



MIRAMAR STEADFAST CLIENT TRADING PLATFORM  
**INDUSTRIAL SPECIAL  
RISKS INSURANCE**  
POLICY WORDING

DATED 6 MAY 2019

## **ABOUT STEADFAST**

Steadfast Group Limited (“Steadfast”) is a public company. It includes a large network of insurance brokerages who operate in Australia as Steadfast Brokers. This Policy is available exclusively to You through a Steadfast broker.

Steadfast does not issue, guarantee or underwrite this Policy.

## **IMPORTANT INFORMATION ABOUT STEADFAST’S ADVICE**

Any advice Steadfast gives about this Policy does not take into account any of Your particular objectives, financial situation or needs. For this reason, before You act on Steadfast’s advice, You should consider the appropriateness of the advice taking into account Your own objectives, financial situation and needs.

Before You make any decisions about whether to acquire this Policy We recommend You should read this insurance Policy.

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# IMPORTANT INFORMATION

For the purposes of the Important Information section all references to:

“You” or “Your” have the same meaning as “Insured” as defined in the Definitions section of the Policy; “We”, “Us”, or “Our” have the same meaning as “Insurer(s)” as defined in the Definitions section of the Policy.

## ABOUT LLOYD’S

Lloyd’s underwriters are authorised by the Australian Prudential Regulation Authority (“APRA”) under the provisions of the *Insurance Act 1973* (Cth) to conduct insurance business in Australia.

Lloyd’s syndicates have approximately \$1 billion placed in trust in Australia, purely to act as an additional layer of security to pay claims. Lloyd’s is recognised by two leading independent international rating agencies, Standard & Poor’s and AM Best who rate Lloyd’s “A+” (Strong) and “A” (Excellent).

## GENERAL INSURANCE CODE OF PRACTICE

We proudly support the General Insurance Code of Practice (“the Code”). The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

For further information on the Code, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

## ABOUT MIRAMAR

Miramar Underwriting Agency Pty Ltd (ABN 97 111 534 797, AFSL 314176) (“Miramar”) acts under a binding authority given to it by Us, to administer and issue policies, alterations and renewals. In all aspects of arranging the Policy, Miramar acts as an agent for the Insurer(s) and not for You.

If You have any queries in relation to this Policy, contact Miramar in any of the following ways:

**Street Address:** Level 5, 97-99 Bathurst Street, Sydney NSW 2000

**Postal Address:** PO Box A2016, Sydney South NSW 1235

**Phone:** +61 2 9307 6600

**Fax:** +61 2 9307 6699

## OUR CONTRACT WITH YOU

This Policy is a contract of insurance between You and Us and contains all the details of the cover that We provide. The Policy consists of:

- this Policy wording which tells You what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the Proposal, which is the information You provide to Us when applying for insurance cover;
- Your most current Policy Schedule issued by Us. The Schedule is a separate document unique to You, which shows the insurance details relevant to You. It includes any changes, exclusions, terms and conditions made to suit Your individual circumstances and may amend the Policy. Please note, only those Cover Sections shown as covered in Your Schedule are insured;
- any Endorsement;
- any other document We tell You forms part of the Policy which may vary or modify the above documents.

These documents should be read together as they jointly form the contract of insurance between You and Us.

## DUTY OF DISCLOSURE

Before You enter into an insurance contract, You have a duty to tell Us anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms.

You have this duty until We agree to insure You.

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

You do not need to tell Us anything that:

- reduces the risk We insure You for; or
- is common knowledge; or
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

### If You do not tell Us something

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a claim, or both.

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

## PRIVACY STATEMENT

In this Privacy Statement the use of “We”, “Us” and “Our” means the Insurer(s) and Miramar unless specified otherwise.

The Privacy Statement set out below refers to Miramar’s Privacy Policy in dealing with Your information and processing of Your insurance Policy. This will differ from the privacy policy of Your broker as set out on their website.

We are committed to protecting Your privacy. We are bound by the obligations of the *Privacy Act 1988* (Cth). This sets out basic standards relating to the collection, use, storage and disclosure of personal information.

We need to collect, use and disclose Your personal information (which may include sensitive information) in order to consider Your application for insurance and to provide the cover You have chosen, administer the insurance and assess any claim. You can choose not to provide Us with some of the details or all of Your personal information, but this may affect Our ability to provide the cover, administer the insurance or assess a claim.

The primary purpose for Our collection and use of Your personal information is to enable Us to provide insurance services to You.

Personal information will be obtained from individuals directly where possible and practicable to do so. Sometimes it may be collected indirectly (e.g. from Your insurance intermediary or co-insureds). If You provide personal information for another person You represent to Us that:

- You have the authority from them to do so and it is as if they provided it to Us;
- You have made them aware that You will or may provide their personal information to Us, the types of third parties We may provide it to, the relevant purposes We and the third parties We disclose it to will use it for, and how they can access it. If it is sensitive information We rely on You to have obtained their consent on these matters. If You have not done or will not do either of these things, You must tell Us before You provide the relevant information.

We may disclose the personal information We collect to third parties who assist Us in providing the above services, such as related entities, distributors, agents, insurers, reinsurers and service providers. Some of these third parties may be located outside of Australia. In all instances where personal information may be disclosed to third parties who may be located overseas, We will take reasonable measures to ensure that



the overseas recipient holds and uses Your personal information in accordance with the consent provided by You and in accordance with Our obligations under the *Privacy Act 1988* (Cth).

In dealing with Us, You consent to Us using and disclosing Your personal information as set out in this Privacy Statement. This consent remains valid unless You alter or revoke it by giving written notice to Our designated Privacy Officer. However, should You choose to withdraw Your consent, We may not be able to provide insurance services to You.

Miramar's Privacy Policy which is available at [www.miramaruw.com.au](http://www.miramaruw.com.au) or by calling Miramar, sets out how:

- Miramar protects Your personal information;
- You may access Your personal information;
- You may correct Your personal information held by Us;
- You may complain about a breach of the *Privacy Act 1988* (Cth) or Australian Privacy Principles and how Miramar will deal with such a complaint.

If You would like additional information about privacy or would like to obtain a copy of the Privacy Policy, please contact Our designated Privacy Officer by:

**Postal Address:** PO Box A2016, Sydney South NSW 1235

**Phone:** +61 2 9307 6656

**Fax:** +61 2 9307 6699

**Email:** [privacyofficer@steadfastagencies.com.au](mailto:privacyofficer@steadfastagencies.com.au)

You can download a copy of Miramar's Privacy Policy by visiting [www.miramaruw.com.au](http://www.miramaruw.com.au)

## DISPUTE RESOLUTION PROCESS

Any enquiry or complaint relating to this insurance should be referred to Miramar in the first instance.

Please contact Miramar by:

**Postal Address:** PO Box A2016, Sydney South NSW 1235

**Phone:** +61 2 9307 6653

**Fax:** +61 2 9307 6699

**Email:** [servicefeedback@steadfastagencies.com.au](mailto:servicefeedback@steadfastagencies.com.au)

If Miramar require additional information, Miramar will contact You to discuss. If Your complaint is not immediately resolved Miramar will respond within fifteen business days of receipt of Your complaint or agree a reasonable appropriate timeframe to respond.

If this does not resolve the matter or You are not satisfied with the way a complaint has been dealt with, You should contact Lloyd's Australia Limited:

**Street Address:** Level 9, 1 O'Connell Street, Sydney NSW 2000

**Phone:** +61 2 8298 0783

**Fax:** +61 2 8298 0788

**Email:** [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

who will respond to Your complaint within fifteen (15) business days, unless an alternative timetable has been agreed with You.

If We are unable to resolve Your complaint within forty-five (45) business days of the date We first received Your complaint or if Your complaint has not been resolved to Your satisfaction, You can lodge Your complaint with the Australian Financial Complaints Authority ('AFCA') depending on eligibility related to Your Policy. AFCA provides fair and independent financial services complaint resolution that is free to consumers and small businesses. You can contact AFCA by:

**Post:** Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

**Phone:** 1800 931 678 (free call)

**Email:** [info@afca.org.au](mailto:info@afca.org.au)

**Website:** [www.afca.org.au](http://www.afca.org.au)

If Your complaint is not eligible for AFCA, it may be eligible for referral to the Financial Ombudsman Service Ltd (UK). Further details will be provided at the appropriate stage of the complaints process.

## **CO-INSURANCE**

A co-insurance (average) Memorandum applies to this Policy.

The effect of this Memorandum is that if at the time of loss the Declared Values is less than the full value of the property or income insured, then You may not be covered for Your full loss. It is Your responsibility to insure for full value at the time You take out this Policy, during the currency of the Policy and prior to renewal each year.

There are exemptions applying to this memorandum and these are specified throughout the Policy wording.

# POLICY WORDING

## DEFINITIONS

Some words have special meaning wherever they appear in the Policy, an Endorsement or any document attached to the Policy and are capitalised. These meanings are set out below:

### **ACT OF TERRORISM**

An act, including the use of force or violence or the threat of force or violence, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.

### **APPROVED VALUER**

A person registered with The Australian Property Institute as a certified practicing valuer.

### **BOILER AND/OR PRESURE VESSEL**

- (a) any boiler used for domestic purposes;
- (b) any other boiler, economiser or other pressure vessel which will include any pipes, valves and other apparatus forming part of these and in respect of which a certificate is required to be issued under the terms of any statute or regulation.

### **BOILER EXPLOSION**

The sudden and violent rending of the permanent structure of a Boiler by force of internal steam or fluid pressure or bodily displacement of any part of such structure together with force ejection of its contents. Except in the case of a steam test at a pressure not exceeding the maximum pressure permitted by the inspecting authority, the term explosion will not mean failure under any test.

### **BOILER COLLAPSE**

The sudden and dangerous distortion of any part of the permanent structure of a Boiler by bending or crushing caused by force of steam or fluid pressure whether attended by rupture or not. Except in the case of a steam test at a pressure not exceeding the maximum pressure permitted by the inspecting authority, the term collapse will not mean failure under any test.

### **BURGLARY**

Theft or attempted Theft by any person:

- (a) consequent upon forcible and violent entry to any enclosed building at the Premises or locked cabinets, counters or showcases in which Property Insured is located, including any attempt thereat;
- (b) concealed in an enclosed building at the Premises; or
- (c) threatening or committing physical violence against persons including armed hold-up at the Premises.

### **BUSINESS**

The business of the Insured as described in the Schedule.

### **BUSINESS HOURS**

The period during which the Insured's Premises are actually occupied for business purposes and during which the Insured or employees of the Insured are in the Premises.



## **COMPUTER VIRUS**

A set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer virus includes but is not limited to “Trojan Horses”, “worms” and “time or logic bombs”.

## **DAMAGE(D)**

Physical loss, destruction or damage to the Property Insured that causes the Property Insured to no longer be in its normal state or fit for its intended purpose or safe usage.

## **DEBRIS**

The residue of all property or other substances (other than landlord’s property if not Property Insured by this Policy), following Damage to Property Insured by a peril or event covered by this Policy including liquids or chemicals used in the extinguishment or suppression of Damage or in preventing imminent Damage to Property Insured by fire or any other peril covered by this Policy.

## **DECLARED VALUES**

The values for Insured Property [set out in the Schedule] as declared by the Insured as at the day of commencement of the Period of Cover.

## **DEDUCTIBLE**

The first amount of each claim which is payable by the Insured, as stated in the Schedule. Should more than one Deductible apply under this Policy for any claim or series of claims arising from the one original source or cause, those Deductibles will not be aggregated and the highest single Deductible only will apply. The Limits and Sub-Limits of Liability will apply in addition to, and will not be reduced by, the amount of any applicable Deductible.

## **ELECTRONIC DATA**

Any facts, concepts or information converted to a form usable for communications, displays, distribution or processing by electronic or electromechanical data processing or electronically controlled equipment which includes programs, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

## **ENDORSEMENT**

An individual endorsement that varies the terms and conditions of the Policy that the Insurer(s) give to the Insured. Each Endorsement forms part of the Policy.

