



# SINGLE PROJECT

## CONSTRUCTION AND LEGAL LIABILITY INSURANCE POLICY



# Contents

<b>About CGU</b>	<b>1</b>
Intermediary Remuneration	1
About Steadfast	1
<b>Important Information</b>	<b>1</b>
General Insurance Code of Practice	1
Our Service Commitment	1
How CGU protects your privacy	1
Interest on unallocated premium	2
Extract from the Insurance Contracts Act 1984	2
Important notices	2
Single Project Construction and Legal Liability Insurance	2
General	2
<b>Section 1 Property Damage</b>	<b>4</b>
Cover	4
Insured Items	4
Additional benefits	5
Definitions	5
Basis of loss settlement	6
Limitation	7
Exclusions applicable to Section 1	7
<b>Section 2 Legal Liability</b>	<b>9</b>
Introduction	9
Cover	9
Definitions	9
Exclusions applicable to Section 2	11
Conditions applicable to Section 2	14
General exclusions	14
General conditions	15
Claims procedures	16
Endorsements	17



# About CGU

Insurance Australia Limited trading as CGU Insurance is the underwriter of this insurance policy. Our Australian Business Number is 11 000 016 722. Our Australian Financial Services Licence Number is 227681. In this policy Insurance Australia Limited trading as CGU Insurance is called 'We', 'Us', 'Our' or 'Insurer'.

## Intermediary Remuneration

Insurance Australia Limited trading as CGU Insurance pays remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to Us. The type and amount of remuneration varies and may include commission and other payments. If You require more information about remuneration We may pay Your intermediary, You should ask Your intermediary.

## About Steadfast

Steadfast is an unlisted public company comprising over 270 shareholders. Each shareholder is an independent insurance brokerage. This policy is available exclusively through shareholders of Steadfast Group Limited. Steadfast Group Limited does not issue, guarantee or underwrite this policy.

# Important Information

## General Insurance Code of Practice

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

The objectives of the Code are:

- to commit Us to high standards of service;
- to promote better, more informed relations between Us and You;
- to maintain and promote trust and confidence in the general insurance industry;
- to provide fair and effective mechanisms for resolving complaints You make about Us; and
- to promote continuous improvement of the general insurance industry through education and training.

The Code Governance Committee is an independent body that monitors and enforces insurers' compliance with the Code.

We have adopted and support the Code and are committed to complying with it. Please contact Us if You would like more information about the Code or the Code Governance Committee.

## Our Service Commitment

CGU is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that you are not satisfied with the way in which we have dealt with you, as part of our commitment to customer service, we have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact Your nearest CGU office if You have a complaint, including if You are not satisfied with any of the following:

- one of Our products;
- Our service;
- the service of Our authorised representatives, loss adjusters or investigators; or
- Our decision on Your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to our Internal Dispute Resolution Department.

Brochures outlining our internal dispute resolution process are available from your nearest CGU office.

## How CGU protects your privacy

We use information provided by our customers to allow us to offer our products and services. This means we may need to collect your personal information, and sometimes sensitive information about you as well (for example, health information for travel insurance). We will collect this information directly from you where possible, but there may be occasions when we collect this information from someone else.

CGU will only use your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give us your information, but this may affect our ability to provide you with insurance cover.

We may share this information with companies within our group, government and law enforcement bodies if required by law and others who provide services to us or on our behalf, some of which may be located outside of Australia.

For more details on how we collect, store, use and disclose your information, please read our Privacy Policy located at [www.cgu.com.au/privacy](http://www.cgu.com.au/privacy). Alternatively, contact us at [privacy@cgu.com.au](mailto:privacy@cgu.com.au) or 13 15 32 and we will send you a copy. We recommend that you obtain a copy of this policy and read it carefully.

By applying for, using or renewing any of our products or services, or providing us with your information, you agree to this information being collected, held, used and disclosed as set out in this policy.

Our Privacy Policy also contains information about how you can access and seek correction of your information, complain about a breach of the privacy law, and how we will deal with your complaint.

## Interest on unallocated premium

If we are unable to issue your insurance when we receive your application, we are required to hold your Premium in a trust account on your behalf until your insurance can be issued. We will retain any interest payable by our bank to meet, among other things, bank fees and other bank costs we incur in operating the account.

## Extract from the Insurance Contracts Act 1984

Under the terms of the Act, We must advise You about the following:

### Your duty of disclosure

Before You enter into a contract of general insurance with an insurer, You have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that You know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before You renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matters:

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

### Non-disclosure

If You fail to comply with Your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim to the extent the insurer is prejudiced by Your failure or may cancel the contract if the insurer would not have issued You cover on the same terms had You complied with Your duty of disclosure, or do both.

If Your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

## Important notices

### 1. Claims

This policy does not provide cover in relation to events that occurred before this policy was entered into.

### 2. Deductible

A Deductible is the sum of money We will not pay in respect of a claim. This policy and the Schedule detail the Deductibles which may be applicable.

## Single Project Construction and Legal Liability Insurance

The Company and You are identified and referred to in this policy and the Schedule. You having paid, or agreed to pay, to Us, the premium shown in the Schedule for the Policy Period or a premium as advised by Us as applying to any subsequent period, We will provide insurance against the risks described in each Section, subject to the terms, Conditions, Exclusions and Endorsements of this policy. In issuing this policy, We rely upon the information contained in the Application and any written statements made by You or anyone acting on Your behalf. The insurance applies only in respect of those Items against which a Sum Insured is shown in the Schedule or which are otherwise indicated in the Schedule as being operative.

## General

### Definitions applicable to Sections 1 and 2

- 1. Contract** shall mean the contract or agreement between any of the Named Insured under 4 a), b), c) and d) which gives rise to the Contract Works, and includes any sub-contract or sub-contract agreement entered into pursuant to such contract or agreement.
- 2. Communicable Disease** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not;
  - b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas between organisms; and
  - c) the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property.
- 3. Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, Electronic Data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.
- 4. Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

To the extent that Damage to property insured under the policy and any Time Element Loss directly resulting therefrom is directly occasioned by theft, burglary or forcible entry involving the use or operation of any Computer System to facilitate any physical entry or exit, such use or operation shall not be considered as a Cyber Act.

**5. Cyber Incident** means:

- a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

**6. Data Processing Media** means any property insured on which Electronic Data can be stored but not the Electronic Data itself.

**7. Deductible** shall mean the amount shown in the Schedule for which We shall have no liability in respect of:

- a) Section 1, each and every claim or series of claims arising out of any one event.
- b) Section 2, each and every Occurrence.

**8. Electronic Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

**9. Employee** shall mean any person engaged under a contract of service or deemed contract of service or apprenticeship with any of the Named Insured.

**10. Named Insured** shall mean:

- a) You;
- b) Your personal representatives;
- c) any of Your directors, partners, executives, officers or Employees but only for liability incurred by them while acting within the scope of their duties in such capacity;
- d) Additional Insured:
  - i. any principal; or
  - ii. the head contractor; or
  - iii. the project manager; or
  - iv. all contractors and sub-contractors

not being You but being a legal entity with whom You have entered into a Contract and provided their interests are required to be insured jointly by You, and then only to the extent required by the terms set out in the Contract, and only in respect of work performed as a part of the Project. For the purposes of this policy sub-contractors shall not mean suppliers, manufacturers, design consultants or consultants of any kind whatsoever:

- e) Any officers, committees or members of Your canteen, sports, social and welfare organisations and any member of Your fire, first aid, medical or ambulance services whilst acting in their capacity as such and in respect of activities associated with the Project:
- f) Any legal entity identified by name in the Schedule as having a financial, legal, or equitable interest in the Project, but only in respect of the insurance provided under Section 1 and only to the extent of such financial, legal, or equitable interest.

The Named Insured as outlined above shall represent the entire group as described unless otherwise specified in the Schedule.

**11. Period of Insurance** means the period commencing at the start of the Project or the date specified in the Schedule, whichever is the later and ceasing at the end of the Defects Liability Period.

**12. Policy Period** means the period commencing at the inception date shown in the Schedule and ending on the expiry date shown in the Schedule.

**13. Principal** means the owner or persons or organisation (by whatever name) for or on behalf of whom the Project is being carried out.

