

Wordings.





DUAL Australia General Liability

Policy Wording

Table Of Contents

Section 1: Preamble	5
Section 2: Insuring Clauses	5
Section 3: Automatic Extensions	6
Section 4: Optional Extensions	8
Section 5: Exclusions	9
Section 6: Definitions	14
Section 7: Claim Conditions	18
Section 8: General Conditions	19

Important Notices

You should read the entire **policy** carefully, including all definitions and, in particular, the exclusions to ensure that it meets your requirements. **We** recommend that you consult an insurance agent or broker to ensure a clear understanding of your rights and obligations under the **policy**.

Occurrence Based Policy

This is an occurrence policy. **We** shall only cover you for **occurrences** happening during the **insurance period**.

If your **policy** does not have a continuity of cover provision or provide retrospective cover then your **policy** may not provide insurance cover in relation to events that occurred before the **policy** was entered into.

Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell **us** anything that you know, or could reasonably be expected to know, that 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:

- a. reduces the risk **we** insure you for;
- b. is common knowledge;
- c. **we** know or should know as an insurance company; or
- d. **we** waive your duty to tell **us** about.

If you do not tell us something

If you do not tell **us** something you are required to, **we** may cancel your **policy** or reduce the amount **we** shall indemnify 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 **policy** as if it never existed.

Privacy Statement

We are committed to compliance with “Privacy Act 1988” (Cth) (“the Privacy Act.”) **We** use your personal information to assess the risk of and provide insurance, assess and manage claims, to perform administrative functions and to comply with regulatory requirements. **We** may also use your contact details to send you information and offers about products and services that **we** believe will be of interest to you.

If you do not consent to provide **us** with the information which **we** request, **we** may not be able to provide insurance or assess a claim. If you provide **us** with information about someone else, you must obtain their consent to do so.

We provide your information to the insurer **we** represent when **we** issue and administer your insurance. When providing a quotation or insurance terms, **we** will tell you if the insurer is overseas and if so, where they are. **We** are part of the Howden Group and may provide your information to UK Based Group entities who provide **us** with business support services. **We** may also provide your information to your broker and our contracted third party service providers (e.g. claims management companies) but will take all reasonable steps to ensure that they comply with the Privacy Act.

We understand that this information is often sensitive, and **we** shall treat it with the utmost care. **Our** Privacy Policy contains

information about how you can access the information **we** hold about you, ask **us** to correct, or make a privacy related complaint. You can obtain a copy from **our** Privacy Officer by:

telephone (+61 (0) 2 9248 6300)

email (privacy@dualaustralia.com.au)

or by visiting our website (www.dualaustralia.com.au).

By providing **us** with your personal information, you consent to its collection and use as outlined above and in **our** Privacy Policy.

General Insurance Code of Practice

We are compliant with the Insurance Council of Australia General Insurance Code of Practice.

The Insurance Council of Australia has developed the General Insurance Code of Practice (“the Code”), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd’s has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers’ compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this **policy**, **our** services or your insurance claim, please let **us** know and **we** will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure.

Please contact **us** in the first instance:

General Counsel Team

DUAL Australia Pty Limited

Email: complaints@dualaustralia.com.au

Telephone: 02 9248 6300

Level 6, 160 Sussex Street

Sydney NSW 2000

We will acknowledge receipt of your complaint and do **our** utmost to resolve the complaint to your satisfaction within 10 business days.

If **we** cannot resolve your complaint to your satisfaction, **we** will escalate your matter to Lloyd’s Australia who will determine whether it will be reviewed by their office or the Lloyd’s UK Complaints team.

Lloyd’s contact details are:

Lloyd’s Australia Limited

Email: ldraustralia@lloyds.com

Telephone: (02) 8298 0783

Level 16, Suite 1603

1 Macquarie Place

Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your

satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

[Australian Financial Complaints Authority Limited](#)

GPO Box 3
Melbourne VIC 3001
Australia

Telephone Number: 1800 931 678

Facsimile Number: (03) 9613 6399

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Service of Suit and Legal Notices

The Underwriters accepting this Insurance agree that:

- i. if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- ii. any summons notice or process to be served upon the Underwriters may be served upon:

[Lloyd's Underwriters' General Representative in Australia](#)

Level 16, Suite 1603
1 Macquarie Place
Sydney NSW 2000
Australia

Telephone Number: (02) 8298 0700

Facsimile Number: (02) 8298 0788

Who has authority to accept service on the Underwriters' behalf;

- iii. If a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Notification of Claims

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

[The National Claims Manager](#)

DUAL Australia Pty Limited
Level 6, 160 Sussex Street
Sydney NSW 2000
Australia

Or by email to claims@dualaustralia.com.au

Please refer to the Claims Conditions section of this **policy** for further details regarding the notification of claims or loss subject to this Insurance.

About DUAL Australia Pty Ltd

DUAL Australia Pty Limited ABN 16 107 553 257 AFSL 280193 (**We/Us/Our**) is a Coverholder for certain Underwriters at Lloyd's of London. DUAL has the authority to bind this **policy** on behalf of Underwriters.

DUAL Australia General Liability

Policy Wording

Section 1: Preamble

- 1.1** In consideration of payment of the premium and subject to all the terms and conditions of the **policy**, and, in reliance upon the disclosures made in the **proposal**, **we** agree to provide insurance on the terms set out in this **policy**.

Section 2: Insuring Clauses

A sub-limit of indemnity may apply to an Insuring Clause. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Insuring Clause. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Insuring Clause. All applicable **deductibles** are specified in the **schedule**.

2.1 Public and Products Liability

We agree to pay to or on behalf of the **insured** all sums that the **insured** shall be legally liable to pay as **damages** in respect of **personal injury** or **property damage** happening within the **territory** and caused by an **occurrence** during the **insurance period** in connection with the **business**.

2.2 Defence Costs in Addition to Indemnity Limit

In addition to the **indemnity limit**, **we** agree to pay to or on behalf of the **insured** any **defence costs** necessarily and reasonably incurred in respect of a **claim** for **damages** covered by this **policy**.