## **FLOOD**

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

## **INDEMNITY VALUE**

Indemnity Value is the cost necessary to replace, repair or rebuild the Property Insured to a condition substantially the same as but not better or more extensive than its condition at the time that the Damage occurred taking into consideration age, condition and remaining useful life.

## **INSURED**

The person(s) or entities shown as the Insured in the Schedule.

## **INSURER(S)**

Certain Underwriters at Lloyd's.

## **LIMIT(S) OF LIABILITY/SUB-LIMIT(S) OF LIABILITY**

The limits, and sub-limits, of liability stated in the Schedule, as applicable.

## **MALICIOUS DAMAGE**

Intentional and wilful destruction of or damage to the Property Insured by any person or persons (other than the Insured), including persons engaged in Burglary, Theft or any attempted Burglary or Theft.

## **MONEY**

Money means current coin, bank notes, currency notes, cheques, travellers cheques, stored value cards, securities and negotiable instruments, credit card sales and/or discount house vouchers, postal orders, money orders, unused postage and revenue stamps and including the value of stamps contained in franking machines whilst contained in the Situation and whilst in transit to and from the Situation anywhere in Australia or New Zealand, 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 residence.

## **PERIOD OF COVER**

The Period of Cover stated in the Schedule.

## **POLICY**

This document, the Schedule, any Endorsement and any other document that the Insurer(s) tells the Insured forms part of the Policy which may vary or modify the other documents.

## **POLLUTION OR CONTAMINATION**

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 watercourse or body of water (including groundwater).

## **PREMISES**

The Premises owned by the Insured including buildings, land and outbuildings.

## **PROPERTY INSURED**

All tangible property both real and personal of every kind and description (except as specifically excluded by the Property Exclusions section of the Policy) belonging to the Insured or other property for which the Insured is responsible or has assumed responsibility to insure prior to the occurrence of any Damage.

For customers' goods not within the definition of Property Insured, where the Insured has elected to insure unspecified customers' goods, Property Insured includes customers' goods to the extent that they are not otherwise insured. The "Co-Insurance" Memorandum will not apply to this extension of cover. The Insurer(s) liability for payment will not exceed the Sub-Limit of Liability stated in the Schedule for "Unspecified Customers' Goods".

Unless specified otherwise, the term "personal property" includes Money.

**RESIDUAL VALUE**

In respect to leased machinery, plant or equipment, the minimum amount which the Insured, as lessee, has guaranteed that the leased property will realise, being the same amount which the Insured, as lessee, has agreed would be payable to acquire such property upon the retirement date(s) of the lease(s).

**SCHEDULE**

The most current Schedule document that We give to You that attaches to and forms part of the Policy.

**SECURITIES**

Certificates of stock, bonds, coupons and all other types of securities.

**SITUATION**

The location of the Premises stated in the Schedule.

**SUM INSURED**

The Sum Insured stated in the Schedule.

**THEFT**

The physical removal of property without the consent of the owner with the intention of permanently depriving the owner of the rightful possession of that property or its use.

**UNSPECIFIED DAMAGE**

Damage caused by any accidental peril or circumstance not more specifically covered or excluded by this Policy other than fire, lightning, thunderbolt, explosion including the exposure or collapse of Boilers and/or Pressure Vessels; implosion, collapse, earthquake, subterranean fire, volcanic eruption, impact by aircraft or other aerial devices or articles dropped from them, sonic boom, Theft, breakage of glass, loss of money, the acts of persons taking part in riots or civil commotions, of strikers, locked-out workers or persons taking part in labour disturbances, of other malicious persons (including those engaged in Theft or attempted Theft) or the acts of any lawfully constituted authority in connection with the foregoing acts or in connection with any conflagration or other catastrophe, storm or tempest or rainwater or wind or hail or Flood or water or other liquids or substances discharged, overflowing or leaking from apparatus, appliances, pipes or any other system at the Premises or elsewhere or any other peril mentioned under the heading "Sub-Limits of Liability" in the Schedule.

# 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 where following a peril or event not otherwise excluded by the Policy, the Property Insured is impacted and is no longer in its normal state or fit for its intended purpose or safe usage) not otherwise excluded happening during the Period of Cover at the Situation to the Property Insured described in Section 1, the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) liability, indemnify the Insured in accordance with the applicable Basis of Settlement.

Subject to the liability of the Insurer(s) not being increased beyond the Limit(s) of Liability already stated herein, the Insurer(s) will also indemnify the Insured the following additional costs and expenses necessarily and reasonably incurred for:

- (a) architects’, surveyors’, consulting engineers’, legal and other fees for building approval, project management and certification of the reinstatement, replacement or repair of Damaged Property Insured and clerks of works’ salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon Damage to Property Insured but not such costs or fees for preparing any claim.

The “Co-Insurance” Memorandum applies to amounts covered by this additional benefit.

- (b) 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). The Insurer(s) will not be liable for payment of any fines or penalties imposed by any such authorities;
- (c) any legal liability to make enquiries in connection with the reinstatement or replacement of Property Insured following the Damage;
- (d) representation at any judicial, coronial or other form of inquiry or hearing established by or at the direction of any government or local or planning authority as a direct result of the Damage to Property Insured. The most the Insurer(s) will pay under this additional benefit is the Sub-Limit of Liability stated in the Schedule for “Statutory Inquiries”;
- (e) the purpose of preventing imminent Damage or minimising Damage to Property Insured caused or threatened by fire at or in the vicinity of the Property Insured or by any other peril or event insured by this Policy, including fire brigade attendance fees associated with fire or a chemical emergency and the costs of making good Damage to gain access. The cover applies to action taken after Damage has commenced or been threatened;
- (f) making the Premises and/or surrounding areas safe following the Damage or protecting the Property Insured until its repair, replacement or sale as salvage;
- (g) the replenishment of fire-fighting appliances used to minimise the Damage to Property Insured, and any charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines;
- (h) switching off or re-setting alarms following the Damage;
- (i) travelling expenses to avert or minimise the loss or Damage including for the purposes of the protection of, safeguarding or recovery of Property Insured;
- (j) locating and exposing the source of gas, water or other liquid escaping, discharging, leaking or overflowing from fixed systems including tanks, pipes and other fixed apparatus and preventing imminent Damage or diminishing Damage to Property Insured including the costs and expenses of making good or reinstating Damage to other property necessarily incurred in locating the source of the problem.

The Insurer(s) will pay the cost of repairing or reinstating the fixed system, tanks or other apparatus but not the cost of repairing or reinstating any part found to have been installed incorrectly or which has failed due to age, gradual deterioration, corrosion or is unfit for its intended purpose.

- (k) the replacement of locks, keys or combinations where, if as a result of Theft or any attempted Theft of Property Insured, the keys or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated. The Insurer(s) will also pay the cost of opening safes or strong rooms as a result of Theft of keys or combinations;
- (l) the clearance of blocked pipes, drains, gutters, sewers, filters, pumping equipment and the like (including exploratory costs) resulting from the Damage;

The most the Insurer(s) will pay under this additional benefit is the Sub-Limit of Liability stated in the Schedule for "Cost of Clearing Blocked Drains, Pipes, Filters and Pumps";

- (m) taking inventory (including unpacking, repacking and restacking) to identify, quantify and value any property Damaged by any peril insured against by this Policy, including examination of property not belonging to but in the care, custody or control of the Insured;
- (n) express carriage rates and extra payments for overtime, night, Sunday or holiday working incurred in connection with the repair or reinstatement of the Property.

The most the Insurer(s) will pay under this additional benefit is the Sub-Limit of Liability stated in the Schedule for "Expediting Expenses".

- (o) customs, excise and other duties which the Insured becomes liable to pay in the event of Damage to Property Insured;
- (p) costs and expenses in respect of:
  - (i) the removal, storage or disposal of Debris or the demolition or dismantling consequent upon Damage to Property Insured;
  - (ii) the clean-up and restoration of the land at the Situation, notwithstanding Property Exclusion 10, where such costs are the responsibility of the Insured, including the cost of clean-up and removal of any material or substance classed as a pollutant or contaminant deposited as a direct result of a peril or event covered by this Policy causing Damage to Property Insured. This benefit will apply regardless of whether the Insured is proceeding pursuant to an order issued by the relevant environmental authority; and
  - (iii) the Insured's legal liability in respect of removal, storage or disposal of Debris, despite Perils Exclusion 11, at the Premises, roadways, services, railway or waterways of others, consequent upon Damage to the Property Insured by and the associated costs of cleaning. This additional benefit will not apply to any liability assumed by the Insured under an agreement entered into by the Insured unless such liability would have arisen in the absence of that agreement.

The most the Insurer(s) will pay under this additional benefit is the Sub-Limit of Liability stated in the Schedule for "Removal of Debris".

- (q) the shoring up, propping, underpinning or other temporary repairs consequent upon the Damage to Property Insured;
- (r) the demolition of or dismantling, removal or reinstatement of undamaged property belonging to the Insured, provided such demolition of or dismantling, removal and reinstatement is necessary for the purpose of the reinstatement or replacement of Property Insured following the Damage caused by a peril or event covered by this Policy;
- (s) legal liability under any Federal or State Award or Determination for loss or destruction of or Damage to employees' clothing and/or tools;
- (t) Damage to personal property, tools of trade and effects (excluding Money) belonging to directors and employees of the Insured and Damage to visitor's personal effects whilst located at the Situation.

The most the Insurer(s) will pay under this additional benefit is the Sub-Limit of Liability stated in the Schedule for "Personal Property of Employees and Others".

- (u) Damage occurring anywhere in the Commonwealth of Australia in the Period of Cover to personal property belonging to directors and employees of the Insured whilst they are engaged in the Business of the Insured away from the Premises or their place of residence to the extent that such property is not otherwise insured.

The Insurer(s) liability under this indemnity in respect of each person and in the aggregate for any one event will be limited to the amounts specified in the Schedule for "Accompanied Baggage in Australia".

Provided that only clause (a) shall be subject to any "Co-Insurance" clause or Memorandum contained in this Policy.

## Basis of Settlement

For the purpose of ascertaining the classification under which any property is insured, the Insurer(s) agree(s) to accept the designation applied to such property by the Insured in its records, provided that such property is not specifically excluded by this Policy.

The basis of settlement by property classification is set out below subject to the application of the "Co-Insurance" Memorandum. In determining the amount payable as the indemnity, the value of salvage shall be deducted before the application of co-insurance.

### **(a) 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 or Replacement" and "Extra Cost of Reinstatement" Memoranda as set out herein.

Provided that if the Insured elects to claim the Indemnity Value of any Damaged Property Insured, the Insurer(s) 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.

If the Insured elects to claim the Indemnity Value of any Damaged Property Insured, the most the Insurer(s) will pay for Indemnity Value is the proportion of the loss that the Declared Values of such property bears to eighty per cent (80%) of the actual value of such property at the commencement of the Period of Cover, or the Limit of Liability, whichever is higher.

Any amount recoverable under the "Extra Cost of Reinstatement" Memorandum will not be taken into account in determining the Insurer(s) proportion of the loss of such property.

For any textile awnings and blinds or any property in the open air, unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof, the most the Insurer(s) will pay is the Sub-Limit of Liability for "Weather damage to certain property in the open air" stated in the Schedule for any one loss or series of losses arising out of any peril or event covered this Policy.

### **(b) On raw materials, supplies and other merchandise not manufactured by the Insured:**

If such property is replaced, the replacement cost at the time and the place of replacement, provided that replacement is carried out with reasonable dispatch or, if such property is not replaced, the lesser of:

- the original cost to the Insured of such property; or
- the Indemnity Value.

If such property is obsolete, the amount paid by the Insurer(s) (whether or not such property is replaced), will be the lesser of:

- the original cost to the Insured of such property; or
- the Indemnity Value.



**(c) On material in process of manufacture:**

The replacement cost of the raw materials and the cost of labour and other manufacturing costs (including overheads based on the accounts of the Insured) expended at the time and the place of the Damage.

**(d) On finished goods manufactured by the Insured:**

The lesser of:

- the replacement cost of the raw materials and the cost of labour and other manufacturing costs (including overheads) expended before any allowance for profit, calculated at the time and place of the Damage; or
- the cost of re-stocking such goods within a reasonable time.