**14. Provisional Premium** shall mean the premium calculated on the basis of the Estimated Contract Price of the Project at the agreed rates.

**15. Schedule** shall mean the schedule attaching to this policy.

**16. Time Element Loss** means business interruption, contingent business interruption or any other consequential losses insured under this policy.

**17. Vehicle** shall mean any type of machine on wheels, on skids or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine whilst attached thereto.

**18. We, Us, Our, Company** shall mean Insurance Australia Limited ABN 11 000 016 722 trading as CGU Insurance.

**19. You, Your, Insured** means the Person(s) or legal entity named in the Schedule.

# Section 1

## Property Damage

### Cover

#### A. Construction Period Cover

We will indemnify the Named Insured for Damage to the Project and other Insured Items as specified in the Schedule from any cause, not excluded, occurring at the Project site as set out in the Schedule during the Construction Period including materials, components and equipment to be incorporated in the insured Project, whilst in storage or in transit within the Commonwealth of Australia.

#### B. Commissioning Period Cover

Where either testing or commissioning of the Project is required by the Contract Conditions, We will indemnify the Named Insured against Breakdown of any of the items the subject of this condition and which:

- a) arise out of the performance of the testing or commissioning; and
- b) occurs and is discovered during the Commissioning Period.

#### C. Defects Liability Period Cover

Where a Defects Liability Period is required by the Contract conditions, We will indemnify the Named Insured for Damage to the Project from any cause, not hereafter excluded, and which;

- a) manifests itself during the Defects Liability Period; and
- b) originates from:
  - i. a cause (unless excluded) occurring and arising out of the Project carried out by the Named Insured during the Construction Period and at the Project Site; or
  - ii. any cause (unless excluded) occurring and arising out of the course of operations carried out by the Named Insured on the Project Site in complying with the requirements of the Defects Liability clause in the Contract.

The insurance shall cease to attach to the whole or any separable portion of the Project following expiry of the Defects Liability Period.

### Insured Items

Following Damage indemnified under Section 1 Property Damage. Cover A, B or C, We will pay up to the Sums Insured stated in the Schedule, costs and expenses necessarily incurred by the Named Insured for;

#### 1. Contract Works Sum Insured

The Contract Works Sum Insured must be the full Estimated Construction Cost at the commencement of the Period of Insurance. Average will not apply to this Insured Item.

#### 2. Removal of Debris

Shall include the cost of:

- a) demolition, removal and disposal of Damaged parts of the Project; and any Existing Structure insured hereunder:
- b) demolition, removal and disposal of undamaged parts of the Project necessary to enable the Project to be restored or replaced. and, where applicable, this insured Item shall also apply to any insured Existing Structure,

Unless another Sum Insured is shown in the Schedule, this Sum Insured will be limited to 10% of the Estimated Construction Cost. Average will not apply to this Insured Item.

#### 3. Professional Fees

Shall include fees for architects, surveyors, consulting engineers and other such professionals not being Employees of the Named Insured but employed in the reinstatement of insured Damage to the Project (but excluding any fees for the preparation of any claim under this policy).

Unless another Sum Insured is shown in the Schedule, this Sum Insured will be limited to 10% of the Estimated Construction Cost. Average will not apply to this Insured Item.

#### 4. Expediting Expenses

Shall include the costs of express delivery within the Commonwealth of Australia, overtime rates of wages, the hire of additional labour and equipment, and the costs of purchasing resources necessary to reinstate repair or urgently replace Damaged parts of the Project insured by this policy. Express delivery shall include carriage by airfreight within the Commonwealth of Australia but only by licensed airline(s) utilizing regular scheduled services, and not aircraft chartered specifically for such carriage unless agreed in writing by Us. Expediting expenses will not include reimbursement of costs incurred solely to compensate for delay in completion of the Project.

Unless another Sum Insured is shown in the Schedule, this Sum Insured will be limited to 10% of the Estimated Construction Cost. Average will not apply to this Insured Item.

#### 5. Mitigation Expenses

Shall include the costs and expenses necessarily and reasonably incurred by any of the Named Insured, in containing, mitigating, suppressing or preventing further Damage to the Project.



Unless another Sum Insured is shown in the Schedule, this Sum Insured will be limited to 5% of the Estimated Construction Cost. Average will not apply to this Insured Item.

#### 6. a) Construction Tools, Minor Plant and Equipment

For insured Damage to construction tools, minor plant and equipment used on or about the Project Site for the performance of the Project during the Construction Period and owned by You.

Average will not apply to this Insured Item. The maximum sum insured will be limited to \$50,000 or any lesser amount shown in the Schedule, with a further limit of \$5,000 current market value applying to each individual item.

#### b) Formwork, Hoardings, Temporary Buildings, Scaffolding Major Plant and Equipment

For insured Damage to Insured Items owned, hired, or for which You have accepted responsibility to insure, used on or about the Project Site for the performance of the Project during the Construction Period.

Average will apply to this Insured Item based on the Sum Insured being the current market value of all items used on the Project Site.

### 7. Principal Supplied Materials

The cost of replacing Principal Supplied Materials in respect of Damage, whilst at the Project Site.

Average will apply to this Insured Item based on the Sum Insured being the full replacement value of all such materials.

### 8. Existing Structures

The costs of replacing Existing Structures located at the Project Site and as shown on the Schedule.

Average will apply to this Insured Item. In applying Average the Sum Insured shall represent the full replacement cost of the structure at commencement of the Period of Insurance.

## Additional benefits

**The Cover under Section 1 is extended to include the following additional benefits.**

### 1. Loss Accumulation

For the purpose of the application of the Deductible, all Damage resulting from storm, tempest, flood, cyclone, tsunami, earthquake, subterranean fire, volcanic eruption or bushfire, occurring during any period of 72 consecutive hours shall be considered as one instance of Damage whether or not such storm, tempest, flood, cyclone or earthquake is continuous or sporadic in its sweep or scope and whether or not the Damage was due to the same climatic or seismological conditions. Each such instance shall be deemed to have commenced on the first happening of any such loss or damage, not within the period of any previous such instance.

### 2. Reinstatement of Sum(s) Insured

Following payment of a claim under this policy, We will automatically reinstate the Sum(s) Insured, provided You pay any additional premium at the original policy rate applicable.

### 3. Escalation and Variations

If during the Construction Period there is an increase in the Estimated Construction Cost, the Sum Insured for the Contract Works as specified in the Schedule shall be increased by the same proportion.

The amount of such increase shall not exceed 15 per cent of the Sum Insured stated under Insured Item 1 in the Schedule, unless expressly agreed in writing and an additional premium shall be paid at the end of the Policy Period at the original rates in accordance with General Condition 8.

## Definitions

### Applicable to Section 1 only

1. **Average** shall apply to any claim when the amount You have specified for an Insured Item is less than the replacement amount of that Insured Item. This means that any payment we might otherwise be required to make under the terms and Conditions of this policy will be reduced in the same proportion as the amount specified bears to 80% of the replacement amount.

Average will apply to each Insured Item, as detailed in the Insured Item descriptions.

2. **Breakdown** shall mean Damage caused by mechanical, hydraulic, electrical or electronic failure resulting from defects within a machine or installation which requires repair or replacement to enable normal working to continue.

3. **Commissioning Period** shall mean the period commencing with the final installation of the items specified under the Contract and continuing for 6 weeks or the time specified in the Contract, whichever is the lesser, or the time actually specified in the Schedule.

4. **Construction Period** being the period commencing:

- a) on the date specified in the Contract, or on the date of possession of the Project Site, or the actual date of commencement of the works, provided such date is within the Policy Period specified within the Schedule; and expiring:
- b) i. at the time of practical completion of the Project, being when the Contract Works are complete except for minor omissions and minor defects that do not prevent the Contract Works from being operational or reasonably capable of being used for their intended purpose; or
- ii. with respect to any separable portion of the Project at the time it is taken into use by the Principal; or
- iii. with respect to any separable portion of the Project at the time it is completed and delivered up to or taken over by the Principal; or

- iv. with respect to any separable portion of the Project at the time it is completed pending sale or leasing; or
  - v. with respect to the whole of the Project attaining practical completion and subject to a contract of sale, cover shall continue for a maximum of 30 days, or completion of the sale which ever occurs first; or
  - vi. on the expiry date specified in the Schedule;
- whichever occurs first.