We will only pay **defence costs** however if:

- a. **we** incur them; or
- b. the **insured** incurs them after obtaining **our** agreement in writing and the **defence costs** are reasonable and necessary.

We will not defend or continue to defend any **claim** to which the **policy** would provide indemnity, or pay or continue to pay any **defence costs** associated with such defence, once **we** have paid the **indemnity limit** in relation to any judgment or settlement.

2.3 Advancement of Defence Costs

We agree to pay for **defence costs** as and when they are incurred prior to the final resolution of the **claim** for **damages**, and within thirty (30) days of receipt by **us** of sufficiently detailed invoices for those costs.

The maximum amount of **defence costs** and other costs and expenses **we** will advance is an amount equal to the applicable sub-limit, or the **indemnity limit**. Upon exhaustion of the applicable sub-limit or **indemnity limit**, **our** obligation to advance **defence costs** will cease.

Paid **defence costs** will be repayable to **us** by the **insured** in the event, and to the extent, that it is established that such **defence costs** are not insured under the **policy**.

Section 3: Automatic Extensions

Subject to all the terms and conditions of the **policy**, **we** further agree to extend cover under the **policy** as follows.

A sub-limit of indemnity may apply to an Automatic Extension. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Automatic Extension. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Automatic Extension. All applicable deductibles are specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

3.1 Advertising Liability

We agree to pay to or on behalf of the **insured** all sums that the **insured** shall be legally liable to pay as **damages** in respect of **advertising liability** happening during the **insurance period** within the **territory** and caused by an **occurrence** in connection with the **business**.

3.2 Attendance at Investigations

We agree to pay to or on behalf of the **insured** all **investigation costs** arising from the **insured's** attendance at or preparation for any **investigation**. This Automatic Extension applies only if:

- a. **our** consent is obtained before such costs are incurred; and
- b. the **insured** notifies **us** that the **insured** is legally compelled to attend the **investigation**, or which **we** agree is reasonable for the **insured** to attend; and
- c. the **investigation** is not being held outside Australia; and
- d. at **our** option, **we** can nominate the legal advisers to represent the **insured**.

3.3 Committees and Services

We agree to pay to or on behalf of the **insured** all sums that the **insured** shall be legally liable to pay as **damages** in respect of **personal injury** or **property damage** caused by the officers, committee and members of the **insured's** canteen, social, sports, medical, fire-fighting and welfare organisations, in their respective capacity as such.

3.4 Consultants, Sub-contractors and Agents

We agree to pay to or on behalf of the **insured** all sums that the **insured** shall be legally liable to pay as **damages** in respect of **personal injury** or **property damage** arising from the conduct of any party who enters into an agreement with the **insured** for any purpose of the **business**, but only to the extent required by such agreement to grant such indemnity and subject always to Exclusions 5.4 (Contractual Liability) and 5.25 (Property Owned).

Cover under this Automatic Extension is not available to consultants, sub-contractors or agents in respect of their own liability.

3.5 Cross Liability

Where the **insured** is comprised of more than one party, each of the parties will be considered as a separate and distinct unit and the word **insured** will be considered as applying to each party in the same manner as if a separate **policy** had been issued to each of them, provided always that nothing in this Automatic Extension will result in an increase of the **indemnity limit** or **defence costs**.

3.6 Estates and Legal Representatives

We agree to treat the personal representatives of the estate of any **insured** as an **insured** in respect of any liability incurred by such person because they are acting in their capacity as a personal representatives of the estate of any **insured**.

3.7 Joint Venture Liability

We agree to pay to or on behalf of the **insured** all sums that the **insured** shall become legally liable to pay as **damages** in respect of **personal injury** or **property damage** arising from any joint venture where the **insured** has active control or is required to arrange insurance for the joint venture.

We will not be liable for **damages** or any other costs or loss arising from any liability of the joint venture partner in respect of their own liability.

3.8 Landlord's Liability

We agree to pay to or on behalf of the **insured** all sums that the **insured** shall become legally liable to pay as **damages** in respect of **personal injury** or **property damage** arising from the **insured's** legal ownership, but not physical occupation, of any premises.

3.9 Panel Counsel

The **insured** is entitled to one (1) hour of free advice per enquiry from any one firm listed on **our** panel of solicitors for each matter relevant to the risks insured by this **policy**. We consent to that firm listed on **our** panel of solicitors being retained to act for an **insured** in respect of any **claim** covered by this **policy**.

3.10 Principal's Liability

We will cover a **principal** of the **insured** for that **principal's** liability for the **insured's** conduct which is covered under this **policy**.

We will not be liable under this Automatic Extension for the **principal's** own liability.

3.11 Property in Care Custody or Control

Notwithstanding Exclusion 5.25 (Property Owned) but subject to Exclusion 5.6 (Defective Materials, Design & Workmanship), we agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in **damages** in respect of **property damage** to:

- a. premises (including landlord's fixtures and fittings) which are leased or rented to the **insured** to the extent that the **insured** would be held liable in the absence of any specific agreement;
- b. premises (or the contents thereof) not owned, leased or rented by the **insured** but temporarily occupied by the **insured** for work therein (but not indemnity is granted for **property damage** to that part of the property on which the **insured** is working and which arises out of such work);
- c. vehicles (not belonging to or used by the **insured**) in the physical or legal control of the **insured** where the **property damage** occurs whilst such vehicles are in a car park owned or operated by the **insured**;
- d. clothing and personal effects belonging to **employees** and visitors of the **insured**;
- e. all other property in the physical or legal control of the **insured**.

3.12 Tenant's Liability

Notwithstanding Exclusion 5.25 (Property Owned), we agree to pay to or on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **property damage** to premises (including landlord's fixtures and fitting) leased or rented, but not owned, by the **insured**.

3.13 Visits to Countries Outside the Policy Territory

Notwithstanding Exclusions 5.18 (North American Countries) and 5.19 (North American Exports), and the **territory** referred to in the **schedule**, we agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** in any country outside of the **territory** arising solely out of the actions of non-resident directors, executives and salespersons temporarily visiting these countries in the course of the business;

Provided that:

- a. the **insured** has no premises, branch or **subsidiary** operation in the country being visited;
- b. any work performed in, on, or in connection with, the supply, manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any of the **insured's products** is excluded;
- c. the ownership, possession, control, or maintenance or use of any **vehicle** or **watercraft** is excluded.