If such goods are obsolete, the amount paid by the Insurer(s) (whether or not such goods are replaced) will be the lesser of:

- the original cost to the Insured of such goods; or
- the Indemnity Value.

**(e) On goods sold but not delivered for which the Insured is responsible and, under the conditions of sale, the sale contract is by reason of the Damage, cancelled either wholly or to the extent of the Damage:**

The contract price.

**(f) On computer systems records, documents, manuscripts, deeds, specifications, plans, drawings, designs, business books and other records of every description:**

The cost of repairing, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to the Insured of the said information or, if repair, replacement, reproduction or restoration is not carried out with reasonable dispatch, the replacement cost of materials as blank stationary at the time and place of the Damage.

Computer systems records includes Electronic Data.

**(g) Securities:**

If, with the approval of the Insurer(s), the Securities can be replaced, the cost of replacement paid or payable by the Insured.

If the Securities cannot or are not to be replaced by the Insured, the greater of:

- the price for which the Insured purchased them; or
- the closing market value on the last business day prior to the date of discovery by the Insured of the Damage 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 Damage of the Securities.

In the case of a loss of subscription, conversion or redemption privileges as a result of the Damage of any Securities the value of such privileges immediately preceding their expiration. Such valuation being in the currency in which the loss was sustained.

Losses sustained in currencies other than Australian dollars will 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(s).

**(h) On patterns, models, moulds, jigs, templates, dies or lasts:**

The cost of repair or replacement (but only if repaired or replaced with reasonable urgency). Otherwise the value of such property to the Insured calculated at the time and place of the Damage up to the cost of replacement.

**(i) On glass:**

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

- temporary shuttering or hiring of security service pending replacement of broken glass;
- removing and re-fixing of window and show-case frames, locks, fittings, shop front tiling and replacing burglar alarm tapes, protective film, and heat reflecting material; and
- replacing signwriting or ornamentation on glass.

**(j) On works of art, antiques and curios, not forming part of the stock in trade or merchandise of the Business:**

- 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; or
- if restoration or repair is not possible, the market value immediately before the Damage.

The most the Insurer(s) will pay is the Sub-Limit of Liability stated in the Schedule for “Works of Art, Antiques and Curios”.

**(k) On machinery, plant and equipment leased on a Residual Value basis:**

On machinery, plant and equipment leased on a Residual Value basis; notwithstanding the first paragraph of Basis of Settlement (a), if the Residual Value exceeds the cost of replacement of such property with similar property in a condition equal to, but not better or more extensive than, its condition when new, Provisions (a), (c) and (d) of the “Reinstatement or Replacement” Memorandum and the Provisions of the “Extra Cost of Reinstatement” Memorandum will apply.

The Basis of Settlement will be the greater of, less any salvage value; of:

- the amount for which the Insured, as lessee, is contractually liable to the lessor, but not exceeding the sum represented by rent payable under such lease(s) for the period commencing on the date of Damage and ending on the retirement date(s) of such lease(s); and
- the current market value of the property immediately before its Damage or the Residual Value.

For the purposes of this clause, a Damaged item of machinery, plant or equipment will be deemed a constructive total loss when the cost necessary to repair that item exceeds the cost necessary to replace it with a similar property in a condition equal to, but not better or more extensive, than its condition when new.

**(l) On empty Premises awaiting demolition:**

The salvage value of the building materials or landlord’s fixtures and fittings, net of demolition costs.

# 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 property is carried out at another site, the abandoned undamaged portion of such building, including foundations and services, will be deemed to have been Damaged.

If the presence of such abandoned, undamaged portion of the property increases the sale value of the original site, the increase in sale value will be regarded as forming part of the salvage value and this amount will be payable to the Insurer(s) by the Insured upon completion of any sale of the site or otherwise will be deducted from the total amount otherwise payable by the Insurer(s) under this Policy.

The most the Insurer(s) will pay is the Sub-Limit of Liability stated in the Schedule for “Abandoned Undamaged Portion of a Building” for any one loss or series of losses arising out of any one event or occurrence.

Any differences between the parties about the amount of any increase in site value, will be referred to the decision of two registered valuers (each party to appoint one valuer). In the event the two registered valuers do not agree, the parties will be required to submit to mediation to resolve their differences assisted by the services of a third valuer, appointed as mediator by the President of the Australian Institute of Valuers.

## **Branded goods**

Any salvage of any branded goods covered by this Policy will not be disposed of by sale without the consent of the Insured. If such salvage is not disposed of by sale, then the value of the salvage will be the market value of the goods after brands, labels or names have been removed by or on behalf of the Insured.

## **Co-Insurance**

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 Cover and, in relation to any Property Insured acquired after the commencement of the Period of Cover, 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 Cover of the value of all Property Insured at the Situation to which the Damaged item or items belong bears to eighty per cent (80%) of the value of all such property as at the time of commencement of the Period of Cover calculated in accordance with the appropriate Basis of Settlement clauses.

This Memorandum shall not apply if the amount of the Damage does not exceed ten per cent (10%) of the amount of the Insured's declaration of value for that Situation.

The “Co-Insurance” Memorandum shall not apply to any claim for Burglary, Theft, Money, Glass, or Unspecified Customers' Goods for which Sub-Limits of Liability are stated in the Schedule.

For the purposes of the application of this Memorandum, the Insured's Declared Values at any Situation shall not include any allowance for “Extra Cost of Reinstatement” Memorandum or for the costs and expenses referred to in the additional cover provided in clauses (b) to (n).

Provided further that this Memorandum is deleted for property forming part of the Property Insured, which has been insured under this Policy for the full value stated in a Valuation prepared by an Approved Valuer not less than three years before the commencement of the Period of Cover, and which an Approved Valuer has updated not more than twelve months prior to the commencement of the Period of Cover.

## **Constructive Total Loss**

There will be deemed to be a constructive total loss of Property Insured if it is reasonably abandoned:

- (a) because its actual total loss seems unavoidable; or
- (b) because it could not be preserved from actual total loss without an expenditure which would exceed its repaired or recovered value.

“Actual total loss” in this condition shall mean loss, destruction or damage (and is not limited to physical loss, destruction or damage) of or to the Property Insured.

If the Insurer(s) elect(s) not to take possession of any Property Insured deemed to be a constructive total loss, the Insured will retain responsibility for such property.

## **Declared Values**

The Declared Values at each Situation (in accordance with the applicable Basis of Settlement) will represent the estimated cost of reinstatement of the property covered by this Policy on the day of the commencement of the Period of Cover.

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 will be taken into account when applying the “Co-Insurance” Memorandum.

Declared values shall not include any allowance for “Extra Cost of Reinstatement” Memorandum nor any of the costs and expenses referred to under any of the clauses, except clause (g), of “The Indemnity”.

## **Depreciation of Undamaged Stocks**

For undamaged goods in storage, notwithstanding anything contained in this Policy to the contrary, in particular Property Exclusion 16 and Perils Exclusion 12, the Insurer(s) will indemnify to the Insured for any further loss or Damage resulting from the deterioration of such goods in consequence of the Insured’s inability to process them in the normal way due to the Damage caused by any peril or event covered by this Policy to any property used by the Insured.

The Insurer(s) will not pay for more than the value of the goods in storage.

## **Extra Cost of Reinstatement**

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

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of 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; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limits of Liability of this Policy.

## **Provisions**

- (a) The work of reinstatement (which may be carried out wholly or partially upon any other site(s), subject to the liability of the Insurer(s) not being increased), must be commenced and carried out with reasonable dispatch, failing which the Insurer(s) will not be liable to make any payment beyond the amount which would have been payable under this Policy as if this condition did not exist.
- (b) The amount recoverable will 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 with prior to the happening of the Damage.
- (c) 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.

## **Floor Space Ratio Index (Plot Ratio)**

If any building(s) being Property Insured are Damaged by an event covered by this Policy and, as a result of the exercise of statutory powers 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(s) agree(s) to pay, subject to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy, in addition to any amount payable on reinstatement of 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, the "Extra Cost of Reinstatement" Memorandum will apply to the costs of demolition or dismantling of the Property Insured necessarily incurred to comply with the requirements of any Act of parliament or regulation made under such legislation or any by-law or regulation of any municipal or other statutory authority.

Any payment made for the difference between (a) and (b) above will 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).

## **Interests of Other Parties**

The insurable interest of only those lessors, financiers, trustees, mortgagees, owners and all other parties specifically noted in the records of the Insured will 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 will, immediately on becoming aware of any act or neglect whereby the risk of Damage has increased, give notice in writing to the Insurer(s) and on demand pay such reasonable additional premium as the Insurer(s) may require.

## **Landscaping**

Despite any term or provision of the Policy including Property Exclusions 7 and 9, cover is extended to include the cost of reinstating Damage to landscaping (which means lawns, gardens, plants, shrubs, trees, paths, garden edges, rockwork, ornamentation, and the like).

The most the Insurer(s) will pay under this Memorandum is the Sub-Limit of Liability stated in the Schedule for "Landscaping" for any one loss or series of losses arising out of any one event or occurrence.

## **Loss of Land Value**

Despite Perils Exclusion 12 and Property Exclusion 9:

- (a) in the event of the absolute refusal by the competent local or government authority to allow the reconstruction of the Premises after Damage, the Insurer(s) will pay by way of indemnity the difference between the Land Value before the Damage to property at the Situation and the Land Value after the Damage; or
- (b) in the event of the competent local or government authority allowing only partial reconstruction of the Premises after Damage to property at the Situation, the Insurer(s) will pay by way of indemnity the difference between the Land Value after that reconstruction and the Land Value before the Damage.

The amount payable will be reduced by any sum paid by way of compensation by such authority arising out of the action referred to in (a) or (b) above.

For the purposes of this Memorandum, Land Value will be the true value of the land at the Situation. To determine the Land Value the Insurer(s) will have reference to the sum certified by the Valuer General, and other variation or circumstances affecting value either before or after the Damage.



The most the Insurer(s) will pay under this Memorandum is the Sub-Limit of Liability stated in the Schedule for "Loss of Land Value" for any one loss or series of losses arising out of any one event or occurrence at any one location.

### **Special Conditions**

- (a) Settlement of the claim will 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 will be refunded to the Insurer(s).
- (b) Any differences under this Special Condition relating to Land Values will be referred to the decision of two registered valuers (each party to appoint one valuer). In the event the two registered valuers do not agree, the parties will be required to submit to mediation to resolve their differences assisted by the services of a third valuer, appointed as mediator by the President of the Australian Institute of Valuers.

### **Metered Water**

The Insurer(s) will indemnify the Insured for the additional costs chargeable to the Insured by a water authority or company, or by a landlord as outgoings under a rental agreement, for consumption of metered water at the Premises arising following:

- (a) Damage to Property Insured by a peril not otherwise excluded; or
- (b) Theft or attempted Theft of property owned or used by the Insured in the operations of the Business.

Where the property stolen is owned by the Insured, the value thereof must be included in the Insured's declaration of Property Insured by this Policy.

The most the Insurer(s) will pay under this Memorandum is the Sub-Limit of Liability stated in the Schedule for "Metered Water".

### **Notable Old Buildings Without Legal Protection**

In the case of a building with architectural features or structural materials possessing an ornamental or historical character or for which the original materials are not available, which is not legally protected for preservation by national, state or local legislation or regulation, the first paragraph of Basis of Settlement clause (a) will be deemed to be amended as follows:

- (a) if the building is Damaged, the cost necessary to repair the Damage and restore the Damaged portion to a condition substantially the same as, but not better or more extensive than its condition when new, but not exceeding the cost of the rebuilding thereof to a condition equal to but not better or more extensive than its condition when new;
- (b) if the cost of repairing the Damage and restoring the Damaged portion exceeds the said cost of rebuilding, the building may, at the Insured's option, be deemed to be destroyed;
- (c) if the building is destroyed, the cost necessary to replace the building with one that is no more expensive but of equivalent or improved utility, using current design techniques and modern materials.