**5. Contract Works** shall mean the cost of labour and all the materials incorporated in, or to be incorporated in the Project and included within the Estimated Contract Price at the commencement of the Project.

**6. Damage** means unforeseen physical loss, destruction or damage neither intended nor expected by the Named Insured in the course of carrying out the Project and the term 'Damaged' shall bear a corresponding meaning wherever it appears in this policy.

**7. Defects Liability Period** being the period of months specified in the Schedule, and commencing

- i. at the expiry of the Construction Period; or
- ii. on the date each separable portion of the Project is taken over or taken into use or occupation by the Principal, or for which a certificate of practical completion has been issued;

whichever occurs first.

**8. Estimated Construction Cost** shall mean the total of all costs to complete the Project at the commencement of the Period of Insurance.

**9. Existing Structure** means any permanent building or structure located at the Project site prior to commencement of the Project.

**10. Insured Items** means all of the individual items shown in the Schedule.

**11. Major Perils** means fire, lightning, explosion, earthquake, collapse, storm, tempest, flood, water, subsidence, ground heave or landslide.

**12. Minor Perils** means any other cause of Damage not defined as a Major Peril other than Named Cyclone

**13. Principal Supplied Materials** means any item supplied free, by the Principal, for incorporation within the Project and in addition to the Estimated Construction Cost.

**14. Project** means the Contract Works described in the Schedule.

**15. Project Site** shall mean the location or locations specified in the Schedule where the Project is carried out together with all areas surrounding the said location that the Insured shall use in connection with the Project.

## Basis of loss settlement

The amount payable in respect of Damage insured under Section 1 Property Damage will be as set out below.

### 1. Contract Works

The costs necessary to reinstate, or replace, or repair the affected parts of the Project to its condition immediately before the Damage, even though such cost may vary from the original construction cost, less any salvage.

### 2. Existing Structures

The costs necessary to reinstate, or replace, or repair the affected Structure to its condition when new or pay up to the Sum Insured, shown in the Schedule, less any salvage.

### 3. Plant and Equipment

The amount payable in respect of Plant and Equipment in respect of Damage will, at our option, be either:

- a) The costs necessary to repair the item and return it to its state of serviceability immediately prior to the Damage, less allowance for depreciation in respect of parts replaced; or
- b) In the case where the costs of repair exceed the current market value, We will pay the current market value immediately prior to the Damage, less any salvage.

The Basis of loss settlement for **1. Contract Works** and **2. Existing Structures** shall include but not be limited to:

- a) the cost of dismantling, re-erection, opening up, cleaning and repainting incurred as a result of an insured event under Section 1;
  - b) any fee, contribution or other impost payable to any government, local government or other statutory authority necessarily incurred by a Named Insured because payment of such fees, contribution or impost is a condition precedent to the obtaining of consent to reinstate or replace or repair any of the Project, provided that we shall not be liable for payment of any fines or penalties imposed by any such authorities;
  - c) the extra cost of reinstatement (including demolition/ or dismantling) of Damaged or undamaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made there under or any By-Law or Regulation of any Municipality or other Statutory Authority;
- Provided that the amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Named Insured had been required to comply prior to the happening of the Damage;
- d) customs, excise and other duties, taxes and reasonable overhead costs, profit margins, establishment and supervisory charges incurred by a Named Insured.

In all cases the cost of reinstatement shall mean the final cost to the Named Insured after completion of the work of reinstatement, replacement or repair of the Project. Where such work is carried out wholly or in part by a Named Insured, such final costs shall include a margin for overheads and profit, equivalent to the margins and profit contained within the original contract tender.

Where We have accepted liability to meet a claim under this Section, We will pay at the Named Insured's request progress payment(s) on account of such claim, provided that the Named Insured can reasonably substantiate the accounts, invoices and any other supporting documentation that the work of repair, rebuilding or replacement has been effected or is in progress.

We will not pay costs for any alterations, additions, improvements or overhauls nor the cost of any temporary repairs that do not constitute a part of the final repairs.

The Deductible shall be subtracted from the insured loss amount reduced by the application of Average, where applicable.

Progress payments on account of any loss recoverable under this Section 1 will be made by Us to or on behalf of the Named Insured at such intervals and/or for such amounts as may be agreed upon, subject to the Named Insured complying with Our request for relevant claim details and where necessary upon the production of a report by the loss adjuster (if appointed). Any such payment shall be deducted from the finally agreed claims settlement figure.

## Limitation

The maximum amount of our liability will not exceed the Sum(s) Insured for each Insured Item as stated in the Schedule, less the application of any Deductible.

## Exclusions applicable to Section 1

### We shall not be liable for:

1. The cost of repairing, replacing or rectifying Damage caused by a defect in design, plan, specification, materials or workmanship. Provided that We will pay the cost of Damage resulting directly from such fault, defect, error or omission, less the cost which would have been incurred in repairing replacing or rectifying such fault, defect, error or omission, immediately prior to the loss occurring.  
  
We agree that the Project shall not be regarded as damaged solely by virtue of the existence of any defect in design, plan, specification, materials or workmanship.
2. The cost of repairing, replacing or rectifying Damage due to Breakdown of second hand machinery or any plant and equipment not forming part of the Project.
3. Damage discovered only at the time an inventory is taken.
4. Damage to, cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes, securities and computer systems, software and data.
5. Damage caused by, erosion, wasting or wearing away, abrasion, corrosion, rust, oxidation, gradual deterioration, or any gradually operating cause. Provided that this exclusion shall be limited to the discrete parts or portions of the Project which are directly and immediately affected and shall not be deemed to exclude any Damage to any correctly executed parts or portions of the Project, which may result therefrom.
6. The cost of normal upkeep or routine making good.
7. Consequential loss, except if specifically covered by this policy. This means we will not pay for any direct or indirect financial or economic loss, for example loss of use, penalties, fines, liquidated damages, or aggravated, punitive or exemplary damages, or Damage in connection with guarantees of performance or efficiency, loss of reputation, loss of use or enjoyment, loss of profits or depreciation.
8. Damage occurring during the course of ocean marine transit including unloading following ocean marine transit, other than transit within Australian coastal waters, in connection with the Project. Provided that this exclusion shall not apply to materials and/or property awaiting loading onto vessels or craft or following discharge and landing at ships slings.

9. Damage to any vessel, craft or thing made or intended to float on or in, or travel on or through, water or air, or any plant, tools, equipment or other things in, on or attached to, any such vessel or craft.
10. Damage to property for which You are relieved of responsibility under the terms of any Contract or agreement.
11. Damage to hoists, cranes and other plant and equipment, Vehicles of any kind, tools, and Employees effects used in and about the performance of the Contract Works, unless a Sum Insured is shown in the Schedule.
12. Damage due to embezzlement or fraudulent misappropriation by any Employee; provided always that this exclusion shall not apply to theft consequent upon forcible and violent entry to or felonious concealment upon the Project Site committed by an employee of the Insured.
13. Damage arising out of the imposition of abnormal conditions, intentional overloading or overheating or experiments.
14. The cost of repairing or replacing parts on any construction plant and equipment, requiring periodic or frequent replacement, repair or maintenance. This includes but is not limited to:
  - i. Fuses, shear-pins, rupture plates, or other expendable load limiting devices;
  - ii. Bits, drills, knives, saw blades or other cutting devices;
  - iii. Dies, moulds, patterns, pulverising and crushing surfaces, screens, sieves, filters, batteries, tyres, tracks;
  - iv. Ropes, belts, chains, elevator and conveyor belts;
  - v. Flexible pipes, jointing and packing material.
15. Damage to floor and wall finishes or coverings, contents of, or consequential loss in respect of any Existing Structures.
16. Damage arising from any abandonment of the Project or cessation of work for more than 30 consecutive days.
17. Damage to any vegetation forming part of the Project which is caused by or arises from, disease, lack of water, excess water or replanting operations.
18. Damage to any roadworks unless cover is included by Endorsement.
19. Damage to pipe trenches, but this exclusion shall not apply to pipe trenching forming part of the construction of a building.
20. The cost of:
  - i. additional dewatering expenses incurred because the quantities of water exceed those allowed for in the Contract:
  - ii. expenses incurred for additional installations and facilities for the discharge of run-off or underground water:
  - iii. expenses incurred for grouting or any other measures to remedy leakage of water into excavations, foundations or basements:
  - iv. loss or damage due to failure of the dewatering system if such failure could have been avoided by sufficient standby facilities.