Section 4: Optional Extensions

The following Optional Extensions are subject to all the terms and conditions of the **policy**, and shall apply only if they are specifically included in the **schedule**.

A sub-limit of indemnity may apply to an Optional Extension. All applicable sub-limits are specified in the **schedule**. The sub-limit is the maximum amount payable by **us** under an Optional Extension. A sub-limit is part of and not in addition to the **indemnity limit**.

A **deductible** may apply to an Optional Extension. All applicable **deductibles** are specified in the **schedule**. The **deductible** is inclusive of **defence costs**, unless otherwise specified in the **schedule**.

4.1 Goods on Hook

Notwithstanding Exclusion 5.11 (Goods on Hook), **we** agree to pay to or on behalf of the **insured** all sums that the **insured** shall become legally liable to pay for damage to property being lifted or lowered or moved or carried by any crane(s) owned, hired, or otherwise the responsibility of the **insured**.

4.2 Hot Work

Notwithstanding Exclusion 5.12 (Hot Work), **we** agree to pay on behalf of the **insured** all sums which the **insured** shall become legally liable to pay as **damages** in respect of **personal injury** or **property damage** happening during the **insurance period** arising from the **insured** undertaking any **hot work**, provided the **insured** fully complies with any applicable Australian Standard in relation to the conducting of that **hot work** at the time.

4.3 Mechanical Plant

Notwithstanding Exclusion 5.27 (Vehicles), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in **damages** in respect of **personal injury** or **property damage** happening during the **insurance period**:

- a. arising from loading or unloading any **vehicle** used by or on behalf of the **insured** but not in the **insured's** care, custody or control;
- b. arising from any **vehicle** operating its mechanical plant that it carries for its specialised function or purpose, and not as a **vehicle**;
- c. relating to the operation or ownership of a car-park so as to cause damage to **vehicles** within it (other than to **vehicles** belonging to, or used by or on behalf of the **insured**);
- d. relating to any bridge, viaduct, weigh bridge, road or anything beneath the **vehicle** caused by vibration or by the weight of any **vehicle** and/or its load;

4.4 Machinery Service / Repair Liability

Notwithstanding Exclusions 5.6 (Defective Materials, Design & Workmanship) and 5.25 (Property Owned), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** arising from the service or repair by the **insured** of any machinery other than any **vehicle**, and/or **watercraft** and/or its internal combustion engine, accessories or fittings, provided that the machinery is not owned, hired leased, or rented by the **insured**, and is in the care, custody or control of the **insured** for the purposes of the service or repair.

4.5 Pollution Liability

Notwithstanding Exclusion 5.23 (Pollution), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** arising out of the pollution or contamination of the atmosphere or of any water, land or other tangible property, where the discharge, dispersal, release or escape of the **pollutants** is:

- a. sudden, unidentifiable, unexpected and unintended from the standpoint of the **insured**;
- b. direct result of a sudden, specific and identifiable **occurrence** during the **insurance period**; and
- c. not the direct result of the insured failing to take reasonable precautions to prevent such pollution.

4.6 Underground Services

Notwithstanding Exclusion 5.26 (Underground Services), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** arising out of damage to or interference with existing underground services, cables, pipes or equipment.

Provided that:

- a. prior to the commencement of any work, the **insured** inquired of the relevant authority, corporation or **company** as to the location of such services, or
- b. engaged a professional underground utility locating service, and
- c. the **insured** took all reasonable precautions to prevent **personal injury** or **property damage**.

4.7 Vibration and Removal of Support

Notwithstanding Exclusion 5.28 (Vibration and Removal of Support), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** arising from vibration, or removing, weakening or interfering with, the support of land or buildings;

Provided that:

- a. the land or buildings are not owned or occupied by the **insured**; and
- b. the **personal injury** or **property damage** arises from the actions of the **insured**.

Section 5: Exclusions

We will not cover the **insured** in connection with:

5.1 Aircraft Products

personal injury or **property damage** arising out of, or directly or indirectly attributable to or in any way connected with any of the **insured's products** which, with the **insured's** knowledge were, or were intended to be, incorporated into the structure, machinery or controls of any **aircraft** or aerial device.

5.2 Asbestos and Toxic Mould

personal injury or **property damage** arising from or directly or indirectly attributable to or in any way connected with:

- a. asbestos, asbestos fibres or derivatives of asbestos or other things that contain it; or
- b. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins,

including the manufacture, distribution, or rectification of asbestos or asbestos products.

5.3 Building Defects Exclusion

personal injury or **property damage** arising out of, or directly or indirectly attributable to or in any way connected with:

- a. the failure or alleged failure of any building or structure to meet or conform to the requirements of the National Construction Code, or the relevant Building Code applicable at the time of the **occurrence**, in relation to leaks, water penetration, weatherproofing, moisture, or any effective water exit or control system; or
- b. mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure.

5.4 Contractual Liability

liability assumed by the **insured** under any contract or agreement except to the extent that the **insured** would have been legally liable even if there had been no contact in existence. This Exclusion shall not apply to liability pursuant to any:

- a. lease or hire of real or personal property;
- b. representation or warranty of fitness or quality in respect of the **insured's products**, or a representation or warranty that work performed by or on behalf of the **insured** will be done in a workmanlike manner; or
- c. contracts or agreements specified in the **schedule**.

5.5 Defamation

liability arising from or directly or indirectly attributable to or in connection with a statement made at the **insured's** direction, knowing of its defamatory nature, which results from or is related to advertising, broadcasting or telecasting activities by or on behalf of the **insured**.

5.6 Defective Materials, Design & Workmanship

personal injury or **property damage** arising from or directly or indirectly attributable to or in connection with any defective materials, design or workmanship of any kind (including but not limited to **defective workmanship**) including the costs of or associated with:

- a. rectifying, repairing or replacing defective materials;
- b. remedying any defect in any design, plan or speculation;
- c. remedying any **defective workmanship**; or
- d. correcting or improving any work undertaken by the **insured**;

And any liability arising from the costs of a. – d.

