

# Contract Works and Legal Liability Policy



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## Important notices affecting this policy

### Terrorism cover

The Commonwealth Government has enacted the Terrorism Insurance Act 2003 (Cth) (the '**Act**'). Under the **Act**, insurance policies covering certain commercial property in Australia (known as '**eligible property**') are now deemed to cover terrorism risks as defined in the **Act** ('**terrorism cover**').

The policies in question consist of Industrial Special Risks (including associated Business Interruption), Commercial Property, and Contract Works policies, together with some Public Liability and some Farm policies. Commercial Package policies (such as a Business Insurance Policy) are also included, but only in relation to the cover they provide for commercial buildings and/or their contents, for Business Interruption, and for Public Liability.

**Terrorism cover** is automatically included in policies in the above categories, therefore this Policy includes **terrorism cover** up to the sum insured and subject otherwise to the terms, Conditions, Exclusions and limitations of the Policy.

### Premium payable

The **Act** contains provisions in relation to the premium payable for **terrorism cover**, and the Company will charge the Policyholder for **terrorism cover** based on the premium rates advised by the Commonwealth Government.

As these premium rates vary according to the postcode location of Contract Works that are subject to the **Act**, it is vital that, where the Company does not already have this information, the Policyholder provide the correct postcode for all **eligible property** insured.

Please note that the **Act** does not permit the Policyholder to opt out of **terrorism cover**.

This notice is only intended to provide a broad summary of the **Act**. For more information on its provisions or its effect on this Policy, please consult an insurance adviser or broker.

### Special requirements

Information on the operation of the **Act** is contained above.

To facilitate the calculation of the terrorism premium in accordance with the Act, sufficient information concerning the location of eligible property must be provided in order to allocate the insured assets into CBD, Urban and Rural Terrorism Zones as specified by the Australian Reinsurance Pool Corporation. The Policyholder must therefore use every endeavour to provide to the Company accurate information detailing the value **by postcode** of all insured eligible property.

With respect to annual declaration (floater) contract works policies, the Policyholder must declare to the Company at the underwriting stage the expected total value of Contract Works, apportioned over each of the three Terrorism Zones (CBD, Urban and Rural) or the Policyholder's office post code if the expected total turnover is less than \$5,000,000.

### Duty of disclosure

The Policyholder before entering into a contract of general insurance with the Company has a duty of disclosure, under the Insurance Contracts Act 1984 (Cth), to disclose every matter that the Policyholder knows, or could be reasonably expected to know, is relevant to the Company's decision whether to accept the risk of insurance and, if so, on what terms.

The Policyholder's duty, however, does not require disclosure of a matter:

- ▼ that diminishes the risk to be underwritten by the Company;
- ▼ that is common knowledge;
- ▼ that the Company knows, or, in the ordinary course of their business, ought to know; or
- ▼ as to which compliance with the Policyholder's duty is waived by the Company.

## Non disclosure

If the Policyholder fails to comply with the Policyholder's duty of disclosure, the Company may be entitled to reduce its liability under the contract in respect of a claim and may cancel the contract.

If the Policyholder's non-disclosure is fraudulent, the Company may also have the option of avoiding the contract from its beginning.

## Privacy statement

AAI Limited trading as Vero Insurance is the insurer and issuer of your commercial insurance product, and is a member of the Suncorp Group, which we'll refer to simply as "the Group".

### Why do we collect personal information?

Personal information is information or an opinion about an identified individual or an individual who is reasonably identifiable. We collect personal information so that we can:

- ▼ identify you and conduct appropriate checks;
- ▼ understand your requirements and provide you with a product or service;
- ▼ set up, administer and manage our products and services and systems, including the management and administration of underwriting and claims;
- ▼ assess and investigate any claims you make under one or more of our products;
- ▼ manage, train and develop our employees and representatives;
- ▼ manage complaints and disputes, and report to dispute resolution bodies; and
- ▼ get a better understanding of you, your needs, your behaviours and how you interact with us, so we can engage in product and service research, development and business strategy including managing the delivery of our services and products via the ways we communicate with you.