### **Output Replacement**

Notwithstanding anything contained to the contrary in the "Reinstatement or Replacement" Memorandum (see below), any property that has a measurable output and which is capable of replacement with a new item or items that perform a similar function will be valued for insurance purposes as follows and values for the settlement of any Damage in respect thereof will be on the same basis:

- (a) if Damaged property is to be replaced by an item or items that have the same or a lesser total output, then the insurable value thereof is the new installed cost of such replacement item or items as would give the same total output as the Damaged property;



- (b) if Damaged property is to be replaced by an item or items that have a greater total output and the new installed cost of such replacement property is no greater than the replacement value of the Damaged property then no deductions will be made from any claim for the improved output;
- (c) if the Damaged property is to be replaced by an item or items that have a greater total output and the new installed cost of such replacement property is greater than the replacement value of the Damaged property, then its insurable value is the greater of:
  - (i) the cost of replacement with similar property in a condition equal to but not better or more extensive than its condition when new; and
  - (ii) that proportion of the new installed cost that the output of the Damaged property bears to the output of the replacement item or items.

The difference between the insurable value so calculated and the new installed cost of the replacement item or items will be borne by the Insured.

No payment beyond the value of the Damaged property at the time the Damage occurs will be made until a sum equal to the value for settlement determined according to clauses (a), (b) and/or (c) above have been actually incurred.

In the event of partial Damage, where property is to be repaired, the Insurer(s) will pay the cost of restoration of the Damaged property to a condition substantially the same but not better nor more extensive than its condition when new and the liability of the Insurer(s) will not exceed the sum representing the cost that the Insurer(s) could have been called upon to pay if such property had been wholly Damaged.

### **Reinstatement or Replacement**

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

The basis upon which the amount payable is to be calculated will 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.

For the purpose of the insurance under this Memorandum, "reinstatement" will 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**

- (a) The work of rebuilding, replacing, repairing or restoring (which, at the option of the Insured, may be carried out wholly or partially upon any other site(s) and in any manner suitable to the requirements of the Insured, but subject to the liability of the Insurer(s) not being thereby increased) must be commenced and carried out with reasonable dispatch, failing which the Insurer(s) will 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 or assume any increased liability under Section 2 of the Policy.
- (b) When any Property Insured to which this condition applies is Damaged in part only, the liability of the Insurer(s) will not exceed the sum representing the cost which the Insurer(s) could have been called upon to pay for reinstatement if such property had been wholly destroyed.

- (c) No payment beyond the amount that would have been payable under this Policy if this condition had not been incorporated will be made until a sum equal to the cost of reinstatement has been actually incurred.

Where the Insured reinstates or replaces any lost or destroyed property at a cost that is less than the cost of reinstatement (as defined above) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred will be deemed to be the cost of reinstatement.

- (d) 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(s) will pay the lesser of:
- (i) the cost of the dissimilar property; or
  - (ii) 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.
- (e) The Insured will not be bound to reinstate any destroyed building but may, at its option, purchase an existing building or buildings to replace the destroyed building, limited to the cost that would have been incurred if the destroyed building had been reinstated in accordance with clause (a) of the definition of "reinstatement" including the "Extra Cost of Reinstatement" Memorandum which would have been payable under the Policy in respect in such reinstatement.
- (f) Where any lost or destroyed property is replaced by property that is better or more extensive than its condition when new, the Insurer(s) will pay to the Insured the cost that would have been incurred if the lost or destroyed property had been reinstated in accordance with the provisions of clause (a) of the definition of "reinstatement" including the amount payable under the Policy for the "Extra Cost of Reinstatement" Memorandum associated with the reinstatement of the original structure. The Insured will bear the balance of the cost of such better or more extensive property.

### **Reinstatement of Damage by the Insured**

If the Insured will, after obtaining the consent of the Insurer(s), reinstate Damaged Property Insured, the Insurer(s) payment for such reinstatement will include the value of labour and other overhead charges expended together with a reasonable margin for profit. The liability of the Insurer(s) will not exceed the amount that would otherwise have been payable had such reinstatement been carried out by outside contractors.

### **Theft of Property in the Open Air**

Perils Exclusion 9(a) is varied to indemnify the Insured for losses arising from Theft or attempted Theft of property in the open air up to the Sub-Limit of Liability stated in the Schedule for "Theft of Property in Open Air".

This extension of cover will only apply to such property within the boundaries of the Premises.

### **Undamaged Ancillary or Peripheral Equipment**

If plant and/or machinery is Damaged and its ancillary or peripheral equipment is not Damaged but, upon replacement of the Damaged plant or machinery, the ancillary or peripheral equipment is rendered superfluous, such equipment will be deemed to be Damaged.

The salvage value will be payable to the Insurer(s) by the Insured upon completion of any sale, or will be deducted from the total amount otherwise payable by the Insurer(s) under the Policy, whichever occurs later.

### **Weather Damage to Certain Property in the Open Air**

The Policy is extended to include Damage by wind, rainwater or hail to certain types of Property Insured (as set out below) otherwise excluded by Property Exclusions 13 and 14.

The most the Insurer(s) will pay for this type of property is the Sub-Limit of Liability stated in the Schedule for “Weather damage to certain property in the open air” for any one loss or series of losses arising out of any one event or occurrence at any one Situation.

This condition only applies to the following types of property:

- (a) gates, fences, retaining walls, textile awnings and blinds; and
- (b) property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof.

## SECTION 2: BUSINESS INTERRUPTION

### Definitions applicable to Section 2

The definitions set out below apply to Section 2 only. Other Policy definitions also apply.

#### **ANNUAL TURNOVER**

The Turnover during the twelve months immediately before the date of the Damage.

For Damage occurring in the first twelve months of operation of the Business, see the “New Business” Memorandum.

#### **CONSOLIDATED PERIOD**

The sum of the number of weeks specified in the Schedule produced by dividing the combined declared values under clauses (a)(i) and (a)(ii) of Item No. 3 by the declared value amount based on one hundred per cent (100%) of the declared value applicable for one week under clause (a)(i). If no sum appears, the Consolidated Period shall be produced as determined within this definition.

#### **GROSS PROFIT**

The amount by which the sum of the Turnover and the amount of the closing stock and work in progress will exceed the sum of the amount of the opening stock and work in progress and the items(s) or amount(s) as set out in the Schedule for “Uninsured Working Expenses”.

**Note:** The amounts of the opening and closing stocks and work in progress will be arrived at in accordance with the Insured’s normal accountancy methods (due provision being made for depreciation).

#### **INDEMNITY PERIOD**

The period beginning with the occurrence of the Damage and ending not later than the number of months specified in the Schedule during which the results of the Business will be affected in consequence of the Damage.

#### **INSURED PAYROLL**

The Declared Value of estimated Payroll in respect of the Consolidated Period, declarable as at the day of commencement of the Period of Cover.

#### **PAYROL**

The remuneration paid to all employees of the Insured (including but not limited to holiday pay, sick pay, long service leave pay and bonus) plus payments for payroll tax, fringe benefits tax, superannuation and pension fund contributions, workers compensation insurance premiums, accident compensation levies and the like.

#### **RATE OF GROSS PROFIT**

The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the Damage.

For Damage occurring in the first twelve months of operation of the Business, see the “New Business” Memorandum.

#### **RATE OF PAYROLL**

The rate of Payroll to Turnover during the financial year immediately before the date of the Damage.

For Damage occurring in the first twelve months of operation of the Business, see the “New Business” Memorandum.

#### **SHORTAGE IN TURNOVER**

The amount by which the Turnover during a period will, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period.

## STANDARD TURNOVER

The Turnover during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.

For Damage occurring in the first twelve months of operation of the Business, see the “New Business” Memorandum.

## TURNOVER

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 Premises including 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.

## Adjustments Clause

Adjustments will be made to the 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 adjusted will 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.

## The Indemnity

The Insurer(s) will pay the Insured in accordance with the applicable Basis of Settlement, subject to the Limit(s) and Sub-Limit(s) of Liability stated in the Schedule, for loss resulting from the interruption of or interference with the Business, caused by Damage (not otherwise excluded) covered by Section 1 happening in the Period of Cover to:

- (a) any building or any other property or any part of it used by the Insured at the Premises for the purpose of the Business;
- (b) any property belonging to the Insured or property for which the Insured is responsible, while such property is at any storage premises within Australia or at any situation in Australia where the Insured is undertaking work or has any process or work carried out by others;
- (c) land based premises or property in Australia or New Zealand of any company or authority producing, supplying, providing or delivering electricity, gas, water, sewerage or communication services to:
  - (i) the Insured's Business; or
  - (ii) the Insured's direct suppliers and/or direct customers or the direct supplier of commodities, materials, components, goods or services to any of those parties;
- (d) computer installations, including ancillary equipment and data processing media utilized by the Insured anywhere in Australia;
- (e) property in the vicinity of the Premises which will prevent or hinder the use of or access to the Premises whether the Premises or any property of the Insured will be Damaged or not;
- (f) property in any complex of which the Premises forms part or in which the Premises are contained which prevents or hinders the use of or access to the Premises, which results in a cessation or diminution of trade of the Business due to temporary falling away of potential custom, whether the Premises or property of the Insured will be Damaged or not;
- (g) roads, bridges and railway lines infrastructure on which the Business depends for the conveyance of goods, property or potential customers to and from the Premises. Property Exclusions 10 and 11 do not apply to this clause (g).

- (h) property at the premises, anywhere in Australia or New Zealand, of any direct supplier or direct customer of the Insured; or property at the premises of their direct supplier(s) or direct customer(s).

However, this cover does not apply to any claim caused by, arising from or in any way connected with a Natural Disaster (defined below) to any Situations that are located within the New Zealand regions of Wellington, Canterbury or Marlborough.

For the purposes of this clause (h), the term "Natural Disaster" refers to earthquake, hydrothermal and geothermal activity, natural landslip, subterranean fire, volcanic eruption, tsunami and fires resulting from these perils.

The most the Insurer(s) will pay for loss under this clause, in respect of any one loss or series of losses arising out of any one event or occurrence at any one premises, is the Sub-Limit of Liability stated in the Schedule for "Unspecified Suppliers' and/or Customers' Premises".

For the purposes of this clause, the premises of a direct supplier is any premises, other than those described in Section 2 "The Indemnity" clause (c) at which any of the goods or services used directly by the Insured are produced, assembled or stored.

- (i) registered vehicles or trailers whilst such vehicles or trailers are at the Premises (but not a road used by the public). Property Exclusion 6 does not apply to this clause (i).

The Insurer(s) will not be liable for any loss under this Section 2 unless:

- (i) the Damaged property is insured against such Damage (other than loss arising out of Damage by the explosion, implosion, rupture, collapse, bursting, cracking or overheating of any boiler used for domestic purposes 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) and the insurer(s) of such property are liable to cover such Damage (or would be other than because of the application of a Deductible); and
- (ii) in the case of non-owned property which suffers Damage, that Damage occurred in circumstances in which indemnity would apply if that property was insured under Section 1 (or would be other than because of the application of a Deductible).

## Basis of Settlement

The Basis of Settlement that applies to the Insured will be limited to those items set out in the Schedule.

### Item No. 1 - Loss of 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 will be:

- (a) *In respect of reduction in Turnover:*

The sum produced by applying the actual Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period will, in consequence of the Damage, fall short of the Standard Turnover; or

- (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.



If the Declared Value of Gross Profit 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 Cover, the amount payable will be proportionately reduced.

However, this provision will not apply:

- (a) if the amount of the loss does not exceed ten per cent (10%) of the Insured's Declared Value of Gross Profit on the day of commencement of the Period of Cover; or
- (b) if the Gross Profit (after the application of the "Adjustments Clause") which the Business would have earned in the Indemnity Period had the Damage not occurred is less than eighty per cent (80%) of the Insured's Declared Value of Gross Profit (appropriately increased if the Indemnity Period exceeds twelve months at the commencement of the Period of Cover); or
- (c) where the Insured's declaration of Gross Profit at the commencement of the Period of Cover has been stated in a valuation prepared by LMI Group, MSM Loss Management, Martin Minett Claims Preparation or another qualified professional agreed to by both the Insurer(s) and the Insured.