However, subject to the **policy** terms, **we** will indemnify the **insured** for resultant **property damage** to property other than the **insured's products** arising from defective material, design or workmanship.

5.7 Dishonesty

any liability, **claim**, **damages**, **occurrence**, or loss arising from or directly or indirectly attributable to or in connection with any actual or alleged act or omission by the **insured** which was deliberate, reckless, fraudulent, dishonest, malicious or criminal.

Where a **claim** is determined to be deliberate, reckless, fraudulent, dishonest, malicious or criminal whether by judgment, adjudication, admission or otherwise, and we have advanced **defence costs**, **we** shall seek reimbursement of any amounts paid to the **insured** under the **policy** including any advancement of **defence costs** made by **us**.

5.8 E-Commerce

- a. **personal injury** or **property damage** arising, directly or indirectly, out of, or in any way involving the **insured's Internet Operations**.

This Exclusion does not apply to **personal injury** or **property damage** arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its website.

For the purposes of this exclusion "**Internet Operations**" means the following:

- i. use of electronic mail systems by the **insured** or **employees**;
- ii. access through the **insured's** network to the world wide web or a public internet site by the **insured** or **employees**;
- iii. access to the **insured's** intranet (meaning internal company information and computing resources) which is made available through the world wide web for customers of the **insured** or others outside the **insured's** organisation; and
- iv. the operation and maintenance of the **insured's** website.

Nothing in this Exclusion shall be construed to extend coverage under this policy to any liability which would not have been covered in the absence of this Exclusion.

- b. **property damage** to computer data or programs and their storage media arising from or directly or indirectly attributable to or in connection with:
- i. the use of any computer hardware or software;
 - ii. the provision of computer or telecommunication services by the **insured** or on the **insured's** behalf; or
 - iii. the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

5.9 Failure to Insure

any breach of an obligation to insure.

5.10 Fines, Penalties and Refund of Fees

liability arising from or directly or indirectly attributable to or in connection with:

- a. taxes, fines or penalties; or
- b. punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages, the consequences of non-payment or performance warranty.

5.11 Goods on Hook

liability arising from or directly or indirectly attributable to or in connection with the lifting or lowering or movement or carrying of goods by any crane(s) owned, hired, or otherwise the responsibility of the **insured**.

5.12 Hot Work

liability arising from or directly or indirectly attributable to or in connection with the **insured** carrying out **hot work**.

5.13 Insured's Products

property damage to the **insured's products** if such damage is attributable to any defect therein or the harmful nature or unsuitability thereof.

5.14 Jurisdiction

any liability, **claim** or **damages** arising from or directly or indirectly attributable to or in connection with any legal action or regulatory proceedings:

- a. first brought against the **insured** in any country outside of the countries specified in the **schedule** under Jurisdiction;
- b. brought in a Court of Law within the jurisdiction of the countries specified in the **schedule** to enforce a judgment of a Court of Law outside the jurisdiction of the countries specified in the **schedule** whether by way of reciprocal agreement or otherwise; or
- c. in which proper law to be applied to the issues or any of them is that of a country other than the countries specified in the **schedule**.

5.15 Loss of Use

loss of use of tangible property which has not been physically damaged or destroyed arising from or directly or indirectly attributable to or in connection with:

- a. a delay in or lack of performance by or on behalf of the **insured** of any contract or agreement; or
- b. the failure of the **insured's products** to meet the level of performance, quality, fitness or durability that has been warranted or represented expressly or implied by the **insured**.

5.16 Misuse of Drugs

any liability arising from or directly or indirectly attributable to or in connection with the use, manufacture or distribution of methamphetamine or any other prohibited substance.

5.17 Molestation

personal injury arising out of or in connection with sexual harassment, sexual intercourse or any other form of sexual activity or any behaviour of a sexual nature.

5.18 North American Countries

personal injury or **property damage** arising from or directly or indirectly attributable to or in connection with **North American countries**, including any liability from or based on a settlement or arbitration in, or judgement or order of a court in **North American countries**.

5.19 North American Exports

liability arising from or directly or indirectly attributable to or in connection with any of the **insured's products** knowingly exported by the **insured** (or exported by the **insured's** agents or distributors with the **insured's** knowledge) to **North American countries**, including any liability arising from or based on a settlement or arbitration in, or judgement or order of a court in **North American countries**.

5.20 Nuclear/Radioactivity

liability arising from or directly or indirectly attributable to or in connection with **personal injury** or **property damage** or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- a. ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste 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.

5.21 Offshore Gas or Oil Platforms

liability arising from or directly or indirectly attributable to or in connection with work performed on or about any offshore gas or oil platform.

5.22 Personal Injury to Employees

- a. any **personal injury** sustained by any **employee** of the **insured**;
- b. an obligation on the **insured** under any accident or workers compensation legislation or any industrial award, employment contract, agreement or determination; or
- c. any liability, **claim**, **damages** or **defence costs** in connection with any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by the **insured**.

5.23 Pollution

any **personal injury** or **property damage** arising from or directly or indirectly attributable to or in connection with:

- a. the actual, alleged or threatened discharge, dispersal, release, seepage or escape of **pollutants** into or upon the land, building or other property, the atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or
- b. any direction or request to test for, monitor, clean up, contain, treat, detoxify or neutralise **pollutants**.

5.24 Professional Liability

liability for an error or omission arising from or directly or indirectly attributable to or in connection with professional advice or service.

5.25 Property Owned

property damage to any property owned by or leased or rented to the **insured** or otherwise in the **insured's** care, custody or control, other than as provided for by Automatic Exclusion 3.11 (Property in Care Custody or Control).

5.26 Underground Services

liability arising from or directly or indirectly attributable to or in connection with damage to or interference with existing underground services, cables, pipes or equipment.