Notwithstanding anything contained in (i) – (iii) above, We will indemnify the Named Insured against the cost of dewatering necessary to provide initial access to, and to allow repairs to be effected to, previously completed

sections of the Project whether Damaged or undamaged following insured Damage but not exceeding the cost of dewatering which was being incurred immediately prior to the Damage occurring.

21. Any loss, Damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with:
- i. Any Cyber Act, including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act;
  - ii. Any Cyber Incident, including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Incident, unless any Damage to property insured and any Time Element Loss are the direct result of a Cyber Incident, which has not been directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with a Cyber Act, and such Damage is directly caused by the following perils if otherwise covered under the policy:
    - a) theft, burglary or forcible entry;
    - b) storm, windstorm, hail, tornado, cyclone, hurricane;
    - c) fire, lightning or explosion;
    - d) earthquake, volcanic eruption or tsunami;
    - e) flood, freeze or weight of snow;
    - f) aircraft impact or Vehicle impact or falling objects;
    - g) water damage;
    - h) a change in temperature affecting refrigerated goods; or
    - i) machinery or electronic Breakdown, including collapse or explosion of pressure equipment; or
  - iii. Any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any Electronic Data, including any amount pertaining to the value of such Electronic Data.

Provided however should Data Processing Media owned or operated by the Insured suffer Damage insured by this policy, then this policy will cover the cost to repair or replace the Data Processing Media itself plus the costs of copying the Electronic Data from back up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling the Electronic Data. If such media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank Data Processing Media. However, this policy excludes any amount pertaining to the value of such Electronic Data, to the Insured or any other party, even if such Electronic Data cannot be recreated, gathered or assembled.

This exclusion does not apply to loss directly caused by acts of fraud or dishonesty by employee(s) of the Insured provided these acts are otherwise covered under this policy.

22. Any actual or alleged loss, damage, liability, cost, expense or any other amounts of whatever nature directly or indirectly caused by, arising from, contributed to by, resulting from, or otherwise in connection with:
- i. disease;
  - ii. a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto;

- iii. any disease determined to be a 'listed human disease' under, or any disease in respect of which a 'biosecurity emergency' or 'human biosecurity emergency' is declared under, the *Biosecurity Act 2015* (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation;
- iv. any disease determined by the World Health Organization to be a Public Health Emergency of International Concern (PHEIC);
- v. any 'notifiable infectious disease' as defined under the *Health Act 1956* (NZ) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation;
- vi. any 'notifiable organism' as defined under the *Biosecurity Act 1993* (NZ) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation;
- vii. Highly Pathogenic Avian Influenza (HPAI) in humans;
- viii. Severe Acute Respiratory Syndrome (SARS);
- ix. rabies;
- x. cholera;
- xi. smallpox;
- xii. any pandemic, epidemic or any other outbreak of infectious disease; or
- xiii. any:
  - a) mutation of; or
  - b) fear or threat (actual or perceived) of; or
  - c) action taken to control or prevent or suppress, the diseases, conditions or circumstances described in this exclusion.

Provided that this exclusion will not apply to Damage to Your property insured caused by the following perils, subject to all other provisions of the policy:

fire, lightning, thunderbolt, aircraft or other aerial devices or articles dropped therefrom, earthquake, tsunami, subterranean fire, volcanic eruption, collapse, storm, flood, cyclone, tempest, rainwater, snow, sleet, wind, hail, subsidence, ground heave or landslip, water, liquids or substances discharged, overflowing or leaking from fixed apparatus, fixed appliances, fixed pipes or other systems, riots, civil commotions, strikes or locked out workers or persons taking part in labour disturbances, explosion, impact by Vehicles, animals, or trees or branches of trees, communication masts, towers, antennae, satellite dishes, watercraft, meteorites, theft, malicious damage, 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 avoidance of doubt "loss, damage, liability, cost, expense or any other amounts" includes any cost to clean up, decontaminate, disinfect, remove, replace, monitor and/or test for such diseases, conditions or circumstances described in this exclusion.

# Section 2

## Legal Liability

### Introduction

This Section forms part of this policy only if shown in the Schedule and, if so, must be read together with the Definitions, terms, Conditions, Exclusions and limitations expressed in this policy and the Schedule.

### Cover

#### 1. What We Cover

We agree (subject to the terms, Claims Procedures, General Conditions, Exclusions, Definitions and Limits of Liability incorporated herein) to pay to the Named Insured or on their behalf all amounts they shall become legally liable to pay as compensation in respect of General Liability

#### 2. Defence Costs and Supplementary Payments

With respect to the indemnity provided by this policy, We will:

- 2.1 defend, the Named Insured and on their behalf, any claim or suit against them alleging such Personal Injury, Property Damage or Advertising Injury and seeking damages on account thereof, even if any of the allegations of such claim or suit is groundless, false or fraudulent.
- 2.2 pay all charges, expenses and legal costs incurred by Us and/or by the Named Insured with Our written consent:
  - 2.2.1 in the investigation, defence or settlement of such claim or suit, including loss or salaries or wages because of a Named Insured's or Your attendance at hearings or trials at Our request; or
  - 2.2.2 in bringing or defending appeals in connection with such claim or suit.
- 2.3 pay all charges, expenses, and legal costs recoverable from or awarded against the Named Insured in any such claim or suit and all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgement which does not exceed the limit of Our liability thereon.
- 2.4 pay expenses incurred by the Named Insured for:
  - 2.4.1 rendering first aid and/or surgical or medical relief to others at the time of any Personal Injury (other than any medical expenses, which We are prevented from paying by any law).
  - 2.4.2 temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up\ and/or underpinning thereof.
  - 2.4.3 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which the Named Insured must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.

2.5 pay all legal costs incurred by the Named Insured with Our consent for representation of the Named Insured at:

2.5.1 any Coronial Inquest or Inquiry.

2.5.2 any proceedings in any court or tribunal in connection with liability insured against by this policy.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Liability of this policy.

However, in respect of any claims or suits originating in any court in North America, the applicable Limit of Liability shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments. Where We are prevented by law or otherwise from making payments on behalf of a Named Insured, We will indemnify the Named Insured for legal liability incurred to the extent that such liability is covered by this policy.

In jurisdictions where We may not legally be permitted to, or cannot for any reason, defend any claim or suit against a Named Insured, We will reimburse the Named Insured for the expense of such defence incurred with Our written consent.

#### 3. Limits of Liability and Deductibles

Subject to clause 2 above and clause 4 below the Limit of Liability specified in the Schedule represents the maximum amount which We shall be liable to pay in respect of any one claim or series of claims for General Liability arising out of any one Occurrence.

The applicable Limit of Liability will not be reduced by the amount of any Deductible payable by the Named Insured.

#### 4. Claims Preparation Costs

In addition to the amount of cover provided by this policy, We will pay up to \$20,000 for reasonable professional fees and such other expenses incurred by the Named Insured for the preparation of claim under this policy.

The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under clause 2 of this policy.

### Definitions

#### Applicable to Section 2 only

**1. Advertising Injury** means Injury arising out of:

- 1.1 libel, slander or defamation; or
- 1.2 any infringement of copyright or passing off of title or slogan; or
- 1.3 unfair competition, privacy, idea misappropriation contrary to an implied contract; or
- 1.4 invasion of privacy committed or alleged to have been committed during the Policy Period in any advertisement, publicity article, broadcast or telecast and caused by or arising out of the Named Insured advertising activities.

**2. Aircraft** means any craft or object designed to travel through air or space, other than model aircraft.

**3. Compensation** means monies paid or agreed to be paid by judgment, award or settlement for Personal Injury and/or Property Damage and/or Advertising Injury. Provided such Compensation is only payable in respect of an Occurrence to which this insurance applies.

