property deemed unsafe following damage by any peril not otherwise excluded by this Policy.

Notwithstanding the provisions of Perils Exclusion 1(b), the Insurer shall be liable for loss or destruction of or damage to and for the reasonable cost of removal of such property including damage resulting from such removal, in each case for the purpose of preventing or diminishing imminent damage by, or inhibiting the spread of, fire or any other cause not excluded under this Policy.

2. (a) damage to property insured.
- (b) any legal liability of whatsoever nature.

directly or indirectly caused by or contributed to by or arising from:

- (i) ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel.

For the purpose of this exclusion only, "combustion" shall include any self-sustaining process of nuclear fission.

- (ii) nuclear weapons materials

This Exclusion does not apply to any radiations emitted by spectrometers, X-ray units, diathermy machines, equipment for radio and television broadcasting, telecommunications equipment, radar installations or industrial and commercial appliances used for sealing plastics or for welding, heating, drying and cooking.

3. damage occasioned by or happening through:-
  - (a) Flood;
  - (b) water from or action by the sea, tidal wave or high water

Provided that Perils Exclusions 3(a) and 3(b) shall not apply if loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance.

4. damage occasioned by or happening through:
  - (a) moths, termites or other insects, vermin, rust or oxidation, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom);
  - (b) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good;
  - (c) error or omission in design, plan or specification or failure of design;
  - (d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration;
  - (e) faulty materials or faulty workmanship;
  - (f) or arising out of or relating to mould, mildew, fungus, spores or other microorganisms of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health;
  - (g) Pollution and Contamination.

Provided that this Exclusion shall not apply to subsequent loss, destruction of or damage to the property insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

5. damage occasioned by or happening through:
  - (a) incorrect siting of buildings consequent upon
    - (i) error in architectural design or specification,
    - (ii) faulty workmanship,
    - (iii) non-compliance by the Insured (or anyone acting on behalf of the Insured) with the necessary permits issued by Government, Public or Local Authorities.
  - (b) demolitions ordered by Government or Public or Local Authorities due to failure on the part of the Insured or their agents to obtain the necessary permits required.
6. damage occasioned by or happening through:
  - (a) unexplained or inventory shortage or disappearance resulting from clerical or accounting errors, shortage in the supply or delivery of materials to or from the Insured,
  - (b) (i) spontaneous combustion;
  - (ii) spontaneous fermentation or heating or any process involving the direct application of heat;

Provided that Perils Exclusions 6(b) (i) and 6(b) (ii) shall be limited to the item or items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation, heating or process involving the direct application of heat.

7. damage occasioned by or happening through:-

- (a) (i) fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting, data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means involving the property insured by the Insured or any employee(s) of the Insured acting alone or in collusion with any other person(s);

provided that this exclusion shall not apply to Burglary/Theft consequent upon forcible and violent entry upon Situation or felonious concealment upon Situation committed by an employee of the Insured.

- (ii) access by any person(s) other than the Insured or the Insured's employee(s) to the Insured's computer system via data communication media that terminate in the Insured's computer system;

provided that this exclusion shall not apply to Burglary/Theft consequent upon forcible and violent entry upon Situation or felonious concealment upon Situation committed by an employee of the Insured or theft of Money whilst in transit.

Provided further that the term 'dishonest acts', in relation to any of the Insured's employees, shall not be deemed to mean acts of arson or vandalism for the purposes of Perils Exclusion 7.

- (b) (i) the cessation of work whether total or partial,  
(ii) the cessation, interruption or retarding of any process or operation,

as a result of strikes, labour disturbances or locked out workers;

provided that Perils Exclusions 7(b) (i) and 7(b) (ii) shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons.

- (c) erosion, subsidence, earth movement or collapse resulting therefrom;

provided that this Exclusion 7(c) shall not apply if damage is caused by or arises out of an earthquake or seismological disturbance.