### **Item No. 2 – (Additional) Increased Cost of Working**

The insurance under this item is limited to increase in Cost of Working (not otherwise recoverable) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction in Turnover or resuming or maintaining normal business operations or services.

### **Item No. 3 – Payroll**

When Payroll is not insured under Gross Profit, the insurance under this item is limited to loss in respect of Payroll and the amount payable as indemnity will 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 set out 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) will 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 No. 1 as exceeds the amount payable thereunder, but not more than the additional amount which would have been payable in respect of Shortage in Turnover under the provisions of clauses (a)(i) and (a)(ii) of this item had such expenditure not been incurred.

If the Insured Payroll declared at the commencement of the Period of Cover is less than eighty per cent (80%) of the amount produced by applying the "Payroll Limits" set out in the Schedule to the amount produced by applying the Rate of Payroll to the Annual Turnover (or its appropriately increased multiple 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 Cover, the amount payable will be proportionately reduced.

This provision will not apply:

- (a) if the amount of the loss does not exceed ten per cent (10%) of the of Insured Payroll declared at the commencement of the Period of Cover; or
- (b) if the value of Insured "Payroll Limits" (after the application of the "Adjustments Clause") in the Indemnity Period is less than eighty per cent (80%) of the Insured's declaration of Payroll at the commencement of the Period of Cover declared Insured Payroll; or
- (c) where the Insured's declaration of Payroll Limits at the commencement of the Period of Cover has been stated in a valuation prepared by LMI Group, MSM Loss Management, Martin Minett Claims Preparation or another qualified professional as agreed between the Insured and the Insurer(s).

#### **Item No. 4 – Claim Preparation Fees**

This item covers 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 preparation of claims under the Policy and the Insurer(s) will indemnify the Insured for such reasonable fees and expenses.

#### **Item No. 5 – Additional Severance pay**

This item covers further additional expenditure beyond that recoverable under Item No. 1 or Item No. 3 of Section 2 of this Policy as the Insured is obligated or has agreed to pay under industrial awards, determinations, decisions or agreements for severance pay or in lieu of notice to employees whose services are terminated during the Indemnity Period in consequence of the Damage.

#### **Item No. 6 – Rent Receivable**

This item is limited to the loss of rent receivable which includes amounts payable by the tenant as outgoings in accordance with the rental agreement or payable by the tenant for services rendered.

The amount payable will be the amount by which rent (including amounts payable as outgoings or for services rendered) received or payable during the Indemnity Period falls short of the amount which it may be reasonably estimated would have been received or paid 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. 7 – Contractual Damages**

This item covers fines or damages for breach of contract.

The amount payable will be such sum or sums as the Insured will be legally liable to pay in discharge of fines or damages incurred in consequence of the non-completion or late completion of orders, the inability to meet contract specifications or cancellation of orders.

The most the Insurer(s) will pay under this item is the Sub-Limit of Liability stated in the Schedule for "Contractual Damages" for any one loss or series of losses arising out of any one event or occurrence.

## Item No. 8 – Accounts Receivables

This item covers the loss sustained by the Insured in respect of all outstanding debit balances if the Insured is unable to effect collection as a direct result of Damage to records of accounts receivable. The Insurer(s) will also pay:

- (a) 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;
- (b) interest lost by the Insured in consequence of such impaired collections;
- (c) additional expenditure necessarily and reasonably incurred in tracing and establishing the amounts of accounts receivable; and
- (d) collection expenses in excess of normal collection costs, incurred in consequence of the Damage.

Where there is proof that a loss covered by the Policy has occurred, but the Insured cannot accurately establish the total amount of accounts receivable outstanding at the date of Damage, such amount will be calculated 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 clause (a), increased or decreased by the percentage calculated in accordance with clause (b) will be deemed to be the total amount of accounts receivable outstanding at the time and date of the Damage.
- (d) The amount determined under clause (c) will 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 will 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.

The most the Insurer(s) will pay under this item is the Sub-Limit of Liability stated in the Schedule for "Accounts Receivable".

## MEMORANDA TO SECTION 2

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

### **Accumulated Stocks**

In adjusting any loss, account will be taken and equitable allowance made if any Shortage in Turnover due to the Damage is postponed by reason of the Turnover being temporarily maintained from accumulated stocks.

### **Books of Account**

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(s) for the purpose of investigating or verifying any claim may be produced and certified by the Insured's auditors and their certificate will be prima facie evidence of the particulars and details to which such certificate relates.

The words and expressions used in this Section 2 have the meanings usually attached to them in the books and accounts of the Insured unless otherwise defined in this Policy.

### **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 Items No. 1 and 3 will apply separately to each department or unit affected by the Damage.

### **Infectious or Contagious Disease; Vermin, Pests or Defective Sanitary Arrangements; Food or Drink Poisoning; Murder, Suicide**

Loss as insured by this Policy resulting from interruption of or interference with the Business directly or indirectly arising from closure or evacuation of the whole or part of the Premises by order of a competent public authority consequent upon:

- (a) human infectious or contagious disease manifested by any person whilst at the Premises;
- (b) the outbreak of a notifiable human infectious or contagious disease in humans occurring within the immediate vicinity of the Premises;
- (c) vermin or pests or defects in the drains or other sanitary arrangements at the Premises;
- (d) poisoning directly caused by the consumption of food or drink provided on or from the Premises; or
- (e) murder or suicide occurring in or at the Premises;

will be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

However, clauses (a) and (b) will not indemnify loss resulting from interruption of or interference with the Business directly or indirectly arising from or in connection with highly Pathogenic Avian Influenza in Humans or any other diseases declared to be a quarantinable disease under the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Cth) and subsequent amendments.

Indemnity under this Memorandum will not exceed the Sub-Limit of Liability stated in the Schedule for "Infectious or Contagious Diseases; Vermin, Pests or Defective Sanitary Arrangements; Food or Drink Poisoning; Murder, Suicide" per event and in the annual aggregate expressed in the Schedule.

### **Interdependency - Australia**

Any loss resulting from the interruption of or interference with the Business in consequence of Damage to property not insured by Section 1 of the Policy and situated at any other premises in Australia owned or occupied by the Insured for the purpose of the Business will be deemed to be resulting from Damage to property used by the Insured at the Premises.

The most the Insurer(s) will pay under this Memorandum is the Sub-Limit of Liability stated in the Schedule for "Interdependency" for any one loss or series of losses arising out of any one event or occurrence.

### **Isolation by landslide or Flood**

Notwithstanding Property Exclusion 9 and Perils Exclusions 5 and 10(c), any loss resulting from interruption of or interference with the Business in consequence of blockage of roads or railway links, bridges or tunnels caused by landslide or Flood if Optional Extension of Cover 1 applies and which prevents or hinders the use of or access to the Premises will be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

### **New Business**

In the event of Damage occurring at the Premises 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" will bear the following meanings. The "Adjustments Clause" will apply:

#### **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 twelve 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.

### **Other Contributing Properties**

Any loss resulting from the interruption of or interference with the Business in consequence of Damage to any other property (not more specifically mentioned in this Policy) at any situation in Australia not owned or operated by the Insured, but which wholly or partly prevents delivery of materials, goods or services to the Insured or to the Insured's customers will be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

The Insurer(s) liability will not exceed the amount of the Sub-Limit of Liability stated in the Schedule for "Other Contributing Properties" for any one loss or series of losses arising out of any one event or occurrence.

### **Prevention of Access – Public Authority Order**

Loss insured by Section 2 of the Policy resulting from an interruption of the Insured's Business caused by any legal authority preventing or restricting access to the Premises or ordering the evacuation of the public as a result of Damage to or threat of Damage to property or persons within a fifty kilometre radius of any Premises covered by this Policy shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

### **Reduced Margin**

If, in consequence of Damage giving rise to a claim under this Policy, Turnover is maintained at a reduced Rate of Gross Profit, an equitable allowance will be made for the loss of Gross Profit resulting from an increase in the ratio to Turnover of stock usage or purchases (adjusted for stock variations). No allowance will be made for an increase in the ratio to Turnover of any other uninsured expenses.



## Salvage Sale

If, following Damage at the Premises giving rise to a claim under this Policy, the Insured shall hold a salvage sale during the Indemnity Period:

- (a) Clause (a) of Item No. 1 of this Section will, 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) will, in consequence of the Damage, fall short of the Standard Turnover, from which the Gross Profit actually earned during the period of the salvage sale will be deducted.”*

- (b) The definition of Shortage in Turnover will, for the purpose of such claim, read as follows:

### **“SHORTAGE IN TURNOVER**

*The amount by which the Turnover during a period (less the Turnover for the period of the salvage sale) will, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which the Payroll paid out of the proceeds of the salvage sale will be deducted.”*

## Trade Exhibitions

Loss insured by Section 2 of the Policy resulting from interruption of or interference with the Business due to curtailment of any trade exhibition anywhere in the world in consequence of Damage or to property exhibited by the Insured will be covered under this Section 2 as if the loss resulted from Damage to property used by the Insured at the Premises.

The most the Insurer(s) will pay under this Memorandum is the Sub-Limit of Liability for “Trade Exhibitions” stated in the Schedule for any one loss or series of losses arising out of any one event or occurrence.

## Turnover Elsewhere After Damage

If during the Indemnity Period goods are sold or services rendered for the benefit of the Business other than at the Premises by or on behalf of the Insured, the money paid or payable in respect of such sales or services will be taken into account in arriving at the Turnover during the Indemnity Period.

## Turnover/Output Alternative

If it gives a more equitable result for the Insured in determining the loss sustained by the Insured for the purpose of this Section 2, the term “Output” is substituted for the term “Turnover” in the “Turnover Elsewhere After Damage” Memorandum and the “Accumulated Stocks” Memorandum.

For these purposes, “Output” will mean the sale or invoice value of goods manufactured or processed by the Insured in course of the Business at the Premises. Only one such meaning of “Output” will be applied in connection with any one event.

If the meaning set out above be used:

- (a) the Memorandum “Turnover Elsewhere After Damage” is amended as follows:

*“If during the Indemnity Period goods shall be manufactured and/or processed other than at the Premises for the benefit of the Business either by the Insured or by others on the Insured’s behalf the sale and/or invoice value of the goods so manufactured and/or processed shall be brought into account in arriving at the Output during the Indemnity Period”.*

- (b) the Memorandum “Accumulated Stocks” is amended as follows:

*“In adjusting any loss under this Section, account shall be taken and equitable allowance made if any Shortage in Output due to the Damage is postponed by reason of the Output being temporarily maintained from accumulated stocks.”*



# EXCLUSIONS

## Property Exclusions

This Policy does not cover Damage under Section 1 to the following property (or loss under Section 2 resulting from that Damage):

1. Property (except Money) whilst in transit (other than during the movement of such property within situations occupied by the Insured where such property is not otherwise insured).

This Property Exclusion 1 will not apply during temporary removal of property, including unregistered motor vehicles (other than stock or merchandise 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 Damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, Malicious Damage and storm or tempest.

The most the Insurer(s) will pay is the Sub-Limit of Liability stated in the Schedule for "Temporary Removal" for any one loss or series of losses arising out of any one event or occurrence.

For the purposes of Property Exclusion 1, 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.

Where, in the ordinary course of Business, the Insured enters into an agreement with such carriers and such agreement provides that the Insured will indemnify or hold harmless or release from liability such carriers in respect of Damage which may occur as a result of any event insured against, this Policy will 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 strong room 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
  - (v) any attempt of any of the above.

3. Jewellery, furs, bullion, precious metals or precious stones other than as stock or merchandise of the Business.

This Property Exclusion 3 does not apply to jewellery and furs which are the personal property of employees or directors of the Insured where loss or Damage occurs at the Premises.

4. (a) Any locomotive or rolling stock or watercraft, other than as stock or merchandise of the Business.
  - (b) Any watercraft whilst on water.

5. (a) Any aircraft (including its accessories or spare parts) other than as stock or merchandise of the Business.  
(b) Any aircraft during taxiing, take-off, flight or landing.