**4. Employment Practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of the Named Insured's Employees.

**5. General Liability** means legal liability of any of the Named Insured for Personal Injury, Property Damage or Advertising Injury caused by or arising out of an Occurrence happening in the course of carrying out work in connection with the Project other than Products Liability.

**6. Geographical Limits** means:

- 6.1 anywhere in the Commonwealth of Australia and its external territories;
- 6.2 elsewhere in the World, but only with respect to:
  - 6.2.1 overseas business visits by any of Your directors, partners, officers, executives, or Employees but not where they perform manual work in North America.

**7. Hovercraft** means any vessel, craft or device made or intended to float on or in or travel on or through the atmosphere or water, on a cushion of air provided by a downward blast.

**8. Incidental Contracts** means:

- 8.1 any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault;
- 8.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- 8.3 any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings;
- 8.4 those contracts designated in the Schedule.

**9. Medical Persons** includes but is not limited to: medical practitioners, medical nurses, dentists and first aid attendants.

**10. North America** means:

- 10.1 the United States of America and the Dominion of Canada;
- 10.2 any state or territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada;
- 10.3 any country or territory subject to the laws of the United States of America or the Dominion of Canada.

**11. Occurrence** means any event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage and/or Advertising Injury that is neither expected nor intended (except for the matters set out in clause 12.5) from the Named Insured standpoint.

With respect to Personal Injury or Property Damage, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one Occurrence.

All Advertising Injury arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one Occurrence.

**12. Personal Injury** means:

- 12.1 bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish, and/or mental injury, including loss of consortium or services resulting therefrom;
- 12.2 false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- 12.3 wrongful entry or wrongful eviction or other invasion of privacy;
- 12.4 libel, slander or defamation of character, unless arising out of Advertising Injury;
- 12.5 assault and battery not committed by the Named Insured or at their direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

In the event of Personal Injury or claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: Such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

**13. Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. "Waste material" includes materials that are intended to be recycled, reconditioned or reclaimed.

**14. Products** means anything, manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, re-supplied or distributed, imported or exported, by You or on your behalf, including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which, by law or otherwise, You are deemed to have manufactured in the course of the Project.

Provided always that for the purpose of this insurance, the term "Products" shall not be deemed to include:

- 14.1 Food and beverages supplied by the Named Insured or on their behalf primarily to their Employees as a staff benefit;
- 14.2 any vending machine or any other property rented to or located for use of others but not sold by the Named Insured; and any claims made against the Named Insured in respect of Personal Injury and/or Property Damage arising out of any Occurrence in connection therewith shall be regarded as General Liability claims hereunder.

**15. Products Liability** means Your legal liability for Personal Injury and/or Property Damage caused by or arising out of any Products or the reliance upon a representation or warranty made at any time with respect to such Products; but only where such Personal Injury and or Property Damage occurs away from premises owned or leased by or rented to You and after physical possession of such Products has been relinquished to others.

**16. Property Damage** means:

- 16.1 physical loss, destruction of or damage to tangible property, including the loss of use thereof at anytime resulting there from; or
- 16.2 loss of use of tangible property which has not been physically lost, destroyed or damaged; provided that such loss of use is caused by or arises out of an Occurrence; or
- 16.3 obstruction, loss of amenities, trespass, nuisance or interference with any right of way, light, air or water; or
- 16.4 stoppage of or interference with pedestrian, vehicular, air, rail or waterborne traffic. The term 'loss of use' is deemed to include economic loss suffered by any person or party consequent upon destruction of or damage to any other person's or party's property.

**17. Tool of Trade** means a vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle and is being used by the Named Insured at Your premises or on any Project site. Tool of Trade does not include any Vehicle whilst travelling to or from a Project site or Vehicles that are used to carry goods to or from any premises.

**18. Watercraft** means Any vessel, craft or thing made or intended to float on or in, or travel on or through, water, other than model boats.

## Exclusions applicable to Section 2

We do not cover any liability:

### 1. Property owned by the Named Insured

for Property Damage to property owned by the Named Insured.

### 2. Property in care, custody and control

for Property Damage to property in the Named Insured's physical or legal care, custody or control; but this exclusion shall not apply with regard to:

- 2.1 the personal property, tools and effects of any of their directors, partners, proprietors, officers, executives or Employees, or the clothing and personal effects of any of their visitors;
- 2.2 premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, the Named Insured for the purpose of the Project, but no cover is provided by this policy if any Named Insured has assumed the responsibility to insure such premises;
- 2.3 premises (and/or their contents) temporarily occupied by the Named Insured for the purpose of carrying out work in connection with the insured Project;

2.4 any other property temporarily in the Named Insured's possession for the purpose of being worked upon, but no indemnity is granted for Damage to that part of any property upon which the Named Insured are or have been working if the Damage arises solely out of such work.

2.5 any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicles) not belonging to or used by the Named Insured, whilst such Vehicle is in a car park owned or operated by the Named Insured, provided that the Named Insured does not operate the car park for reward, as a principal part of the Project.

2.6 any property (except property that the Named Insured own) not mentioned in clauses 2.1 to 2.5 above whilst in the Named Insured physical or legal care, custody or control where they have accepted or assumed legal liability for such property. Provided that Our liability under this clause 2.6 shall not exceed \$100,000 in respect of anyone claim or series of claims arising out of any one Occurrence.

**3. Vehicles** for Personal Injury or Property Damage arising out of the Ownership, possession or use by the Named Insured of any Vehicle:

- 3.1 which is registered or which is required under any legislation to be registered; or
- 3.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected).

Provided that, exclusions 3.1 and 3.2 shall not apply to Personal Injury where:

- i. that compulsory liability insurance or statutory indemnity does not provide indemnity and the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by the Named Insured of legislation relating to Vehicles;
- ii. any Vehicle (including any tool or plant forming part of or attached to or used in connection with such vehicle) is being operated or used by a Named Insured or on their behalf as a Tool of Trade at the Named Insured's premises or on any Project site.
- iii. it arises from the delivery or collection of goods to or from any Vehicle;
- iv. it arises from the loading or unloading of any Vehicle;
- v. any Vehicle is temporarily in the Named Insured's custody or control for the purpose of parking.

**4. Aircraft, Hovercraft or Watercraft** for Personal Injury and/or Property Damage arising from:

- 4.1 the ownership, maintenance, operation or use by the Named Insured of any Aircraft or Hovercraft;
- 4.2 the ownership, maintenance, operation or use by the Named Insured of any Watercraft exceeding eight (8) metres in length, whilst such Watercraft is afloat. Provided that exclusion 4.2 shall not apply with regard to claims arising out of:
  - 4.2.1 Watercraft used in operations carried out by any independent contractors for whose conduct the Named Insured may be held liable;
  - 4.2.2 Watercraft owned by others and used by the Named Insured for business entertainment;

4.2.3 hand propelled sailing craft not exceeding eight (8) metres in length whilst such craft is in territorial waters.

- 5. Aircraft Products** arising out of any Products which, with the Named Insured knowledge, is intended for incorporation into the structure, machinery or controls of any Aircraft.
- 6. Damage to Products** for Property Damage to any Products.
- 7. Faulty workmanship** for the cost of performing, completing, correcting or improving any work undertaken by the Named Insured.
- 8. Loss of Use** for the loss of use of tangible property, which has not been physically lost, destroyed or damaged, directly arising out of:
- 8.1 a delay in or lack of performance by the Named Insured or on their behalf of any contract or agreement; or
  - 8.2 failure of Your products to meet the level of performance, quality, fitness or durability impliedly warranted or represented by You; but this exclusion 8.2 shall not apply to Your liability for loss of use of other tangible property resulting from sudden and accidental Damage to any Products or work performed by the Named Insured or on their behalf after such products or work have been put to use by any person or organisation other than a Named Insured.
- 9. Product Guarantee** for any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to requirements of any Federal or State legislation as to product safety and information.
- 10. Product Recall** for damages, costs or expenses arising out of the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products are withdrawn or recalled from the market or from use by any person or organisation because of any known, alleged or suspected defect or deficiency in such Products.
- 11. Advertising Injury** for Advertising Injury:
- 11.1 resulting from statements made at the direction of the Named Insured with knowledge that such statements are false;
  - 11.2 resulting from failure of performance of contract but this exclusion shall not apply to claims for unauthorised appropriation of advertising ideas contrary to an implied contract;
  - 11.3 resulting from any incorrect description of Products or services;
  - 11.4 resulting from any mistake in advertising price of Products or services;
  - 11.5 from failure of Products or service to conform with advertised performance, quality, fitness or durability;
  - 11.6 incurred by an Insured whose principal occupation or business is advertising, broadcasting, publishing or telecasting.