- (d) kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat.

provided that this exclusion shall not apply to loss caused by hold-up and/or Burglary/Theft or any attempt thereat.

Provided that this Exclusion 7(a) to (d) shall not apply to subsequent loss, destruction or damage to the property insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

8. any legal liability of whatsoever nature other than as herein provided.  
9. consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as herein provided in Section 2.  
10. damage to property insured happening through, Terrorism, except as otherwise provided in the Terrorism Insurance Act 2003, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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 organisation(s) or government(s), which from its nature or context is done for, or in connection with, 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 any act of terrorism.

- 11 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.

12. (a) Cyber Loss;  
(b) loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any Data, including any amount pertaining to the value of such Data;

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

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

This Exclusion supersedes and, if in conflict with any other wording in the Policy or any Endorsement having a bearing on Cyber Loss or Data, replaces that wording.

For the purposes of this Exclusion:

- (i) Cyber Loss means any loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident.
- (ii) Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.
- (iii) Cyber Incident means:
  - (A) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
  - (B) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.
- (iv) Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.
- (v) Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

13. loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto.

For the purposes of this Exclusion Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- (i) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not; and
- (ii) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- (iii) the disease, substance or agent can cause or threaten bodily injury, illness, damage to human health, human welfare or property.

## MEMORANDA APPLICABLE TO ALL SECTIONS

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

### Acquired Companies

This Policy extends to include:

1. property located in Australia belonging to companies and other organisations: a controlling interest in which is acquired by the Insured during the Period of Insurance;
2. property located in Australia for damage to which such companies or other organisations are legally responsible or for which they have assumed responsibility to insure prior to the occurrence of any damage; and
3. any loss suffered by any such companies or organisations which is the subject of indemnity under Section 2 of this Policy.

The Insured must, within one (1) month of acquisition, declare in writing to the Insurer:

- (a) the name of the company or other organisation and the nature of its business;
- (b) the nature and extent of the property to be insured;
- (c) the value of the indemnity provided, calculated in accordance with the relevant basis of settlement clauses;

and must pay any additional premium required and comply with any reasonable directions of the Insurer with respect to the security or safety of that property.

The business of the acquired company or other organisation must be similar to the Business stated in the Schedule.

For the purpose of this Memorandum, a controlling interest shall, in the case of a company, mean the acquisition of shares carrying more than 50% of votes capable of being cast at a general meeting of all shareholders in the company.

All such property shall be property insured for the purpose of the Adjustment of Premium Memorandum and the Insured shall make declarations with respect to it accordingly and with respect to the indemnity provided under Section 2.

### Adjustment of Premium

- (a) The premium shown is provisional and is calculated on the Declared Values of:-
  - (i) property insured,
  - (ii) Gross Profit and Insured Payroll,
 on the day of commencement of each Period of Insurance.
- (b) The Insured undertakes to declare to the Insurer within a reasonable time after the day of expiry of the Period of Insurance:

- (i) the value of property insured on the day of expiry of the Period of Insurance. For purpose of this declaration stock-in-trade and/or merchandise shall be taken at its average value during the Period of Insurance.
- (ii) the amount of the Gross Profit earned and Payroll paid, in accordance with the cover afforded in the respective items of Section 2, in the course of the Business during the accounting period of 12 months most nearly concurrent with the Period of Insurance.

The Insured shall also make such declarations to the Insurer under paragraph (b)(i) in respect of acquisitions of property insured, provided that no such declaration shall be required upon acquisition when the value of the acquisition does not exceed the amount, stated in the Schedule against 'Declarations of Acquired Property, of the Insured's total declaration of value under Section 1 as at the commencement of the Period of Insurance.

Notwithstanding the acceptance of a total variation in the Declared Values up to the percentage as stated in the Schedule, nothing here shall be construed as automatically noting or providing an increase in the Limit of Liability under this Policy.