### What happens if you don't give us your personal information?

If we ask for your personal information and you don't give it to us, we may not be able to provide you with any, some, or all of the features of our products or services.

### How we handle your personal information

We collect your personal information directly from you and, in some cases, from other people or organisations. We also provide your personal information to other related companies in the Group, and they may disclose or use your personal information for the purposes described in 'Why do we collect personal information?' in relation to products and services they may provide to you. They may also use your personal information to help them provide products and services to other customers, but they'll never disclose your personal information to another customer without your consent.

Under various laws we will be (or may be) authorised or required to collect your personal information. These laws include the Anti-Money Laundering and Counter-Terrorism Financing Act 2006, Personal Property Securities Act 2009, Corporations Act 2001, Autonomous Sanctions Act 2011, Income Tax Assessment Act 1997, Income Tax Assessment Act 1936, Income Tax Regulations 1936, Tax Administration Act 1953, Tax Administration Regulations 1976, A New Tax System (Goods and Services Tax) Act 1999 and the Australian Securities and Investments Commission Act 2001, as those laws are amended and includes any associated regulations.

We will use and disclose your personal information for the purposes we collected it as well as purposes that are related, where you would reasonably expect us to. We may disclose your personal information to and/or collect your personal information from:

- ▼ other companies within the Group and other trading divisions or departments within the same company (please see our Group Privacy Policy for a list of brands/companies);
- ▼ any of our Group joint ventures where authorised or required;
- ▼ customer, product, business or strategic research and development organisations;
- ▼ data warehouse, strategic learning organisations, data partners, analytic consultants;
- ▼ social media and other virtual communities and networks where people create, share or exchange information;
- ▼ publicly available sources of information;
- ▼ clubs, associations, member loyalty or rewards programs and other industry relevant organisations;
- ▼ a third party that we've contracted to provide financial services, financial products or administrative services – for example:
  - ▼ information technology providers,
  - ▼ administration or business management services, consultancy firms, auditors and business management consultants,
  - ▼ marketing agencies and other marketing service providers,

- ▼ claims management service providers
- ▼ print/mail/digital service providers, and
- ▼ imaging and document management services;
- ▼ any intermediaries, including your agent, adviser, a broker, representative or person acting on your behalf, other Australian Financial Services Licensee or our authorised representatives, advisers and our agents;
- ▼ a third party claimant or witnesses in a claim;
- ▼ accounting or finance professionals and advisers;
- ▼ government, statutory or regulatory bodies and enforcement bodies;
- ▼ policy or product holders or others who are authorised or noted on the policy as having a legal interest, including where you are an insured person but not the policy or product holder;
- ▼ in the case of a relationship with a corporate partner such as a bank or a credit union, the corporate partner and any new incoming insurer;
- ▼ the Financial Ombudsman Service or any other external dispute resolution body;
- ▼ credit reporting agencies;
- ▼ other insurers, reinsurers, insurance investigators and claims or insurance reference services, loss assessors, financiers;
- ▼ legal and any other professional advisers or consultants;
- ▼ hospitals and, medical, health or wellbeing professionals;
- ▼ debt collection agencies;
- ▼ any other organisation or person, where you've asked them to provide your personal information to us or asked us to obtain personal information from them, eg your mother.

We'll use a variety of methods to collect your personal information from, and disclose your personal information to, these persons or organisations, including written forms, telephone calls and via electronic delivery. We may collect and disclose your personal information to these persons and organisations during the information life cycle, regularly, or on an ad hoc basis, depending on the purpose of collection.

#### Overseas disclosure

Sometimes, we need to provide your personal information to – or get personal information about you from – persons or organisations located overseas, for the same purposes as in 'Why do we collect personal information?'