6. Vehicles or trailers registered or licensed to travel on a public road.

This Property Exclusion 6 will not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by the Insured.

7. Standing timber, growing crops and pastures.
8. Livestock, animals, birds or fish (other than birds or fish contained in an aviary or aquarium and used solely for decorative purposes where the Damage results from a peril or event covered by this Policy other than Unspecified Damage unless covered as a stock in trade of the Business (in which case the most the Insurer(s) will pay is the Sub-Limit of Liability stated in the Schedule for "Decorative Livestock" for any one loss or series of losses arising out of any one event or occurrence).
9. Land, unmined or unrecovered oil, gas and mineral deposits.

This Property Exclusion 9 will not apply to:

- (a) structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy; or
  - (b) to the cover provided under the "Landscaping" Memorandum in Section 1 and under clauses (p)(ii) and (p)(iii) of "The Indemnity" in Section 1.
10. Bridges and tunnels (except where such infrastructure is included as Property Insured at the Premises), roadways (other than driveways, vehicle parking or manoeuvring areas and other paved areas at the Premises used or occupied by the Insured for the purposes of the Business), and canals, dams and reservoirs (other than tanks) and their contents.
  11. Railway tracks (other than on the premises occupied or used by the Insured for the purpose of its business).
  12. Docks, wharves and piers not forming part of any building.
  13. Textile blinds, awnings, shade house and fibre glass houses caused by wind, rainwater or hail.
  14. Property in the open air (other than textile blinds, awnings, shade house and fibre glass houses) caused by wind, rainwater or hail, unless such property comprises or forms part of the permanent structure designed to function without the protection of walls or roof.
  15. Mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy.
  16. Property as a result of its processing unless the Damage results from an intervening cause not otherwise excluded under this Policy.
  17. (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 \$2,000,000. This Property Exclusion 17(a) will apply only to the works comprising such construction, erection, alteration or addition and not to any original or existing structures.  
(b) Empty premises upon which demolition work has commenced.
  18. Oil and gas drilling or production rigs whilst offshore.
  19. All Machinery (as defined in this Property Exclusion 19), 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 this Property Exclusion 19 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 Property Exclusion 19.

For the purpose of this Property Exclusion 19, "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 but does not include a Boiler and/or Pressure Vessel economiser.

## Perils Exclusions

The Insurer(s) will not be liable under Sections 1 or Section 2 in respect of the following:

1. (a) Damage to the Property Insured caused directly or indirectly, occasioned by or happening through or in connection with war, invasion, act of foreign enemies, hostilities or war like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.  
(b) Any loss, destruction, Damage, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1(a) above is also excluded from this Policy.
2. Damage to the Property Insured caused directly or indirectly, occasioned by or happening through or in connection with 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 above, the Insurer(s) will indemnify the Insured for loss, destruction, Damage, cost or expense to Property Insured and for the reasonable cost of removal of sound 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.

3. (a) Damage to the Property Insured caused directly or indirectly, 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 Damage.  
(b) This Perils Exclusion 3 also excludes Damage 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.

In the event any portion of this Perils Exclusion 3 is found to be invalid or unenforceable, the remainder will remain in full force and effect.

4. Damage to any property whatsoever, any loss or expense whatsoever resulting or arising from such Damage, any consequential loss or any legal liability of any nature directly or indirectly caused by or contributed to or arising from:
  - (a) ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel; or
  - (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**Note:** For the purpose of this Perils Exclusion 4 only, "combustion" will include any self-sustaining process of nuclear fission.

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

Perils Exclusions 5(a) and 5(b) will not apply if Damage is caused by or arises out of:

- (i) an earthquake or seismological disturbance; or
- (ii) cyclone or storm and tempest having a wind force scale 11 or greater on the "Beaufort Scale of Wind Force".

6. Damage to Property Insured due to:
- (a) smut or smoke from industrial operations (other than sudden and unforeseen damage resulting from them), moths, termites or other insects, vermin, rust or oxidation, mildew, mould, wet or dry rot, corrosion, change of colour or dampness of atmosphere;
  - (b) other variations in temperature, evaporation, disease, inherent vice or latent defects, loss of weight, change in flavour texture or finish;
  - (c) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good;
  - (d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration;
  - (e) error or omission in design, plan or specification or failure of design; or
  - (f) faulty materials or faulty workmanship provided that this Perils Exclusion 6(f) will not apply to Boiler Explosion or Boiler Collapse not otherwise excluded.

Provided that:

- (i) Perils Exclusions 6(a) to 6(d) will not apply where the circumstance listed is caused by or results from the operation of a peril or event covered by this Policy;
- (ii) the Insurer(s) will indemnify the Insured for any Damage to Property Insured occasioned by a peril (not otherwise excluded) notwithstanding that such Damage may in turn have been caused by circumstances listed in Perils Exclusions 6(a) to 6(f).

7. Damage occasioned by or happening through:
- (a) incorrect siting of building consequent upon:
    - (i) error in architectural design or specification;
    - (ii) faulty workmanship; or
    - (iii) non-compliance by the Insured (or anyone acting on behalf of the Insured) with the necessary permits issued by government or public or local authorities; or
  - (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.
8. Damage to any Boiler and/or Pressure Vessel, economiser consisting of or caused by:
- (a) cracks, fractures, blisters, laminations, flaws or grooving even when accompanied by leakage or Damage to tubes, headers or other parts of the plant caused by over-heating or leakage at seams, tubes or other parts of the plant;
  - (b) slowly developing deformation or distortion of any part of the plant;
  - (c) wearing away or wasting of the material of the plant whether by leakage, corrosion or by action of the fuel or otherwise;
  - (d) failure of joints; or

(e) mechanical malfunction or breakdown.

However, the Insurer(s) will cover subsequent Damage to such plant and Property Insured including Boiler Explosion, except where at the time of the explosion or collapse:

- (i) the pressure plant was being subject to a hydraulic test and the Damage was occasioned thereby;
- (ii) the load on the safety valve or safety valves of the pressure equipment was in excess of the manufacturer's specifications or the load permitted by the latest certificate issued in accordance with any applicable Boiler inspection rules or regulations;
- (iii) any safety valve limiting the pressure is removed or rendered inoperative; or
- (iv) where certificates of inspection are required by a government department for the operation of such equipment and the item of plant was not so certified.

9. Damage occasioned by or happening through:

(a) Theft of property in the open air. However, the Insurer(s) will indemnify the Insured for:

- (i) Theft of Money in transit;
- (ii) Theft or attempted Theft or parts of the building or fixed plant in the open air; or
- (iii) any Damage to Property Insured caused directly by any circumstances not otherwise excluded under Section 1 of this Policy, notwithstanding that these circumstances may in turn have been occasioned by or happening through Theft of property (other than Money in transit) in the open air;

(b) unexplained or inventory shortage or disappearance resulting from clerical or accounting errors or shortage in the supply or delivery of materials to or from the Insured;

(c) spontaneous combustion;

(d) spontaneous fermentation or heating or any process involving the direct application of heat.

Perils Exclusions 9(c) and 9(d) will be limited to the item or items immediately affected and will not extend to other property Damaged as a result of such spontaneous combustion, fermentation or heating or process involving the direct application of heat.

10. 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); or
- (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.

This Perils Exclusion 10(a) will not apply to Burglary committed by an employee of the Insured.

Further, for the purposes of this Perils Exclusion 10, the term "dishonest acts", in relation to any of the Insured's employees, will not be deemed to mean acts of arson or vandalism.

(b) (i) the cessation of work whether total or partial; or

- (ii) the cessation, interruption or retarding of any process or operation, as a result of strikes, labour disturbances or locked out workers.

Perils Exclusions 10(b)(i) and 10(b)(ii) will not apply in respect of Damage directly caused by strikers, locked out workers or similar persons;



- (c) erosion, subsidence, earth movement or collapse resulting therefrom. This Perils Exclusion 10(c) will not apply if Damage is caused by or arises out of an earthquake, seismological disturbance, cyclone, storm and tempest having a wind force of scale 11 or greater on the "Beaufort Scale of Wind Force", Flood if Optional Extension of Cover 1 applies or water escaping from a water main owned by a water supply authority or company;
- (d) kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat. This Perils Exclusion 10(d) will not apply to loss caused by hold-up and/or Theft or any attempt thereat.

Perils Exclusions 10(a) to (d) will not apply to subsequent Damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

- 11. Any legal liability of whatsoever nature that is not specifically covered by this Policy.
- 12. 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 provided in Section 2.
- 13. Pollution or Contamination, except where directly arising from Damage to property or any part thereof used by the Insured at the Premises for the purpose of the Business, which is sudden, unexpected and accidental and results from an Insured Event, and where otherwise provided under clauses (p)(ii) and (p)(iii) of "The Indemnity" under Section 1.

## General Exclusions

The Insurer(s) shall not be liable under Sections 1 or 2 in respect of:

- 1. Physical loss, destruction, or Damage occasioned by or happening through:
  - (a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data; or
  - (b) error in creating, amending, entering, deleting or using Electronic Data;
  - (c) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

However, in the event that a peril listed below (being a peril insured by this Policy but for this General Exclusion 1) is caused by any of the matters described in clause 1(a) above, this Policy, subject to all its provisions, will insure physical loss of or Damage or destruction to Property Insured directly caused by such listed peril, and/or consequential loss insured by this Policy.

Further this General Exclusion 1 does not apply in the event that a peril listed below (being a peril insured by this Policy but for this General Exclusion 1) causes any of the matters described in clause 1(a) above:

Unspecified Damage (other than non-physical damage), fire, explosion including the explosion or collapse of any Boilers and/or Pressure Vessels, implosion, collapse, lightning, storm and tempest, windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, Flood, freezing, weight of snow, impact by meteorite, aircraft and/or other aerial devices and/or other debris or objects dropped therefrom, sonic boom, impact by any road vehicle or animal, the acts of persons taking part in riots or civil commotions or of strikers, locked out workers or the acts of other malicious persons, rainwater, water or other liquids or substances bursting, overflowing, discharging or leaking from apparatus or pipes or other systems at the premises or elsewhere, or Theft of Electronic Data solely where such Theft is accompanied by Theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data.

For the purposes of the Basis of Settlement provision in this Policy, computer system records include Electronic Data as defined above.

Any terrorism exclusion in this Policy or any Endorsement thereto prevails over this General Exclusion.



2. Payment of any claim or to provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would contravene any sanction prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom the United States of America or Australia.
3. Any Damage, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:
  - (a) the calculation, comparison, differentiation, sequencing or processing of data involving any date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not; or
  - (b) any change, alteration, or modification involving any date change, including leap year calculations, to any such computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

This General Exclusion 3 applies regardless of any other cause or event that contributes concurrently or in any sequence to the Damage.

4. Loss, Damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials, regardless of any other cause or event contributing concurrently or in any other sequence to that.
5. Loss, Damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:
  - (a) the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not; or
  - (b) any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

This General Exclusion 5 applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, Damage, cost, claim or expense.

# MEMORANDA 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 Property and Companies

This Policy extends to include:

- (a) property located in Australia acquired by the Insured for the purpose of the Business;
- (b) property located in Australia belonging to companies and other organisations in which a controlling interest is acquired by the Insured during the Period of Cover provided that the business of the acquired companies or organisations is similar to the Business of the Insured stated in the Schedule. "A controlling interest" in the case of a company means the acquisition of shares carrying more than fifty per cent (50%) of votes capable of being cast at a general meeting of all shareholders in the company;
- (c) 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
- (d) 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 sixty days of acquisition, declare in writing to the Insurer(s):

- (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; and
  - (c) the value of the indemnity provided, calculated in accordance with the relevant Basis of Settlement;
- and must pay any additional premium required and comply with any reasonable directions of the Insurer(s) with respect to the security or safety of that property.

All declared property will be Property Insured for the purpose of the Policy, subject to the "Adjustment of Premium" Memorandum which includes the Insured making the required declaration.