- (c) The provisional premium shall be adjusted by payment to the Insurer of an additional premium or by allowance to the Insured of a return premium, as the case may be, calculated at the agreed rate on:
  - (i) Fifty (50) per cent of the difference between property declared in accordance with Clauses (a)(i) and (b)(i).
  - (ii) The full agreed rate hereunder on the difference between the amounts declared under (a)(ii) and (b)(ii).
- (d) It is agreed to make allowance for any abnormal fluctuation in values and to charge a premium commensurate with the risk, such premium to be agreed between the parties to this agreement.
- (e) The Declaration of Values at the expiry of the Period of Insurance declared in accordance with this memorandum shall not be reduced as the result of loss, destruction or damage in respect of which a claim has been paid or is payable under this Policy.
- (f) If any claim paid or payable under Section 1 and/or 2 of this Policy in respect of damage occurring during the Period of Insurance is reduced due to under-insurance in accordance with the provisions of a Co-insurance Memoranda, the Insurer shall waive any additional premium for that Period of Insurance, which would otherwise be payable in accordance with this memorandum.

### Automatic Reinstatement

Unless the Insured requests otherwise the Insurance under each section and/or item of this Policy and the Indemnity Period shall be automatically reinstated in the event of any loss in consideration of the payment by the Insured upon request by the Insurer of a pro-rata additional premium calculated on the amount of the loss

settlement at the rate(s) agreed for the Period of Insurance.

Any clause in this Policy which gives Automatic reinstatement shall not apply in respect of limits stated to be in the annual aggregate during any one period of insurance.

#### Event

Only for the purpose of the application of any deductible: all loss, destruction or damage resulting from earthquake, volcanic eruption, subterranean fire or atmospheric disturbance occurring during each period of 72 consecutive hours shall be considered as one event whether continuous or sporadic in its sweep and/or scope and whether the loss, destruction or damage was due to the same seismological or meteorological conditions. Each event shall be deemed to have commenced on the first happening of any such loss, destruction or damage, not within the period of any previous event.

#### Subrogation Waiver

The Insurer agrees to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:

- (a) any corporation or organisation (including their directors, officers, employees or servants) owned or controlled by any Insured named herein or subsidiary to any Insured named herein or any co-owner of the property insured hereunder;
- (b) any Insured named or described by this Policy (including its directors, officers, employees or servants).

## CONDITIONS APPLICABLE TO ALL SECTIONS

### Alteration

Subject to Section 54 of the Insurance Contracts Act 1984, the Insurer shall not be liable for loss, destruction of or damage to any property Insured hereunder caused or contributed to by any alteration after the commencement of this Policy:

- (a) by removal of such property from the Situation other than as provided under the terms of Property Exclusion 1;
- (b) in the trade or processes of manufacture carried on at the Situation or whereby the nature of the occupation or other circumstances affecting the Situation and/or the Insured's property therein contained shall be changed in such a way as to increase the risk of loss, destruction or damage;
- (c) whereby any Situation containing any property insured hereunder shall become unoccupied, and so remain for a period of more than thirty days; or
- (d) whereby the Insured's interest ceases except by will or the operation of law,

Provided that any such alteration, upon coming to the knowledge of the Insured's officer responsible for insurance, shall be immediately notified to the Insurer and, if agreed to by the Insurer in writing, an appropriate additional premium paid if required.

Provided further that paragraphs (a) and (b) of this Condition shall not apply if such alteration(s) are neither known to nor made by an officer of the Insured who is responsible for insurance.

### Breach of Conditions

Any breach of a condition without the knowledge or consent of the Insurance Officer of the Insured shall not prejudice or invalidate this insurance provided that due diligence is exercised at all times by the Insured.

Provided that the Insured's officer responsible for insurance shall, upon becoming aware of any such unintended and/or inadvertent act, error or omission, inform the Insurer as soon as reasonably practicable and that the Insured shall, upon request, pay any reasonable extra premium to the Insurer from the date of the increase in risk.