5.27 Vehicles

personal injury or **property damage** arising out of the ownership, possession, repair, operation, control, maintenance or use by or on behalf of the **insured** of any **vehicle** which is:

- a. required by legislation to be registered and/or licensed for use on public roads or road related areas and/or insured;
- b. being operated while in an unsafe condition;
- c. being operated by any person who is under the influence of any liquor, substance or drug;
- d. required to be insured by any road traffic legislation (whether or not the **insured** has procured such insurance);
- e. insured, or in respect of which the **insured** is insured under any other policy, even if the other insurance is not collectable because of a breach of condition or applicable exclusion; or
- f. designed, modified or intended to be used for motor racing, rallying or for the purpose of competing in a race or practicing or preparing for any prearranged or organised racing or speed contest.

However, subject to the other terms and conditions of this **policy**, this exclusion will not operate if:

- i. cover does not extend to indemnify the driver or operator of the **vehicle** causing the **occurrence** and

the driver or operator is an **insured** under this **policy**;

- ii. the driving or operation of the **vehicle** was without the knowledge or consent of the **insured** or any director, officer, manager or supervisor of the **insured**; or
- iii. the **insured** has not waived any rights of recovery against the driver or operator causing the **occurrence**.

5.28 **Vibration and Removal Of Support**

liability arising from or directly or indirectly attributable to or in connection with vibration, or removing, weakening or interfering with, the support of land or buildings.

5.29 **War/Terrorism**

any **claim** or liability directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemy, terrorism, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public authority.

5.30 **Withdrawal or Repair of Products**

liability for the recall (including making any refund on the price paid), repair, withdrawal, inspection, removal, altering, treating, modification, replacement or **loss** of use of the **insured's products** or any property of which such products form a part, or of work undertaken by or for the **insured**, if such products, property or work are withdrawn from the market or from use, because of any defect or deficiency which the **insured** knew or has reason to suspect or because of any Government or statutory ban, order or notice.

Section 6: Definitions

For the purposes of this **policy** only:

6.1 Act of Parliament means any legislation of a State or Territory in, or the Federal Parliament of, the Commonwealth of Australia, including any amendment to or re-enactment, and any code, rules, regulations, bylaws or other subordinate legislation made under such Act.

6.2 Advertising liability means:

- a. libel, slander or defamation; or
- b. any infringement of copyright or passing off as title or slogan; or
- c. unfair competition, privacy, idea, misappropriation contrary to implied contract; or
- d. invasion of privacy;

committed or alleged to have been committed during the **insurance period** in any advertising, publicity article, broadcast or telecast and caused by or arising out of the **insured's** advertising activities.

Advertising liability does not include any liability arising out of Optional Extension 4.5 (Pollution Liability), or any liability in connection with the **insured's products**.

6.3 Aircraft means any machine, craft or thing made or intended to fly or move in or through the atmosphere or space.

6.4 Business means the following:

- a. the Business of the **insured** specified in the **schedule**;
- b. the provision and management of lunchroom facilities, social, sports, welfare and similar organisations for the benefit of **employees**;

- c. the provision of Fire Brigade, first aid, medical and ambulance services; and
- d. any other activity that the insured may undertake provided that the insured gives written notice to **us** and obtains **our** acknowledgement of coverage within 60 days of any new activity commencing.

6.5 Claim means:

- a. any civil proceeding brought by a third party against the **insured** for recovery of compensation or **damages**; or
- b. any written or verbal demand by a third party upon the **insured** for monetary relief.

6.6 Damages means any amount payable as compensation, including interest and costs.

6.7 Deductible means the amounts specified in the **schedule**.

A **deductible** may include a Worker to Worker Deductible which is specified in the **schedule** and will apply to **Worker to Worker Claims**.

6.8 Defective workmanship means work by the **insured** which is defective, harmful or fails to perform its functions so as to require rectification, remediation, removal, repair, alteration, treatment or replacement of the item being worked on.

6.9 Defence costs means any legal costs, disbursements, witness costs, assessors or adjusters costs or experts costs incurred by **us**, or by the **insured** with our prior written consent in relation to the **investigation**, defence or settlement of a claim covered by this section of the **policy**, as well as any first aid expenses incurred by the **insured** arising from a **personal injury**. **Defence costs** shall not include any internal or overhead expenses of the **insured**, the cost of the **insured's** time or any loss of earnings or profits.

6.10 Employee means any person who is a past, present or prospective **employee** of the **insured** under a contract of service or apprenticeship on a full-time, part-time or casual basis.

6.11 Hot work means any work involving;

- a. the application of heat, a naked flame, or an open heat source, or work that produces sparks;
- b. the use of welding equipment including cutting with such equipment; and/or
- c. cutting involving the use of rotary disc or grinding equipment, soldering, brazing or use of heat guns.

6.12 Indemnity Limit means the amounts specified in the **schedule**.

6.13 Insurance period means the period specified in the **schedule**.

6.14 Insured means:

- a. the **policyholder**;
- b. every director, officer, **employee**, partner or shareholder of an **insured** defined under 6.14a. whilst acting within the scope of their duties as such, except in respect of any liability under the *Corporations Act 2001* (Cth);
- c. every principal, in respect of its vicarious liability arising solely out of the performance, by an **insured** as defined under paragraph 6.14a. or 6.14b., of any contract work for such principal, but always subject to the terms of this **policy**;
- d. every office bearer or member of social and sporting clubs formed with the consent of the **insured** (other than an **insured** designated in paragraph 6.14c. or 6.14e.) in respect of **claims** arising from the duties connected with the activities of any such club; and
- e. each joint venture, co-venture or joint lessee of a named **insured** but only with respect to liability incurred

as a joint venture, co-venture or joint lessee, provided that a named **insured** gives written notice to **us** and **our** written acknowledgement of coverage for such joint venture, co-venture or joint lease.

6.15 Insured's products means any goods, products, including labels, instructions for use and advice, and property after they have ceased to be in possession of or under the control of the **insured**, manufactured, constructed, erected, installed, repaired, serviced, treated, sold, supplied or distributed by the **insured** (including any container, other than a **vehicle**).

6.16 Investigation means any official investigation, examination or inquiry relating to an **occurrence** which gives rise to a **claim** for **damages** covered under this **policy**.