The complete list of countries is contained in our Group Privacy Policy, which can be accessed at [www.vero.com.au/privacy](http://www.vero.com.au/privacy), or you can call us for a copy.

From time to time, we may need to disclose your personal information to, and collect your personal information from, other countries not on this list. Nevertheless, we will always disclose and collect your personal information in accordance with privacy laws.

#### How to access and correct your personal information or make a complaint

You have the right to access and correct your personal information held by us and you can find information about how to do this in the Suncorp Group Privacy Policy.

The Policy also includes information about how you can complain about a breach of the Australian Privacy Principles and how we'll deal with such a complaint. You can get a copy of the Suncorp Group Privacy Policy. Please use the contact details in Contact Us.

#### Contact us

For more information about our privacy practices including accessing or correcting your personal information, making a complaint, or obtaining a list of overseas countries you can:

- ▼ Visit [www.vero.com.au/privacy](http://www.vero.com.au/privacy).
- ▼ Speak to us directly by phoning one of our Sales & Service Consultants on: 1300 888 073 or by
- ▼ Email us at [claims@vero.com.au](mailto:claims@vero.com.au)

#### General Insurance Code of Practice

The Company has adopted the General Insurance Code of Practice (the '**Code**') developed by the Insurance Council of Australia. The **Code** is designed to promote good relations and good insurance practice between insurers, intermediaries and consumers.

The **Code** sets out what the Company must do when dealing with all insured entities. Further details about the **Code** may be obtained by contacting the Company at any one of the locations shown at the back of this Policy document.

## Introduction

Provided the Policyholder pays to the Company the premium shown in the Schedule for the Period of Insurance and the premium as advised by the Company as applying to any subsequent period, the Company will provide insurance against the risks described in each Section of the Policy subject to the terms, Conditions, Exclusions and Endorsements of this Policy.

This Policy and the Schedule shall be read as one contract and any word or expression to which a specific meaning has been attached in this Policy or the Schedule shall bear that meaning where it appears in this Policy and the Schedule.

## General definitions (applicable to Sections A and B)

### 1. 'Persons Insured' shall mean:

1. the Policyholder so named in the Schedule;
2. the Policyholder's legal representatives in the event of the death or insolvency of the Policyholder but only in respect of liability incurred by the Policyholder;
3. (a) the Principal;  
(b) the Principal Contractor; and  
(c) the Project Manager;  
not being the Policyholder but being a legal entity with whom the Policyholder has entered into the Contract, but only to the extent required by the Contract;
4. any officers, committees or members of the Policyholder's canteen, sports, social and welfare organisations and any member of the Policyholder's fire, first aid, medical or ambulance services (not being a qualified medical practitioner);
5. any director or Employee of any of the entities noted in sub-clauses 1, 2 and 3 above but only for liability in respect of which such entity would have been entitled to indemnity if the claim had been made against such entity;
6. any sub-contractor to entities noted in sub-clauses 1 or 3 above being a legal entity with whom such Persons Insured has entered into a sub-contract or sub-agreement for the performance of any part or parts of the Contract Works, but only to the extent required by sub-contract or sub-agreement. For the purposes of this sub-clause 6 the following parties are not considered to be sub-contractors and will not be Persons Insured within the General Definitions section of this Policy, other than as expressly provided for in sub-clauses 7, 8 and/or 9 below:
  - (a) Professional Consultants;
  - (b) Engineers;
  - (c) Architects;
  - (d) Surveyors;
  - (e) Manufacturers;
  - (f) Suppliers; and
  - (g) Distributors;
7. any lower tier sub-contractor to any sub-contractor noted in sub-clause 6, being a legal entity with whom such sub-contractor has entered into a sub-contract or sub-agreement for the performance of any part or parts of the Contract Works, but only to the extent required by sub-contract or sub-agreement and only whilst at the Contract Site;
8. any supplier to entities noted in sub-clauses 1, 3, 6 or 7 above being a legal entity with whom such supplier has entered into an agreement for the supply of any physical items for the Contract Works, but only to the extent required by such agreement and only whilst at the Contract Site;
9. any professional consultants to entities noted in sub-clauses 1 or 3 above, being a legal entity who is required under the Contract to be included as a Persons Insured, but only in relation to their manual activities associated with the Contract Works and only whilst at the Contract Site;
10. any legal entity identified by name in the Schedule as having a financial legal or equitable interest in the Contract Works, but only in respect of the insurance provided under Section A of this Policy and only to the extent of such financial legal or equitable interest,