### Cancellation

- (a) This Policy may be cancelled at any time at the request of the Insured, in which case the Insurer will be entitled to a pro rata proportion of the premium, for the time this Policy has been in force.
- (b) The Insurer may also cancel this Policy by giving the Insured written notice to that effect in accordance with the provisions of the Insurance Contracts Act (Cth).
- (c) The Insurer notice of cancellation takes effect at the earlier of the following times:
  - (i) the time when another Policy of insurance between the Insured and the Insurer or some other Insurer, being a Policy that is intended by



the Insured to replace this Policy, is entered into; or

- (ii) 4.00 p.m. on the third business day after the day on which notice was given to the Insured.

In the event that the Insurer cancel(s) this Policy, the Insurer will repay to the Insured a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

Provided that in the event of cancellation by the Insured or the Insurer(s):

- (a) Pen Underwriting's administration fee is earned upon policy inception and is non-refundable.
- (b) where any loss, damage, liability or claim has been notified under this Policy, the Premium shall be deemed fully earned.

### Fraud

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the wilful act or with the connivance of the Insured, the Insurer, without prejudice to any other right(s) the Insurer might have under this Policy, shall be entitled to refuse to pay such claim.

### Headings

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

### Insured's Action after Theft or Damage

The Insured shall, upon becoming aware of any loss by theft or of any wilful or malicious damage which may give rise to a claim under this Policy, take all practicable steps to trace and recover any missing property and to discover by whom the property was stolen or damaged.

### Insurer Rights

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Policy the Insurer and every person authorised by the Insurer may, without thereby admitting any liability, and without diminishing the right of the Insurer to rely upon any Conditions of this Policy, enter, take or keep possession of any building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to the Insurer any of the property hereby insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

This condition shall be evidence of the leave and licence of the Insured to the Insurer so to do. If the Insured or any one acting on the Insured's behalf shall not comply with the requirements of the Insurer or shall hinder or obstruct the Insurer in doing any of the abovementioned acts, then all benefits under this Policy shall be forfeited. The Insured shall not in any case be entitled to abandon any property to the Insurer whether taken possession of by the Insurer or not.

### Misdescription and Non-Disclosure

If the Insured

- (i) failed to disclose any matter which the Insured was under a duty to disclose to the Insurer; or
- (ii) made a misrepresentation to the Insurer before this Policy was entered into

and if the Insurer would not have entered into this Policy for the same premium and on the same terms and Conditions expressed in this Policy but for the failure to disclose or the misrepresentation' then:

- (a) the liability of the Insurer in respect of any claim will be reduced to an amount to place the Insurer in the same position in which the Insurer would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
- (b) if the non-disclosure or misrepresentation was fraudulent, the Insurer may avoid this Policy.

Notwithstanding this provision, the Insured shall not be prejudiced by any unintended and/or inadvertent error, omission or misdescription of the risk, interest or property insured under the policy, failure to advise the Insurer of any change of risk, interest or property insured or failure to comply with any statutory requirement, provided that the Insured's officer responsible for insurance shall, upon becoming aware of any such unintended and/or inadvertent act, error or omission, inform the Insurer as soon as reasonably practicable and that the Insured shall, upon request, pay any reasonable extra premium to the Insurer from the date of the increase in risk.

On the discovery of any loss, destruction or damage, the Insured shall forthwith give notice thereof in writing to the Insurer and shall as soon as reasonably practicable deliver to the Insurer a claim in writing containing as particular an account as may be reasonably practicable of the items of property lost, destroyed or damaged and the amount of damage having regard to their value at the time this occurred and of the amount of any claim under Section 2 of this Policy, together with details of any other insurances which may apply to the claim.

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business to avoid or diminish the loss and shall also deliver to the Insurer a statement in writing of any claim certified by the Insured's auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

No claim under this Policy shall be payable unless the Insured has complied with the terms of this condition.