**12. Asbestos** for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury directly or indirectly caused by or arising from exposure to asbestos or materials containing asbestos.

**13. Breach of Professional Duty** arising out of any breach of duty owed in a professional capacity by the Named Insured and/or any person(s) for whose breaches they may be held legally liable, but this exclusion shall not apply to claims:

- 13.1 arising out of the rendering of or failure to render professional medical advice by Medical Persons employed by the Named Insured to provide first aid and other medical services on their premises;
- 13.2 arising out of advice which is not given by the Named Insured for a fee;
- 13.3 arising out of advice given in respect of the use or storage of Your Products.

**14. Design, Specification and Formula** caused by or arising out of any Named Insured making or formulating a design or specification within the domain of the architectural, engineering, scientific, chemical, actuarial, statistical, economic, financial or medical profession.

Provided that exclusion 14 shall not apply in respect of any formulation of a design or specification in regard to any Products, for which You have not charged a fee for that formulation of a design or specification.

**15. Contractual Liability** which has been assumed by the Named Insured under any contract or agreement that requires the Named Insured to:

- 15.1 effect insurance over property, either real or personal;
- 15.2 assume liability for, Personal Injury or Property Damage regardless of fault. Provided that this exclusion shall not apply with regard to:
  - 15.2.1 liabilities which would have been implied by law in the absence of such agreement; or
  - 15.2.2 liabilities assumed under incidental contracts; or
  - 15.2.3 terms, regarding merchantability, quality fitness or care of Your Products which are implied by law or statute; or
  - 15.2.4 liabilities assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this policy.

**16. Employers Liability**

- 16.1 for Bodily Injury to any Worker in respect of which the Named Insured is or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Worker's Compensation or Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.

Provided that this policy will respond to the extent that the Named Insured's liability would not be covered under any such policy, fund, scheme or self insurance arrangement had the Named Insured complied with its obligations pursuant to such law.



16.2 imposed by:

16.2.1 the provisions of any Industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement;

16.2.2 any law relating to Employment Practices.

For the purpose of Exclusions 16.1 and 16.2:

- a) the term 'Worker' means any person deemed to be Employed by the Named Insured pursuant to any Worker's Compensation Law. Voluntary workers, secondees and work experience students (if Any) shall not be deemed to be Workers of the Named Insured.
- b) the term 'Bodily Injury' means bodily injury death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

### 17. Fines, Penalties, Punitive, Exemplary or

**Aggravated Damages** for any fines, penalties, punitive, exemplary or aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

### 18. Cyber

- 18.1 arising out of Property Damage, defamation, humiliation, shock, fright, mental anguish, mental injury or breach of privacy directly or indirectly caused by, contributed to by or as a consequence of a Cyber Act;
- 18.2 arising out of the Insured's Products directly or indirectly caused by, contributed to by or as a consequence of a Cyber Act;
- 18.3 directly or indirectly caused by, contributed to by or as a consequence of Data Loss caused by a Cyber Act; or
- 18.4 directly or indirectly caused by, contributed to by, or as a consequence of an act, error or omission by or on behalf of the Insured in controlling, preventing, suppressing, retaliating against, or responding to a Cyber Act or Data Loss caused by a Cyber Act.

However, this exclusion does not apply to claims for:

- a) Personal Injury, excluding mental anguish or mental injury;
- b) Property Damage, excluding Data; or
- c) Advertising Injury,

directly caused by a Cyber Act.

For the purpose of this exclusion only, the following definitions apply:

**Computer System** means any computer, hardware, software, communications system (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, Data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

**Cyber Act** means any actual or alleged illegal, malicious, reckless, wilful or criminal act or series of related illegal, malicious, reckless, wilful or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

**Data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for such equipment.

**Data Loss** means the loss of use of, loss of access to, total or partial destruction of, corruption of, alteration of, misappropriation of, reduction in functionality of, repair of, replacement of, restoration of, reproduction of, error in the creation of, error in the amendment of, error in the entering of, deletion of, or theft of Data including any monetary amount pertaining to the value of such Data, the infringement of intellectual property rights and breach of confidentiality.

### 19. Libel and Slander for libel and slander:

- 19.1 resulting from statements made prior to the commencement of the Policy Period;
- 19.2 resulting from statements made at the Named Insureds direction with knowledge that such statements are false;
- 19.3 relating to advertising, broadcasting or telecasting activities conducted by the Named Insured or on their behalf.

### 20. Liquidated Damages

arising out of liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

### 21. Vibration, Weakening and Removal of Support for Damage to Property in connection with:

- a) vibration; or
- b) removal or weakening of, or interference with, support to land, buildings or any other property.

This exclusion shall not apply when a separate Limit of Indemnity is shown in the Schedule.

### 22. Products Liability in respect of or arising out of or in connection with the Insured's Products.

### 23. Insured Projects for the cost of repairing or replacing any of the Project or Insured Items covered under Section 1 of this policy.

### 24. Pollutants

- 24.1 for personal Injury or Property Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water.
- 24.2 for the cost of testing and monitoring for, removing, nullifying, or cleaning up of Pollutants. Provided that, with respect to any such liability which may be incurred anywhere other than North America, Exclusions 24.1 and
- 24.3 shall not apply where any such discharge, dispersal, release or escape is caused by a sudden and unexpected event from Your standpoint which takes place in its entirety at a specific time and place.

## 25. Pandemic and Epidemic

whether actual or alleged, directly or indirectly caused by, or contributed to by, or in consequence of, or in any way connected with any:

- 25.1 disease determined to be a Listed Human Disease or in respect of which a Human Biosecurity Emergency is declared under the *Biosecurity Act 2015* (Cth) including any amendment, replacement, re-enactment, successor, equivalent or similar legislation including delegated legislation;
- 25.2 outbreak of infectious disease declared as a pandemic or epidemic by the World Health Organization or any Australian government or Australian government agency; or
- 25.3 disease determined by the World Health Organization to be a Public Health Emergency of International Concern (PHEIC).

## 26. Silica

for Personal Injury, Property Damage (including loss of use of property) or Advertising Injury arising out of or in any way connected with the inhalation of, or exposure to silica in any form.

## Conditions applicable to Section 2

### 1. Bankruptcy or Insolvency

In the event that You should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

In case of execution against You of any final judgement covered by this Policy being returned 'unsatisfied' by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against Us in the same manner, and to the same extent as You but not in excess of the Limit of Liability.

### 2. Cross Liabilities

This insurance extends to indemnify:

- 2.1 each of the parties comprising the Named Insured; and
- 2.2 each of the Insured(s) hereunder, separately in the same manner and to a like extent as though policies had been issued in their separate names.

In particular, but without limiting the foregoing, this insurance shall indemnify each of the parties described in clauses 2.1 and 2.2 in respect of claims made by any other of such parties provided always that:

- a) each of such parties shall be separately subject to the terms, Claims Conditions, General Conditions, Exclusions and Definitions of this policy in the same manner and to a like extent as though separate policies had been issued; and
- b) in no case shall the amount payable by Us in respect of any one claim or series of claims arising out of any one Occurrence or in the aggregate, as the case may be, exceed the applicable Limit of Liability as specified in the Schedule.

## 3. Release

Where You are required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or any landlord or any other persons or parties from liability or Damage or legal liability insured against under this policy, such release is allowed without prejudice to this insurance.

Notwithstanding Condition 6 of this policy, We agree to waive all Our rights of subrogation against such Authority or persons or Parties in the event of any Occurrence for which a claim for indemnity may be made under this policy.