6.17 Investigation costs means reasonable legal fees, costs and expenses incurred with **our** prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an **insured** in:

- a. preparing for, attending or producing documents to an **investigation**; or
- b. responding to a raid on, or on-site visit to, any **insured** by an **official body** that involves the actual or possible production, review, copying or confiscation of files or interviews of any **insured**.

Investigation costs do not include the remuneration of any **insured**, or the cost of time or overheads of any **insured**.

6.18 Medical persons means any legally required medical practitioner, legally qualified registered nurse, dentist or first aid attendant.

6.19 Money means only local or foreign currency, coins, bank notes, cheques, traveller's cheques, registered cheques, postal orders, money orders and bullion.

6.20 North American Countries means the United States of America and Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

6.21 Occurrence means an event, including the continuous or repeated exposure to substantially the same general conditions, which happens during the **insurance period** and results in **personal injury** or **property damage** that is neither expected nor intended from the standpoint of the **insured**.

Personal injury or **property damage** arising from a series of events, or continuous or repeated exposure to substantially the same general conditions, shall be deemed one **occurrence**.

6.22 Official body means any regulator, government or administrative body or agency, official trade body or self-regulatory body legally empowered to conduct an **investigation**.

6.23 Personal injury means:

- a. bodily injury (including resulting death, illness or care), disability, shock, fright, mental anguish or mental injury;
- b. false arrest, wrongful detention, false imprisonment or malicious prosecution or humiliation;
- c. wrongful entry or eviction or other invasion of the right of privacy;
- d. assault and battery, provided that this was not committed by or at the direction of the **insured** except for the purpose of preventing or eliminating danger to persons or property; or
- e. trespass to the person

Where the **insured** and **us** cannot agree when the **personal injury** happened, then the **personal injury** shall be deemed to have occurred when **personal injury** first became evident to the claimant even if the cause or extent was unknown.

6.24 Policy means this policy wording, the **schedule**, the **proposal** and any endorsement attaching to and forming part of the **policy** either at commencement or during the **insurance period**.

- 6.25** **Policyholder** means the entity or entities specified in the **schedule** and any **subsidiaries**.
- 6.26** **Pollutants** means any substances, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.
- 6.27** **Property damage** means:
- a. physical damage to, or loss of or destruction of tangible property, including resulting loss of use;
 - b. loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by physical damage to, loss of or destruction of other tangible property; or
 - c. trespass, nuisance or wrongful interference with the enjoyment of rights over tangible property.
- Where the **insured** and **us** cannot agree when the **property damage** happened, then the **property damage** shall be deemed to have occurred when it first became evident to the claimant even if the cause or extent was unknown.
- 6.28** **Principal** means a natural person or company or other entity who has a contract with the **insured** under which the natural person or company or other entity engages the **insured** to perform the **business**.
- 6.29** **Proposal** means the **insured's** proposal made to us together with any attachments and material referred to therein.
- 6.30** **Schedule** means the policy schedule issued by **us**.
- 6.31** **Subsidiary** means:
- a. any entity which, at the commencement of the **insurance period**, is a subsidiary of the **policyholder** as defined in the *Corporations Act 2001* (Cth) (or any equivalent amendments or re-enactments of that provision); or
 - b. any entity which, at the commencement of the **insurance period**, by virtue of any applicable legislation or law, is deemed to be a subsidiary of the **policyholder**; or
 - c. any entity over which, at the commencement of the **insurance period**, the **policyholder** is in a position to exercise effective direction or control by means of a direct or uninterrupted succession of **subsidiaries** as defined in clauses a. or b. above.
- 6.32** **Territory** means worldwide, unless otherwise states in the **schedule**, and subject to Exclusions 5.18 (North American Countries) and 5.19 (North American Exports), and the limitations in Optional Extensions 4.6 (Underground Services) and 4.7 (Vibration and Removal of Support).
- 6.33** **Vehicle** means a motor vehicle or any type of machine on wheels or on self-laid tracks or rollers that is propelled by its own power and anything other than a watercraft intended to be towed by any such machine, and includes its accessories, tools, specialised equipment and spare parts.
- 6.34** **Watercraft** means any vessel, craft or thing made or intended to float on or in or travel on or through water not exceeding 10 meters in length.
- 6.35** **We/us/our** means DUAL Australia Pty Limited for and on behalf of Certain Underwriters at Lloyd's.
- 6.36** **Worker to Worker Claim** means:
- a. a **claim** that has any connection with the recovery of any payments by any workers' compensation insurer or self-insurer under the provisions of any workers' compensation legislation or any industrial award, employment contract, agreement or determination, or at common law; or
 - b. a **claim** in connection with **personal injury** where the person who has sustained **personal injury** has received (or is entitled to receive) payments in accordance with any workers' compensation legislation or any industrial award, employment contract, agreement or determination, or at common law.

Section 7: Claim Conditions

7.1 Notification

The **policyholder** and/or any **insured** must notify **us** in writing of any **claim** or **investigation**, or other relevant circumstance which may trigger this **policy** as soon as is reasonably practicable after they first become aware of such circumstance and within the **insurance period**.

The written notice should include, so far as is reasonably practicable and so far as the relevant **insured** is aware:

- a. the identity of the claimant if relevant;
- b. an outline of the factual matrix; and
- c. an estimate of the likely quantum of any **loss**.

Such notice to us must be given in writing and delivered to:

[The National Claims Manager](#)

DUAL Australia Pty Limited
Level 6, 160 Sussex Street
Sydney NSW 2000
Australia

Or by email to claims@dualaustralia.com.au

Any written notice will be considered effective from the date such notice is first received by **us**.

7.2 Co-operation

- a. the **insured** must, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.
- b. the **insured** must, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.
- c. each **insured** must provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could potentially prejudice **our** position or **our** potential or actual rights of recovery.
- d. no **insured** may settle any **claim** or incur any **defence costs** or assume any contractual obligation or admit any liability with respect to any **claim** without **our** written consent.