## Adjustment of Premium

- (a) The premium shown is provisional and is calculated on the Declared Values of:
  - (i) Property Insured; and
  - (ii) Gross Profit and Insured Payroll;on the day of commencement of each Period of Cover.
- (b) The Insured undertakes to declare to the Insurer(s) within a reasonable time after the day of expiry of the Period of Cover:
  - (i) the value of the Property Insured on the day of expiry of the Period of Cover. For the purpose of this declaration, stock in trade and/or merchandise will be taken at its average value during the Period of Cover; and
  - (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 twelve months most nearly concurrent with the Period of Cover.

The Insured must also make such declarations to the Insurer(s) under clause (b)(i) in respect of acquisitions of Property Insured. No declaration will be required upon acquisition when the value of the acquisition does not exceed the amount stated in the Schedule for "Declarations of Acquired Properties" and the acquisition relates to the description of the Business as stated in the Schedule.

Notwithstanding the acceptance of a total variation in the Declared Values up to the amount stated in the Schedule for “Declarations of Acquired Properties” under Sub-Limits of Liability, Section 1, nothing here will be construed as automatically noting or providing an increase in the Limit of Liability under the Policy.

- (c) The provisional premium will be adjusted by payment to the Insurer(s) 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 per cent (50%) of the difference between property declared in accordance with clauses (a)(i) and (b)(i); and
  - (ii) the full agreed rate on the difference between the amounts declared under clauses (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 Declared Values at the expiry of the Period of Cover declared in accordance with this Memorandum will not be reduced as the result of Damage in respect of which a claim has been paid or is payable under this Policy.
- (f) If any claim paid or payable under the Policy in respect of Damage occurring during the Period of Cover is reduced due to under-insurance in accordance with the provisions of the “Co-Insurance” Memorandum or other similar term or condition, the Insurer(s) will waive any additional premium for that Period of Cover, which would otherwise be payable in accordance with this Memorandum.

### **Amount of Policy not Reduced by Loss**

Unless the Insured requests otherwise, cover provided under any section or item of this Policy will be automatically reinstated after the payment of a claim, in consideration of the payment by the Insured of additional premium imposed by the Insurer(s).

Automatic reinstatement will not apply in respect of any Limit or Sub-Limit of Liability stated to be in the annual aggregate during any one Period of Cover, unless agreed in writing by the Insurer(s).

### **Event**

Only for the purpose of the application of any Deductible all Damage resulting from earthquake, volcanic eruption, subterranean fire, bushfire or atmospheric disturbance occurring during each period of seventy-two consecutive hours will be considered as one event whether continuous or sporadic in its sweep or scope or whether the Damage was due to the same seismological or meteorological conditions. Each event will be deemed to have commenced on the first happening of any such Damage not within the period of any previous event.

### **Goods and Services Tax**

#### ***Sums Insured***

All monetary limits in this Policy may be increased for Goods and Services Tax (“GST”) in some circumstances (see below).

#### ***Claim settlements – Where the Insurer(s) agree(s) to pay***

When the Insurer(s) calculate(s) the amount payable to the Insured, the Insurer(s) will have regard to the items below:

- (a) Where the Insured is liable to pay an amount for GST in respect of an acquisition relevant to the Insured’s claim (such as services to repair a Damaged item insured under the Policy), the Insurer(s) will pay for the GST amount.
- (b) The Insurer(s) will pay the GST amount in addition to the Sum Insured/Limit of Liability or other limits shown in the Policy or in the Schedule.
- (c) If the Sum Insured/Limit of Liability is not sufficient to cover an insured loss in full, the Insurer(s) will only pay the GST amount that relates to the claim settlement figure.

- (d) The Insurer(s) will reduce the GST amount by the amount of any input tax credits to which the Insured is or would be entitled.
- (e) Where the Insurer(s) make(s) a payment under this Policy as compensation instead of payment for a relevant acquisition, the Insurer(s) will reduce the payment by the amount of any input tax credit that the Insured would have been entitled to had the payment been applied to a relevant acquisition.
- (f) Where the Policy insures business interruption, the Insurer(s) will (where relevant) settle the claim by reference to the GST exclusive amount of any supply made by the Insured's Business that is relevant to the Insured's claim.

#### ***Disclosure – Input tax credit entitlement***

If the Insured registers, or is registered, for GST the Insured is required to tell the Insurer(s) about the Insured's entitlement to an input tax credit on the Insured's premium. If the Insured fails to disclose or understates their entitlement, the Insured may be liable for GST on a claim the Insurer(s) may pay. This Policy does not cover the Insured for this GST liability, or for any fine, penalty or charge for which the Insured may be liable.

#### **Incidental Contracts**

The Insured may, without prejudicing its position under this Policy:

- (a) release any statutory governmental, semi-governmental or municipal authority from any liability if required by any contract to do so;
- (b) agree to enter into a contract for storage of goods or merchandise even if the terms of the contract include a disclaimer clause; and
- (c) agree to enter into a lease for occupancy of any building or part of a building or a lease or hiring of property where the terms of the lease or hiring include a disclaimer clause in favour of the lessor or the owner.

#### **Subrogation Waiver**

The Insurer(s) agree to waive any rights and remedies or relief to which it may become entitled by subrogation against:

- (a) any corporation or organisation (including its directors, officers, partners, 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;
- (b) any Insured named or described by this Policy (including its directors, officers, employees or servants); or
- (c) any party described in the Memorandum to Section 1 headed "Interests of Other Parties", unless the Insured expressly agrees to the pursuit of recovery action against that party.

# CONDITIONS

If the Insured does not comply with these Conditions, the Insurer(s) may refuse to pay a claim in whole or in part.

## 1. Misrepresentation and Non-Disclosure

If the Insured:

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

and if the Insurer(s) 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:

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

## 2. Alteration

The Insurer(s) will not be liable for Damage to any Property Insured caused or contributed to by any alteration after the commencement of this Policy:

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

However, the Insured will not be prejudiced by any unintended or inadvertent error, omission or misdescription of the risk, interest or Property Insured under the Policy, failure to advise the Insurer(s) 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 will, upon becoming aware of any such unintended or inadvertent act, error or omission, inform the Insurer(s) as soon as reasonably practicable and that the Insured will, upon request, pay any reasonable extra premium to the Insurer(s) from the date of the increase in risk.

## 3. 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.

## 4. Sprinkler Installations

This Condition is applicable to owned premises or installations for which the Insured is responsible.

Where Premises are protected or are required by law to be 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 must be used so that such installations are at all times maintained in good working order.

The Insured ensures that it undertakes regular maintenance of the installation in accordance with Australian Standard AS1851 (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(s) to carry out such maintenance.

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

Where the Premises with sprinkler installations are leased to a tenant and the lease provides that the tenant will 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, will either immediately provide for maintenance of the installation or immediately give notice in writing to the Insurer(s) and on demand pay such reasonable additional premium as the Insurer(s) 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 will indemnify and/or hold harmless and/or release from liability the contractor in respect of Damage which may occur as a result of any peril insured against by this Policy, the Policy will not be prejudiced by the Insured or the said tenant agreeing to such provision.

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

## 5. Cancellation

- (a) This Policy may be cancelled at any time at the request of the Insured, in which case the Insurer(s) will be entitled to a pro rata proportion of the premium, subject to any adjustment in accordance with the "Adjustment of Premium" Memorandum for the time this Policy has been in force.
- (b) The Insurer(s) may also cancel this Policy by giving the Insured written notice to that effect where:
  - (i) the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
  - (ii) the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
  - (iii) the person who was the Insured at the time when this Policy was entered into made a misrepresentation to the Insurer(s) during the negotiations for this Policy but before it was entered into;
  - (iv) the Insured or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the Premium;
  - (v) the Insured has made a fraudulent claim under this Policy or any other policy of insurance (whether with the Insurer(s) or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
  - (vi) the Insured failed to notify the Insurer(s) of any specific act or omission where such notification is required under the terms of this Policy; or
  - (vii) the Insured acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the Insurer(s) to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
- (c) The Insurer(s) 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(s) or some other insurer, being a policy that is intended by the Insured to replace this Policy, is entered into; or
  - (ii) 4:00pm on the thirtieth business day after the day on which notice was given to the Insured.

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



## **6. Notification of Claims**

On the happening of any Damage, the Insured will give written notice to the Insurer(s) and will as soon as reasonable practicable deliver to the Insurer(s) a claim, in writing containing as particular an account as may be reasonably practicable of the items of property Damaged and of 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 also afford the Insured an indemnity against such Damage or loss.

The Insured will use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business or to avoid or diminish the loss and will also deliver to the Insurer(s) a statement in writing of any claim certified by the Insured's auditor, with all particulars and details reasonably practicable of the Damage and will 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 will be payable unless the Insured has complied with the terms of this Condition 6.

## **7. 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 Damage be occasioned by the willful act or with the connivance of the Insured, the Insurer(s), without prejudice to any other right(s) the Insurer(s) might have under this Policy, will, subject to the provisions of the *Insurance Contracts Act 1984* (Cth), be entitled to refuse to pay such claim.

## **8. Reinstatement**

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

## **9. Several Liability Notice**

The Insurer(s)' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The Insurer(s) are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

## **10. Insurer(s) Rights**

On the happening of any Damage in respect of which a claim is or may be made under this Policy the Insurer(s) and every person authorised by the Insurer(s) may, without admitting any liability, and without diminishing the right of the Insurer(s) to rely upon any conditions of this Policy, enter, take or keep possession of any building or premises where the Damage has happened and may take possession of or require to be delivered to the Insurer(s) any of the Property Insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

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

## 11. Subrogation

- (a) Any person claiming under this Policy will, at the request and at the expense of the Insurer(s), 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(s) for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the Insurer(s) will be or would become entitled or subrogated upon the Insurer(s) paying for or making good any Damage under this Policy or paying any moneys under Section 2 of this Policy.
- (b) Notwithstanding Section 67 of the *Insurance Contracts Act 1984* (Cth), unless a specific Subrogation Agreement is entered into by the parties, monies recovered in subrogation proceedings whether effected by the Insurer(s) or the Insured will be applied, net of the expense of such recovery:
  - (i) 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);
  - (ii) second to the Insurer(s) in reimbursement of the amount(s) paid in settlement of the Insured's claim;
  - (iii) third to the Insured in satisfaction of any Deductible amount applicable; and
  - (iv) any excess amount remaining will be disbursed to the Insured.
- (c) Nothing contained in this Condition will prevent the Insurer(s) and the Insured entering into a specific agreement for insured and uninsured losses following a claim under this Policy, in which both parties agree to share legal costs, expenses and the allocation of monies recovered on a different basis.

## 12. Precautions to Prevent Loss

The Insured will take all reasonable precautions to prevent Damage to the Property Insured by this Policy.

## 13. Insured's Action after Theft or Damage

The Insured will, upon becoming aware of any loss by Theft or of any 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, including reporting the matter to the police and any other responsible authority.

## 14. Termination of Cover under Section 2

If during the Period of Cover, 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 will automatically cease unless and until its continuance is agreed in writing by the Insurer(s). Such termination of cover will not apply if any of the events stated in clauses 14(a), 14(b) or 14(c) are caused by loss, insured by Section 2 of the Policy, resulting from interruption of or interference with the Business in consequence of Damage to property used by the Insured at the Premises.

## 15. Observance of Terms and Conditions

The due observance and fulfilment of these Conditions and the other the terms and conditions 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(s) to make any payment under this Policy.

## **16. Progress Payments**

Provided that liability has been admitted, progress payments on account of any claim may 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) will be deducted from the amount finally determined upon adjustment of the claim.

## **17. 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.

## **18. Australian Terrorism Insurance Act 2003**

The Insurer(s) has/have treated this insurance as an insurance to which the Australia Terrorism Insurance Act 2003 ("ATIA") applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Act of Terrorism exclusion to which this Policy is subject will not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Act of Terrorism exclusion to which this Policy is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, Conditions, insured coverage and Exclusions of this Policy including applicable Limits of Liability and Deductibles remain unchanged.

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

## **19. Law and Jurisdiction**

This insurance is governed by the laws of the Commonwealth of Australia.