all for their respective rights, interests and liabilities, provided that an entity falling within the definition of Persons Insured above is only a Persons Insured for the purposes of this Policy, insofar as they are insured against the particular risk indemnified under this Policy.

2. **'Employee'** shall mean any person engaged under a contract of employment or apprenticeship with any one of the Persons Insured.
3. **'Contract Works'** shall mean works of engineering, construction or mechanical installation or erection, including formwork, falsework, temporary works, temporary buildings including all associated contents other than employees' personal effects, scaffolding, hoardings, Principal supplied or free-issue materials, materials for incorporation in the works, and additions and alterations to or refurbishment of pre-existing buildings or structures, all of which are carried out in their entirety within Australia during the Period of Insurance and which are described more particularly in the Schedule.
4. **'Contract Site'** shall mean the location specified in the Schedule and where the Contract Works are carried out.
5. **'Vehicle'** shall mean any type of machine on wheels 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.
6. **'Company'** shall mean AAI Limited ABN 48 005 297 807 trading as Vero Insurance.
7. **'Period of Insurance'** shall mean both of the following periods:
  1. **'Construction Period'** being the period commencing on the date specified in the Schedule and expiring:
    - (a) at the time of practical completion of the Contract Works, being when the Contract Works are complete except for minor omissions and minor defects which do not prevent the Contract Works from being reasonably capable of being used for their intended purpose; or
    - (b) with respect to any separable portion of the Contract Works at the time it is taken over or taken into use (whichever is the earlier) by the Principal; or
    - (c) on the Expiry Date specified in the Schedule;
 whichever occurs first.  
  
 If at the Expiry Date as specified in the Schedule the Contract Works remain incomplete the Policy may be extended with written prior approval from the Company on terms and Conditions specified by the Company.
  2. **'Maintenance Period'** being the period specified in the Schedule and commencing:
    - (a) at the expiry of the Construction Period; or
    - (b) on the date each separable portion of the Contract Works is taken into use or occupation by the Principal or for which a certificate of practical completion has been issued;
 whichever occurs first.
8. **'Headings'** used in this Policy, are purely descriptive in nature and are not intended to be used for interpretative purposes.
9. **'Deductible'** shall mean the amounts shown in the Schedule under 'Deductible', for which the Company shall have no liability in respect of each and every instance of loss or damage, Personal Injury or Damage to Property.
10. **'Contract'** shall mean the contract or agreement between any of the entities noted in sub-clauses 1 and 3 of the Persons Insured and which gives rise to the Contract Works, and includes any sub-contract or sub-agreement entered into pursuant to such contract or agreement.
11. **'Electronic Data'** shall mean 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.
12. **'Terrorism'** shall mean an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes including the intention to influence any government and/ or to put the public, or any section of the public, in fear.
13. **'Policy'** shall mean this Contract Works and Legal Liability Policy wording, any Schedule attaching to this wording and any Endorsement.

# Section A – Material damage

The liability of the Company under Items 1, 2 and 3 of Section A of this Policy as specified in the Schedule shall not exceed the Sum(s) Insured stated in the Schedule in respect of each Item, subject to the application of the Deductible. Should more than one Deductible under Section A apply for any claim arising from or attributable to one source or original cause, such Deductibles shall not be aggregated and only the highest applicable Deductible under Section A shall apply.