7.3 Allocation

Our liability under this **policy** is limited to the proportion of **damages, defence costs** and **investigation costs**, which is a fair and equitable allocation as between:

- a. covered and uncovered parties; and/or
- b. covered and uncovered matters;

having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties. Only **damages, defence costs** and **investigation costs** incurred by covered parties in relation to covered matters will be covered by this **policy**, and is subject always to the terms and conditions of this **policy**.

We will use **our** best endeavours to agree upon a fair and equitable allocation of the proportion covered under this **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties.

If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of the

jurisdiction in which the **policy** was underwritten. The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing. Pending Senior Counsel's determination **we** will meet the **damages, defence costs** and **investigation costs** on an interim basis at the percentage at which **we** contend they should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination. The costs of any referral for determination to a Senior Counsel under this Clause will be borne by **us**.

7.4 Legal Representation and Settlement

Unless otherwise specified in a **policy**, it will be **our** duty and not the duty of the **insured** to defend **claims** and arrange for legal representation at **investigations**.

The **insured** will not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or **investigation**, incur any **defence costs, investigation costs** or other loss covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.

We will not be liable for any settlement, **defence costs, investigation costs** or other form of loss, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.

We will have the right and will be given the opportunity to associate with each **insured** and participate in the defence of any **claim** or **investigation** including the negotiation and settlement of a covered **claim**.

With respect to any **claim** or **investigation** involving more than one **insured**, the **insureds** agree that **we** have the right to require such **insureds** to retain separate legal representation.

7.5 Order of Payments

If the payment of **loss, defence costs** and **legal representation costs** in respect of a covered **claim** under a **policy** where such **loss** in the aggregate exceeds the remaining available **indemnity limit**, **we** will:

- a. first pay such **loss** for which the **policyholder** does not indemnify an **insured person**; then
- b. to the extent of any remaining amount of the **indemnity limit** available after payment under 7.5a) above, pay such **loss** for which coverage is provided under any other provision of this **policy**.

We will otherwise pay **loss** covered under this **policy** in the order in which such **loss** is presented to **us** for payment.

Section 8: General Conditions

8.1 Subrogation and Recoveries

Where **we** have paid any amount under the **policy**, **we** become entitled to assume any rights available to the **insured** against any party to the extent of **our** payment. On **our** request, the **insured** must assign all rights of recovery against any person or entity, but only to the extent that payment has been made under the **policy**.

The **insured** must, at its own cost, assist **us** and provide information as **we** may reasonably require, to exercise **our** rights of recovery and/or subrogation. This may include providing and signing statements and other documents and the giving of evidence.

Where a recovery is made, the proceeds of such a recovery will be applied as follows:

- a. firstly, to the satisfaction of all costs incurred in effecting the recovery;
- b. secondly, to the **insured** for the amount of **loss** in excess of the **indemnity limit** specified in the **schedule** which would have otherwise been covered by this **policy** or is also in excess of any excess insurance purchased over this **policy**;
- c. thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies;
- d. finally, to the **insured** for the amount paid in respect of the **deductible** or uninsured (other than by reason of the **indemnity limit**).

8.2 Goods and Services Tax

We will charge an appropriate amount to the **policyholder** on account of GST.

It is the duty of the **policyholder** to inform **us** whether or not it is entitled to an Input Tax Credit in relation to any amounts claimed under this **policy**.

Our liability to pay **loss** under this **policy** will be calculated having regard the **policyholder** or any other **insured's** entitlement to claim an Input Tax Credit.

No payment will be made to the **policyholder**, for any GST liability on account of a covered **claim** or **investigation**.

GST, Goods & Services Tax and Input Tax Credit have the meanings attributed to them under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8.3 Alteration to Risk

The **insured** must notify **us** in writing as soon as practicable of any material alteration to the risk during the **insurance period** including:

- a. the **insured** going into voluntary bankruptcy, receivership, administration or liquidation; or
- b. the **insured** failing to pay debts as and when those debts become due; or
- c. the **insured** breaching any other obligation giving rise to the appointment of a receiver or the commencement of bankruptcy or winding up proceedings; or
- d. any material change in the nature of the **professional business**.

We may not cover the **insured** for any **claim** if the **insured** does not notify **us** in writing as soon as practicable of any material alteration to risk.

If during the **insurance period** a **transaction** occurs then the cover under the **policy** will only apply to conduct which occurred or was committed prior to the effective date of the **transaction**.

If, during the **insurance period**, the **policyholder** decides to make a public offering of its securities in any jurisdiction the **policyholder** must provide **us** with any prospectus or offering statement for **our** review and assessment. **We** will be entitled to amend the terms and conditions of any **policy** and/or charge an additional premium reflecting any potential increase in exposure, which **we** deem reasonable.

The **insured** will give **us** written notice of the above listed events as soon as reasonably practicable.

8.4 Assignment

The **insured** must not assign the **policy** or any rights under the **policy** without **our** prior written consent by way of endorsement to the **policy**.

8.5 Cancellation

The **policyholder** may cancel any **policy** at any time by providing **us** with a minimum of 14 days written notice.

We may only cancel the **policy** for non-payment of premium and must do so in accordance with the provisions of the *Insurance Contracts Act 1984* (Cth).

Provided that there have been no **claims** or notifications made on or under the **policy**, **we** agree to allow a refund of premium calculated on a pro-rata basis, provided that **we** will always retain a minimum of 25% of the full annual premium.

8.6 Several Liability of Underwriters

The obligations of **our** subscribing Underwriters, where there is more than one Underwriter referred to in the **schedule** subscribing to the **policy**, are several and not joint and are limited solely to the extent of their individual subscriptions. No subscribing Underwriter is responsible for the subscription of any co-subscribing Underwriter who, for any reason, does not satisfy all or part of its obligations.

8.7 Confidentiality

The **insured** must not disclose, either personally or through any person or entity acting on the **insured's** behalf or at the **insured's** direction, to any third party:

- a. the existence of this **policy**;
- b. the nature of the indemnity provided;
- c. the **indemnity limit**; or
- d. the amount of premium paid.

However, the **insured** may disclose the above matters to the extent that:

- i. the **insured** is required to do so by law; or
- ii. we consent to the disclosure in writing; or
- iii. we provide a Certificate of Currency which can be provided to third parties.