## General exclusions

### Applicable to Sections 1 and 2

We shall not be liable for:

#### 1. Terrorism

liability directly or indirectly caused by or contributed to by, or arising from or happening through or in connection with any act of terrorism. Terrorism is defined as an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

#### 2. War

any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, terrorism, military or usurped power or confiscation or nationalisation, or requisition or destruction of or Damage to property by or under the orders of any government or public or local authority.

#### 3. Radioactive Contamination

any Damage to property, consequential loss (meaning any direct or indirect financial or economic loss, for example loss of reputation, loss of use or enjoyment, loss of profits or depreciation), liability of whatsoever nature, directly or indirectly caused by, or contributed to, by, or arising from:

- a) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste;
- b) Any nuclear assembly or nuclear component thereof, nuclear weapons or material.

#### 4. Cessation of Work

Damage arising from any abandonment of the Project or cessation of work for more than 30 consecutive days.

#### 5. Insolvency

any Damage, or legal liability of whatsoever nature, directly or indirectly caused by, or due to the non-availability of funds to finance the Contract Works, or for the repair or replacement of the Contract Works.

We will not be liable to provide any cover, pay any claim or provide any benefit under this policy (including any refund of premium), to the extent that such cover, claim, benefit or refund may contravene or expose us to any sanction, prohibition or restriction under United Nations resolutions or any trade or economic sanctions, laws or regulations of any country.

# General conditions

## Applicable to Sections 1 and 2

### Precedent to Liability

#### 1. Your Duty

Our liability is conditional upon:

- a) Payment of the premium. If you need to make a claim when your premium is overdue, and before your policy has been cancelled for non-payment, we will require you to pay the overdue amount as part of the claim settlement process. Alternatively, where the settlement method allows, we can reduce the settlement payment by the overdue amount.
- b) Notification of changes. Notification as soon as reasonably possible by You to Us, of any change materially varying any of the facts or circumstances existing at the commencement of this policy, or subsequent extension in time of this policy. You are required to provide Us with notification of anything that happens that may give rise to a claim or materially increase risk under this policy. If You do not provide Us with such notification, We may refuse to pay a claim, either in whole, or in part.
- c) Observance of Policy terms. The observance of the terms of this policy by You and by any other person entitled to indemnity under this policy.

The course of action We will take when You fail to follow a specific condition will be considered in each circumstance based on what impact or effect Your failure to comply caused or contributed to the claim or our decision to issue Your policy.

#### 2. Breach of conditions or warranty

Your rights under this policy shall not be prejudiced by any unintentional and/or inadvertent:

- a) breach of a condition or warranty without Your knowledge or consent; or
- b) error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of You, Your, Insured; or
- c) error in name, description or situation of property; or
- d) failure to report any property and/or entity and/or insurable exposure in which You have an interest.

Provided always that, upon discovery of any such fact or circumstance referred to above, Your officer responsible for insurance matters shall give written notice thereof to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium that We may require, to reflect any increased risk of loss or damage.

#### Non-Imputation

Where this insurance is arranged in the joint names of more than one Insured, as described in Definition 4 applicable to Sections 1 and 2, it is hereby declared and agreed that:

- a) each Insured shall be covered as if it made its own proposal for this insurance;
- b) any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured.

Any knowledge possessed by any Insured shall not be imputed to the other Insured(s).

#### 3. Reasonable Care

The Named Insured must take all reasonable precautions to:

- a) prevent Personal Injury and Property Damage;
- b) comply with, and take reasonable steps to ensure that the Named Insured's Employees, servants and agents comply with, all relevant laws and bylaws, regulations and recognised standards for the safety of persons or property;
- c) ensure that only competent Employees use, operate, maintain and service plant and equipment;
- d) maintain all premises, fittings, plant and equipment in sound condition.

#### 4. Subrogation and Allocation of the Proceeds of Recoveries

Subject to Condition 6 'Subrogation waiver', the Named Insured and/or any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or of obtaining relief of indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying the Named Insured in respect of legal liability under this insurance. Should the Named Insured incur any legal liability which is not covered by this insurance:

- a) due to the application of a Deductible; and/or
- b) where the amounts of any judgments or settlements exceed the applicable Limit of Liability,

the Named Insured will be entitled to the first call on the proceeds of all recoveries made, by either the Named Insured or Us, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by Us) and any remaining amount(s) will be applied to reimburse Us.

#### 5. Subrogation Waiver

Notwithstanding Condition 5 We hereby agree to waive our rights of subrogation under this policy against:

- a) each of the parties described under General Definition 4 applicable to Sections 1 and 2;
- b) any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this policy.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, Our right of subrogation is not waived to the extent and up to the amount of such other policy.

#### 6. Payment of Limit of Liability

We may at any time pay to the Named Insured the appropriate Limit of Indemnity (after deducting from it any amounts already paid) or any lesser amount for which a claim or claims may be settled. In doing so, We will

relinquish the conduct of, and shall be under no further liability in connection with, such claim or claims except for costs and expenses incurred before We made such payments.

## 7. Premium Adjustment

- a) Within thirty (30) days of expiry of the Construction Period, You shall furnish to Us a declaration and details of the actual or final value of the Contract Works.
- b) Where the final cost of the Contract Works differs from the Estimated Construction Cost, then the final Premium for this policy shall be determined by Us by applying the agreed rate to the final Construction Cost. The difference between the final premium and the Provisional Premium will be calculated and will be:
  - i. the amount payable by You if the Construction Cost exceeds the Estimated Construction Cost; or
  - ii. the amount refunded by Us if the final Construction Cost is lower than the Estimated Construction Cost.

We shall not be called upon to refund more than thirty per cent (30%) of the Provisional Premium.

## 8. Jurisdiction

This contract of insurance shall be governed by and construed in accordance with the laws of Australia and the States and Territories thereof. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such court jurisdiction. All disputes arising under this Policy shall be determined in accordance with the law and practice of such court.

## 9. Cancellation

- a) Subject to General Conditions 2 and 3, We may cancel this policy in any of the circumstances set out in Sections 60 or 61 of the Insurance Contracts Act 1984.
- b) Under Section 60 of the Insurance Contracts Act 1984, We may cancel this policy at any time where:
  - i. it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
  - ii. it is an interim contract of general insurance.
- c) If We cancel this policy, cancellation shall take effect at the earlier of the following times:
  - i. the time when another policy of insurance between You and Us or some other insurer, being a policy that is intended by You to replace this policy, is entered into; or
  - ii. at 4.00 p.m. on the thirtieth (30th) business day after the day on which notification was given to You.
- d) You may cancel this policy at any time by notifying Us in writing.
- e) After cancellation, We will refund the premium for the time remaining on the policy, less any non-refundable duties, subject to the application of a minimum retained premium, if any.

## 10. Inspection by Us

We (or agents appointed by Us) have the right to inspect and examine, by mutual appointment, any property.

## 11. Transfer of Interest

No interest in this policy can be transferred without Our written consent.

## 12. Goods and Services Tax

Where We make a payment under this policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that You are, or will be, or would have been entitled to under A New Tax system (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that acquisition is actually made.

Where we make a payment under this policy as compensation instead of payment for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that You would have been entitled to under A New tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

## Claims procedures

**NOTE:** We may refuse to indemnify You if the Policy does not respond to the claim, or reduce the extent of indemnity We provide You to the extent We are prejudiced, if You fail to forward to Us any writ or summons served upon You within the time stipulated, and it adversely impacts claims settlement under this policy.

### 1. Notification

As soon as reasonably possible after the happening of any occurrence, accident or event which may give rise to a claim against Us, You or Your legal representative must:

- a) advise details to Us and send written confirmation as soon as reasonably possible;
- b) take all reasonable steps to minimise the Damage or liability and to prevent any further Damage or liability;
- c) take all reasonable precautions to preserve any things which might prove necessary or useful by way of evidence in connection with any claim;
- d) advise the nearest Police Station in the case of property lost, stolen or vandalised, and obtain a written Police report if requested by Us. In the event the Police Station is unable assist You please contact Us to discuss alternatives;
- e) take all practical steps to recover any property;
- f) retain all Damaged properly for inspection by Us, provided it is reasonable and safe to do so.