The Insurer(s) agree(s) that:

- (a) In the event of a dispute arising under this Policy, the Insurer(s) and the Insured, will submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute will be determined in accordance with the law and practice applicable in such court.
- (b) Any summons, notice or process to be served upon the Insurer(s) may be served upon:  
Lloyd's Australia Ltd, Level 9, 1 O'Connell Street, Sydney NSW 2000 Australia  
who has authority to accept service and to enter an appearance on the Insurer(s)' behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that it will enter an appearance on the Insurer(s)' behalf.
- (c) If a suit is instituted against any one of the Insurer(s), all Insurer(s) will abide by the final decision of such court or any competent appellate court.

# OPTIONAL EXTENSIONS OF COVER

The following Optional Extensions of Cover apply to this Policy, if noted as applying in the Schedule.

The relevant Sub-Limits of Liability shown in the Schedule apply to cover provided by each Optional Extension of Cover.

For the avoidance of doubt, in the event of any inconsistency between the terms of any applicable Optional Extension of Cover or another term or condition of this Policy, the inconsistency will be resolved in favour of the Insured.

## 1. Flood

Clause (a) of Perils Exclusion 5 is deleted.

## 2. Royalties Receivable

Loss of royalties receivable in consequence of Damage to property at the specified premises anywhere in the world of any company, firm or person identified in the Schedule for "Royalties Receivable" will be deemed to be loss resulting from Damage to property used by the Insured at the Premises for the purposes of Section 2.

## 3. Fusion

The Policy extends to indemnify the Insured against Damage to switchboards and electrical sub-stations at the Situation and resultant Damage to Property Insured caused by electrical current artificially generated. Property Exclusion 19 will not apply to the cover provided by this Optional Extension of Cover 3.

The Insurer(s) will not be liable under this Optional Extension of Cover 3 for:

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

The maximum the Insurer(s) will pay for cover provided by this Optional Extension of Cover 3 is the Sub-Limit of Liability stated in the Schedule for "Fusion".

## 4. Unspecified Suppliers' and/or Customers' Premises – (World Wide) – Single Limit

Loss as insured by this Policy resulting from interruption of or interference with the Business in consequence of Damage anywhere in the world, other than Australia or New Zealand, to property at the premises of any direct supplier or customer of the Insured, will be deemed to be loss resulting from Damage to Property used by the Insured at the Premises for the purposes of cover under Section 2.

The liability of the Insurer(s) under this Optional Extension of Cover 4, in respect of any one loss or series of losses arising out of any one event or occurrence at any one premises, is the Sub-Limit of Liability stated in the Schedule for "Unspecified Suppliers' and/or Customers' Premises (World Wide)".

The following conditions apply to this Optional Extension of Cover 4:

- (a) a "supplier" is any person, body or entity from which the Insured obtains supplies of commodities, materials, components, goods or services other than any company or authority producing, supplying, providing or delivering electricity, gas, water, sewerage or communication services;
- (b) a "customer" is a person, body or entity to which the Insured supplies or provides commodities, materials, components, goods or services;

- (c) suppliers and customers based in the following countries are excluded: Afghanistan, Albania, all former countries of USSR, Angola, Armenia, Azerbaijan, Bulgaria, Belarus, Bosnia-Herzegovina, Cambodia, Caribbean, Maquiladora, Croatia, Cuba, Democratic Republic of Congo, El Salvador, Ethiopia, Georgia, Guam, Haiti, India, Indonesia, Iran, Iraq, Israel, Kazakhstan, Kampuchea (Cambodia), Kyrgyzstan, Laos, Lebanon, Liberia, Libya, Macedonia, Moldova, Mongolia, Montenegro, Myanmar (Burma), Nicaragua, Nigeria, North Korea, Outer Mongolia, Pakistan, Romania, Rwanda, Serbia, Sierra Leone, Somalia, Sudan, Syria, Tajikistan, Tibet, Turkmenistan, Ukraine, Uzbekistan, Venezuela, Yugoslavia, Zaire, Zimbabwe.

This Optional Extension of Cover 4 does not apply to any loss resulting from Damage to the premises or property of the Insured's customers and suppliers caused by:

- (a) earthquake, volcanic eruption and resultant fire damage occurring in the USA, Greece, Italy, Japan, Turkey, Malaysia, Mexico, New Zealand, Taiwan, Indonesia, Peoples Republic of China, Philippines and Vietnam;
- (b) Flood in locations outside the Commonwealth of Australia;
- (c) hurricane, cyclone or typhoon;
- (d) national catastrophes and natural perils in France, Norway, Spain and Spanish Territories;
- (e) storm surge in Germany (Sturmflut)/foreseeable flooding;
- (f) any event covered by NASRIA in Namibia;
- (g) any event covered by any local overseas pool.

## 5. Gross Rental Specification

Gross Rental Specification will be shown as Item No. 10 in the Schedule when this Optional Extension of Cover 5 is included in the Policy.

In interpreting Gross Rental Specification only, this Optional Extension of Cover assumes that the indemnity for Gross Rentals Specification replaces and is in substitution for Item No. 1 of Section 2 and is to be interpreted accordingly.

Where Section 2 of the Policy also includes cover for loss of Gross Profit under Item No. 1 of the Policy the original provisions and Definitions in the base wording shall apply with full force and effect to claims that relate to settlements under Item No. 1.

For the purpose of interpreting Gross Rental Specification cover only:

The following items are deemed to be deleted from Section 2 of the Policy:

- Item No. 1 - Gross Profit
- Item No. 3 - Payroll

The following Definitions are deemed to be deleted from Section 2 of the Policy:

- Gross Profit
- Turnover
- Payroll
- Shortage in Turnover
- Rate of Gross Profit
- Annual Turnover
- Standard Turnover
- Rate of Payroll

The following Memoranda are deemed to be deleted from Section 2 of the Policy:

- Turnover Elsewhere After Damage
- Departmental Clause
- New Business
- Accumulated Stocks
- Turnover/Output Alternative
- Salvage Sale

The above items, Definitions and Memoranda are deemed to be replaced by the following:

### **Item No. 10 – Gross Rental Specification**

The insurance under this Item is limited to loss of Gross Rentals due to a reduction in Gross Rentals and an increase in Cost of Working and the amount payable as indemnity thereunder will be:

- (a) in respect of reduction in Gross Rentals: The amount by which the Gross Rentals during the Indemnity Period will, in consequence of the Damage, fall short of the Standard Gross Rentals;
- (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 Gross Rentals which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the loss of Gross Rentals avoided or diminished;

less any sum saved during the Indemnity Period in respect of such charges and expenses of the Business as may cease or be reduced in consequence of the Damage.

If the estimated value of Gross Rentals declared at the commencement of each Period of Cover is less than eighty per cent (80%) of the Annual Gross Rentals (or the appropriate multiple if the Indemnity Period exceeds twelve months), the amount payable will be proportionately reduced.

This above reduction of cover will not apply:

- (i) if the amount of the loss does not exceed ten per cent (10%) of the value of Annual Gross Rentals declared at the commencement of the Period of Cover; or
- (ii) where the Insured's declaration of Gross Rent receivable at the commencement of the Period of Cover has been stated in a valuation prepared by LMI Group, or other qualified professional approved by the Insurer(s).

### **Definitions applicable to Optional Extension of Cover 5:**

#### **Gross Rentals**

The money paid or payable to the Insured by tenants or paid by the tenant to others as outgoings under the terms of the rental agreement for rental of the premises and for services rendered by or on behalf of the Insured.

#### **Standard Gross Rentals**

The Gross Rentals during that period in the twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.

If the Damage occurred at the Premises before the completion of the first year's trading of the Business, this definition will not apply and the Insured should instead refer to the definition under the "New Business" Memorandum to Section 2.



## **Annual Gross Rentals**

The Gross Rentals earned during the twelve months immediately before the commencement date of the Period of Cover.

If the Damage occurred at the Premises before the completion of the first year's trading of the Business, this definition will not apply and the Insured should instead refer to the definition under the "New Business" Memorandum to Section 2.

## **Memoranda**

The following adjustments to Memoranda apply to Optional Extension of Cover 5:

### **Gross Rentals elsewhere after Damage**

If during the Indemnity Period the Business will be conducted elsewhere than at the Premises, the Gross Rentals derived from such other premises will be brought into account in arriving at the Gross Rentals during the Indemnity Period.

### **Departmental Clause**

If the Business be conducted in departments, the independent trading results of which are ascertainable, the provisions of clauses (a) and (b) of Item No. 1 will apply separately to each department affected by the Damage.

### **New Business**

In the event of Damage occurring at Premises before completion of the first year's trading of business, the terms "Standard Gross Rentals" and "Annual Gross Rentals" will bear the following meanings. The "Adjustments Clause" will apply:

### **Premium Adjustment Condition – Gross Rentals**

The following alteration is made to the "Adjustment of Premium" Memorandum in "Memoranda to all Sections":

"Gross Rental" is substituted for "Gross Profit".

### **Additional Increase in Cost of Working – Gross Rentals**

Where this additional coverage is required it will be shown as an additional Item No. 11 in the Schedule and the Insurer(s)' Limit of Liability will be the amount shown as the Sub-Limit of Liability for "Additional Increase in Cost of Working – Gross Rentals".

### **Item No. 11: Additional Increase in Cost of Working – Gross Rentals**

The insurance under this item is limited to the increase in Cost of Working (not otherwise recoverable) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction in Gross Rentals and/or maintaining normal operations and/or services.

### **Standard Gross Rentals**

The proportional equivalent for a period equal to the Indemnity Period, of the Gross Rentals realised during the period between the commencement of the Business and the date of the Damage.

### **Annual Gross Rentals**

The proportional equivalent, for a period of twelve months of the Gross Rentals realised during the period between the commencement of the Business and the date of the Damage.

## 6. Working Expenses Insured for a Percentage of Fixed Sum

The Rate of Gross Profit will exclude all figures for “Uninsured Working Expenses” (as set out in the Schedule) including those insured for a percentage or fixed sum.

The latter working expenses will be known as “Partially Insured Working Expenses”.

Claims for “Partially Insured Working Expenses” when insured by the Policy will be calculated separately in accordance with the following example:

Rate of Gross Profit for Partially Insured Working Expenses multiplied by the Shortage in Turnover		\$A
Less savings in the Partially Insured Working Expenses during the Indemnity Period i.e.		
(i) Pre-damage payment value in the corresponding period	\$	
(ii) Less post-damage payment value in the Indemnity Period	\$	\$B
Actual Gross loss applicable to Partially Uninsured Working Expenses		\$A - B

Insured Limit: The amount payable not to exceed the insured percentage or fixed sum applicable to the Partially Insured Working Expenses as stated in the Schedule.

### Example

(After the application of the “Adjustments Clause” to provide for trends and other circumstances affecting the Business during the Indemnity Period)

<b>Financial information</b>	
• Partially Insured Working Expenses insured percentage =	10%
• Annual Turnover =	\$1,000,000
• Turnover in the Indemnity Period =	\$100,000
• Shortage in Turnover =	\$900,000
• Gross value of Partially Insured Working Expenses in last Financial Year =	\$200,000
• Rate of Partially Insured Working Expenses to Turnover =	20%
• Partially Insured Working Expenses expenditure in Indemnity Period =	\$35,000

### Claim Adjustment

(a) Rate of Gross Profit for the Partially Insured Working Expenses multiplied by the Shortage in Turnover - (20% X \$900,000) =	\$180,000	A
(b) Less savings in the Partially Insured Working Expenses during the Indemnity Period, i.e.:		
(i) Pre-damage payment value in the corresponding period =	\$200,000	
(ii) Less post-damage payment value in the Indemnity Period =	\$35,000	\$165,000
(c) Actual Gross loss applicable to Partially Insured Working Expenses =	\$15,000	A-B

### Insured Limit

The amount payable is not to exceed ten per cent (10%) of (a) or the fixed sum when applicable, viz., ten per cent (10%) of \$180,000 (A) = \$18,000.

### Claim paid

The loss of \$15,000 falls within the Insured limit of \$18,000 and is payable in full.

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