### Other Insurance

The Insured shall give written notice as soon as practicable to the Insurer of any other insurance or insurances effected covering the Property Insured.

### Observance of Terms and Conditions

The due observance and fulfilment of these Conditions and the other terms of this Policy by the Insured, insofar as the same are capable of being construed as such, are conditions precedent to any liability of the Insurer to make any payment under this Policy.

### Precautions to Prevent Loss

The Insured shall take all reasonable precautions to prevent loss, destruction or damage to the property insured by this Policy.

### Progress Payments

Provided that liability has been admitted progress payments on account of any claim shall be made to the Insured at such intervals and for such amounts as may be agreed upon production of a report by the Loss Adjuster (if appointed) provided such payment(s) shall be deducted from the amount finally determined upon adjustment of the claim.

### Reinstatement

If the Insurer elect(s) or become(s) bound to reinstate or replace any property, the Insured shall at the Insured's own expense produce and deliver to the Insurer all such plans, documents and information as the Insurer may reasonably require. The Insurer shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend more than the applicable Limit of Liability.

### Sprinkler Installations – Applicable to Owned Premises or Installation for which the Insured is responsible

The Insured warrants that in such of the Situations as are protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

The Insured further warrants that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS 1851 Part 3 Automatic Sprinkler Installation by the installing engineers or firm or, failing this, by a person or organisation who must be approved by the Insurer to carry out such maintenance.

Notice of all alterations and additions to the automatic sprinkler installation shall be given by the Insured to the Insurer as soon as reasonably practicable.

Where the sprinklered Situation is leased to a tenant and the lease provides that the tenant shall provide for maintenance of the installation, any failure so to do will not prejudice the rights of the Insured, provided that the Insured, upon becoming aware of the failure, shall either immediately provide for maintenance of the installation or immediately give notice in writing to the Insurer and on demand pay such reasonable additional premium as the Insurer may require.

Where the Insured or a tenant responsible to provide for maintenance of the installation enters into an agreement for maintenance with a contractor and such agreement provides in substance that the Insured or tenant shall indemnify and/or hold harmless and/or release from liability the contractor in respect of loss, destruction or damage which may occur as a result of any peril insured against by this Policy, the insurance hereby shall not be prejudiced by the Insured or the said tenant agreeing to such provision.

The Insured's officer responsible for insurance shall, upon becoming aware of such agreement, inform the Insurer as soon as reasonably practicable and a reasonable additional premium will be paid if required by the Insurer.

### Subrogation

- (a) Any person claiming under this Policy shall at the request and at the expense of the Insurer do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Insurer for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the Insurer shall be or would become entitled or subrogated upon the Insurer paying for or making good any destruction or damage under this Policy.
- (b) Recoveries, whether effected by the Insurer or the Insured, shall be applied, net of the expense of such recovery, first to the satisfaction of the Insured's loss in excess of the claim paid under this Policy (disregarding the amount of any Deductible applicable), secondly to the Insurer as reimbursement of the amount(s) paid in settlement

of the Insured's claim and thirdly to the Insured in satisfaction of any Deductible amount applicable. Recovery from reinsurance shall not be deemed a recovery for the purpose of this paragraph (b).

**Termination of Cover under Section 2**

If during the currency of this Policy the Insured:

- (a) permanently discontinues or ceases to carry on the Business or if the Insured's proprietary interest in the Business ceases otherwise than by death; or
- (b) (being a corporation) is placed in liquidation, provisional liquidation, under official management, under the control of a receiver and manager or if control over its assets is assumed by a receiver; or
- (c) (being a natural person) becomes bankrupt,

then the insurance under Section 2 shall cease unless its continuance is admitted in writing by the Insurer. Such termination of cover shall not apply if any of the events stated in clauses (a), (b) or (c) are caused by loss, Insured by Section 2 of this Policy, resulting from interruption of or interference with the Business in consequence of damage to property used by the Insured at the Situation.