8.8 Territorial Limitation

Unless otherwise stated in the **schedule** and subject to General Condition 8.9 (Jurisdictional Limitation), cover provided under this **policy** extends to the conduct of the **policyholder's professional business** anywhere in the world.

8.9 Jurisdictional Limitation

Unless otherwise stated in the **schedule**, cover provided under this **policy** extends to **loss** with respect to a **claim** or **investigation** brought and maintained anywhere in the world, except within the territorial limits of the United States of America or Canada or their respective territories or protectorates or to enforce any judgment, order or award obtained in or determined under the laws of the United States of America or the Canada or their territories or protectorates.

8.10 Governing Law

This **policy** is governed by the laws of the Commonwealth of Australia and/or the State or Territory of Australia where the **policy** was issued. Any dispute relating to **policy** interpretation will be submitted to the exclusive jurisdiction of the Courts of the State or Territory where the **policy** was issued.

8.11 Indemnity Limit

- a. subject to any Extension of coverage which states otherwise, **our** total liability under the **policy** in respect of any one **occurrence**, will not exceed the **indemnity limit** inclusive of all **loss**.
- b. the **schedule** will indicate the **indemnity limit** applicable to each **policy**. If more than one **policy** has been purchased, the **schedule** will also indicate the aggregate **indemnity limit** for all policies which have been purchased by the **policyholder**.
- c. **we** will have no liability in excess of the sub-limits specified in the **schedule** in the aggregate for the applicable extension of cover, irrespective of the number of **policy** sections, which respond to the **claim** or **investigation** associated with the **occurrence**. In such circumstances, **we** will apply the higher of the sub-limits or **indemnity limit** available.

8.12 Deductible

- a. **our** liability under this **policy** will only apply to that part of any **damages, defence costs** or **investigation costs** which is in excess of the **deductible** specified in the **schedule**. Such **deductible** will be borne by the **insured**, except where otherwise provided.
- b. unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **defence costs** and/or **investigation costs**.

- c. except as otherwise stated in the **policy**, costs and expenses incurred by **us** in determining whether we are liable to indemnify the **insured** under the **policy** will not erode the **indemnity limit** and will be met by **us**.

8.13 Severability, Non-Imputation and Non-Avoidance

No state of mind or knowledge possessed by any one **insured person** will be imputed to any other **insured person** for the purpose of determining whether any provision in this **policy** applies. However, any state of mind or knowledge possessed by any past or present chairman of the board, chief executive officer, chief operating officer or chief financial officer of the **policyholder** or any **subsidiary** will be imputed to the **policyholder**.

We agree not to rescind or avoid this **policy** in whole or in part, for any reason.

We waive all rights under section 28(3) of the *Insurance Contracts Act 1984* (Cth) for non-fraudulent non-disclosure or non-fraudulent misrepresentation by an **insured**.

If **we** are entitled to reduce **our** liability pursuant to section 28(3) of the *Insurance Contracts Act 1984* (Cth) as a result of fraudulent non-disclosure or fraudulent misrepresentation, **we** will only reduce **our** liability under the **policy** in respect of such **insureds** who were involved in or were aware of the fraudulent non-disclosure or fraudulent misrepresentation.

8.14 Preservation of Right to Indemnity

In the event and to the extent that the **policyholder** has not indemnified an **insured person** but is legally permitted or required to do so in respect of a **claim** or **investigation**, but for whatever reason, refuses to do so, then **we** will pay on behalf of the **insured person** any **loss** arising from the **claim, defence costs** or **legal representation costs** within the **deductible** and, the applicable **deductible** will be paid by the **policyholder** to **us**.

8.15 Other Insurance

This **policy** does not apply if any **claim** under this **policy** is also covered in whole or in part by another policy or would but for the existence of this **policy** be covered by another policy, except to the extent that the amount of any liability exceeds the amount payable under such other policy or policies, provided always that we shall not be liable to pay any amount in excess of any relevant amount specified in the **schedule**.

If **loss** or any other amount insured by the **policy** is also potentially insured under any other insurance policy or policies, then the **insured** must advise **us** within sixty days of making a claim under the **policy** and provide **us** with a copy of such other policy or policies.

8.16 Currency

Any reference to premium, **indemnity limit, deductibles, damages, defence costs, investigation costs** or any other amounts payable by **us** under this **policy** are expressed and are payable in Australian Dollars. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in Australian Dollars at the cash rate for the purchase of Australian Dollars set by the Reserve Bank of Australia as at 4.00pm on the date which the foreign payment becomes due.

8.17 Service of Legal Notices

The Underwriters agree that any Summons, Writ or other like legal Notice or Process, which is to be served upon the Underwriters may be served upon Lloyd's General Representative at Lloyd's Australia:

[Lloyd's Underwriters' General Representative in Australia](#)

Level 16, Suite 1603

1 Macquarie Street

Sydney NSW 2000

Australia

Telephone Number: (02) 9298 0700

Facsimile Number: (02) 8298 0788

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at

the request of the **insured** (or reinsured) to give a written undertaking to the **insured** (or reinsured) that he will enter an appearance on Underwriters' behalf.

If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

8.18 Interpretation

Words and phrases appearing in bold text have the meaning defined in the **policy**.

In this **policy**:

- a. the singular includes the plural and the masculine includes the feminine;
- b. the headings are for descriptive purposes only; and
- c. in the event that any portion of the **policy** is found to be invalid or unenforceable, the remainder will remain in full force and effect.

All **policy** documents will be read together as one contract of insurance.

8.19 Reasonable Precautions

The **insured** must:

- a. exercise reasonable care that only competent **employees** are employed and take reasonable measures to maintain all premises, fittings and plant in safe and sound condition; and
- b. take all reasonable precautions to:
 - i. prevent **personal injury, property damage** and **pollution**;
 - ii. prevent the manufacture, sale or supply of defective products;
 - iii. comply and ensure the **insured**, the **insured's employees**, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property; and
 - iv. take reasonable action to trace, recall or modify any of the **insured's products** containing any defect or deficiency of which the **insured** has knowledge or reason to suspect any defect or deficiency.