### 2. Our Rights of Conduct and Recovery

- a) We shall have full discretion in the conduct, defence or settlement of any claim. This includes the right to instruct lawyers to provide advice as to the Named Insured's liability and to represent the Named Insured.
- b) Subject to the provisions of the Insurance Contracts Act 1984, we have the right to recover or obtain contribution from any person against whom the Named Insured may be able to claim and the right to take action in their name.

You and any other person entitled to benefit under this policy must not hinder these rights and must give all such information and cooperation as We may reasonably require.

We will only request information relevant to handling Your claim and will explain why the information and cooperation is required.

### 3. Authority for Repairs or Replacement

Where a claim arises, the Named Insured must not authorise repairs to, or arrange replacement of, any of the property relevant to the claim without Our consent, other than essential emergency repairs.

### 4. Admission of Liability

Subject to the provisions of the Insurance Contracts Act 1984, You or any person making a claim under this policy must not make any admission of liability or payment or promise, or offer of payment in connection with any such claim, without Our written consent.

### 5. Verification of Claim

The Named Insured will, at their own expense, furnish Us with:

- a) a statement in writing containing particulars of the property affected and its value; and
- b) such relevant books of account and other business books, computer records, vouchers, invoices, balance sheets, and other documents, proofs, information, explanations and other relevant evidence and any statutory declaration as We may require for the purpose of investigating or verifying a claim under this policy. We will only request information and assistance where relevant to handling the claim and will explain why the information and assistance is required.

### 6. Other Insurances

The Named Insured must furnish Us with a statement giving details of the other insurances which may also provide cover on any property hereby insured.

### 7. Inspection of Damage

- a) Upon notification of any Damage being given to Us, the Named Insured may carry out repairs or make good any minor Damage, but in all other cases the Named Insured must give Us, Our Employees or agents an opportunity to inspect the Damage at a reasonable time and place before any repairs or alterations are effected.
- b) If no inspection is carried out by or on behalf of Us within a period of time which is reasonable, having regard to the location of the risk, weather conditions and any other relevant factors, the Named Insured may proceed with such repairs or replacement.

## Endorsements

The following Endorsements apply to and form part of this policy but only where the title appears and is activated in the Schedule. The terms, Conditions and Exclusions of this policy remain otherwise unaltered.

### End1 Unsealed Roads Limitation

We will indemnify the Named Insured against Damage to unsealed road works, being road works that are completed or partially completed but have not received at least one application of weatherproof course, but only up to a maximum length as shown in the Schedule either in one continuous section or in the aggregate.

### End2 Open Trench Limitation

We will indemnify the Named Insured against Damage to incomplete Trenches being partially or completely excavated, with or without pipes, ducts or cables laid therein prior to backfill and final compaction, but only up to a maximum length as shown in the Schedule either in one continuous section or in the aggregate.

We will not indemnify the Named Insured under this Endorsement against:

- i. the cost of rectifying any subsidence of completed backfill regardless of the cause;
- ii. the cost of cleaning pipes, the ends of which have not been sealed by the end of each working day to prevent entry of water and or debris;
- iii. the cost of rectifying displacement of pipes or ducts by water unless such pipes and ducts have been secured by the end of each working day by backfill placed in a manner intended to counteract pipe buoyancy.

### End3 Dewatering

Notwithstanding anything to the contrary contained in this policy, We will not indemnify the Named Insured against any costs associated with the installation and operation of any dewatering equipment or any other costs of dewatering.

### End4 Tunnels, Shafts and Declines

We will not indemnify the Named Insured against any costs incurred for:

- i. grouting of unsound earth or rock strata;
- ii. any measured to control water inflow.;
- iii. the provision of linings, cribs, sets or other support(s);
- iv. removal or excavation material in excess of the minimum excavation line provided in the plans;
- v. dewatering;
- vi. installations and facilities for the discharge of run-off or underground water;
- vii. refilling of cavities resulting from overbreak;
- viii. loss or damage due to failure of the dewatering systems, if such failure could have been avoided by sufficient standby facilities;
- ix. loss or damage or dewatering costs directly or indirectly caused by the ingress of water through the tunnel, shaft or decline entrance unless such ingress is caused by the failure of the water diversion or protective bunds.

However, notwithstanding anything contained in i) to ix) above, We will indemnify the Named Insured against the cost of:

- a)
  - i. replacing previously installed grouting, linings, cribs, sets or other support(s) which have been damaged as a consequence of any insured Damage;
  - ii. additional grouting, permanent linings, cribs, sets or other support(s) necessary to reinstate previously completed sections of the Project which have been damaged as a consequence of any insured Damage, less the cost of linings, cribs, sets or other support(s) which would have been incorporated into the original construction

to deal with any physical conditions of the ground surrounding the Project if the condition had been detected or anticipated prior to the insured Damage.

- b) removal of collapsed ground material necessary to provide access to the location of any insured Damage and to provide a clear working area to allow repairs to be effected to previously completed sections of the Project.
- c) dewatering necessary to provide initial access to, and to allow repairs to be effected to previously completed sections of the Project whether damaged or undamaged following any insured Damage but not exceeding the cost of dewatering which has been incurred immediately prior to the insured Damage.

Clauses (b) and (c) above will be subject to the Removal of Debris Sum insured in the Schedule.

### **End5 Partial Occupancy**

Notwithstanding anything to the contrary contained in this policy We will indemnify the Named Insured for Damage to the Project following partial occupancy, however no cover will be provided for any stock, contents, the occupiers fixtures or fittings or any property belonging to Employees or visitors.

### **End6 Loss of Stabilising Fluid**

We will not indemnify the Named Insured for any loss of or Damage of Bentonite or any other stabilising medium whilst being used.

### **End7 Formwork, Hoardings, Temporary Buildings, Scaffolding, Major Plant and Equipment. First Loss Basis**

Notwithstanding anything to the contrary in this policy it is agreed that the Sum Insured in respect of Insured Item 6 b) shall not be subject to Average.

### **End8 Action of the Sea**

We shall not be liable for loss or damage resulting from normal action of the sea. Normal action of the sea means:

- a) tidal movement;
- b) currents, whether tidal or otherwise caused;
- c) wave action, whether wind or tidal driven;
- d) sediment transport; or
- e) any other normal behaviour patterns of the marine environment.

This Endorsement shall not apply where it can be demonstrated that such loss or Damage has resulted from an action of the sea of a type that has not occurred during the previous ten year period.

The onus of proving this Endorsement does not apply rests with the Insured.

### **End9 Piling Foundations and Retaining Walls.**

We shall not be liable in respect of piling foundation and retaining wall works for expenses incurred for:

- 1. replacing or rectifying piles or retaining wall elements:
  - a) which have become misplaced or misaligned or jammed during their construction; or
  - b) which are lost or abandoned or damaged during driving or extraction; or
  - c) which have become obstructed by jammed or damaged piling equipment or casings;
- 2. rectifying disconnected or declutched sheet piles;
- 3. rectifying any leakage or infiltration of material of any kind;
- 4. filling voids or for replacing lost bentonite;
- 5. as a result of any piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity;
- 6. reinstating profiles or dimensions.

### **End10 Average to apply to Contract Works**

It is noted and agreed that the clause headed Insured Item 1 under Section 1 of this policy is deleted and replaced by the following.

#### **1. Contract Works**

The Contract Works Sum Insured must be the full Estimated Construction Cost at the commencement of the Period of Insurance. Average will apply to each and every loss otherwise insured by this policy, subject to the application of the policy Escalation and Variations allowance.

### **End11 Welding, Flame Cutting, Application of Heat**

The Named Insured must ensure that all welding and flame cutting complies with the Australian Standard "AS1674.1-1997 and AS1674.2-2003 Safety and Welding in Allied Processes" and its amendments.



# CONTACT DETAILS

**ENQUIRIES 13 24 81**

**CLAIMS 13 24 80**

## MAILING ADDRESS

**GPO BOX 9902 IN YOUR CAPITAL CITY**

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**CGU.COM.AU**

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### **SYDNEY**

GPO Box 244  
Sydney  
NSW 2001

### **MELBOURNE**

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VIC 3000

### **BRISBANE**

189 Grey St  
South Bank  
QLD 4101

### **PERTH**

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West Perth  
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### **ADELAIDE**

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