## 1. Construction period

The Company will indemnify the Persons Insured against unforeseen physical loss of or damage to the Contract Works provided such loss or damage is not hereafter excluded and occurs at the Contract Site (or elsewhere as set out in the Schedule) during the Construction Period.

Provided always that insurance under this Policy Section A1 shall cease to attach to the whole or any separable portion of the Contract Works from the time described in General Definition 7.1.

## 2. Maintenance period

The Company will indemnify the Persons Insured against unforeseen physical loss of or damage to the Contract Works provided such loss or damage is not hereafter excluded and:

- (a) manifests itself during the Maintenance Period; and
- (b) originates from:
  - (i) a cause arising during the Construction Period and at the Contract Site; or
  - (ii) an act or omission of any of the Persons Insured during the course of operations carried out by such Persons Insured on the Contract Site in complying with the requirements of the defects liability or maintenance provisions of the Contract,

provided always that insurance under this Policy Section A2 shall cease to attach to the whole or any separable portion of the Contract Works from the time described in General Definition 7.2.

## 3. Additional payments

Following loss or damage indemnifiable under Sections A1 and A2 of this Policy the Company will also pay, up to the Sum(s) Insured stated in the Schedule against each Item, for costs and expenses necessarily incurred for:

- (a) Removal of Debris
  - being the costs of:
    - (i) (the demolition and disposal of damaged Contract Works; and
    - (ii) the removal of debris coming onto the Contract Site as a result of loss or damage indemnifiable under this Policy.
- (b) Professional Fees
  - being architects', surveyors', consulting engineers' and other professionals' fees necessarily incurred by the Persons Insured in the reinstatement of the Contract Works consequent directly upon loss or damage to the Contract Works (but excluding any fees for the preparation of a claim or estimate of fees) not exceeding those fees authorised under the scales of the various professional institutes regulating such fees prevailing at the time of the loss or damage.
- (c) Expediting Expenses
  - being the costs of express delivery within Australia, overtime rates of wages, the hire of additional labour and equipment, and the costs of purchasing resources necessary to reinstate, repair or replace urgently loss or damage to the Contract Works. Express delivery shall include carriage by airfreight within Australia by use only of licenced airline(s) operating a regular scheduled service, but not aircraft chartered specifically for such carriage unless agreed in writing by the Company. Expediting Expenses will exclude reimbursement of costs incurred solely to compensate for delay in completion of the Contract Works.
- (d) Mitigation Expenses
  - in respect of instances of loss or damage ('The Original Loss or Damage') the Company will pay, in addition to the Sum Insured stated in the Schedule in respect of the Contract Works, but subject to the limit specified below, for the reasonable costs and expenses incurred by any of the Persons Insured in containing, mitigating, suppressing or preventing further loss or damage to the Contract Works provided such further loss or damage is not hereafter excluded.

Provided further that the amount payable by virtue of this extension shall not exceed in respect of each and every instance of loss or damage a figure equal to ten per cent (10%) of the amount payable under this Policy for The Original Loss or Damage (but excluding any amounts payable under paragraph 3 Additional Payments (a), (b) and (c) above).

#### **4. Basis of loss settlement**

In respect of instances of loss or damage indemnifiable under Section A of this Policy the basis of any settlement will be:

- (a) in the case of loss or damage which can be repaired, the cost of repairs necessary to restore the Contract Works to a condition equal to but not better than their condition when new, less any salvage; or
- (b) in the case of a total loss, the actual value of the Contract Works immediately before the loss, less any salvage,

provided always that all such costs claimed are included in the Sum(s) Insured stated in the Schedule.

In respect of all loss or damage which can be repaired, settlement will be made on the basis provided for in 4(a) above, but if the cost of repairing any loss or damage equals or exceeds the value of the Contract Works immediately before the loss or damage, settlement will be made on the basis provided for in 4(b) above. Where repairs are carried out by any of the Persons Insured, allowance shall be made for a reasonable margin of profit and overheads in any settlement in relation to such repairs.

The Company will not be liable to make any payment under Section A of this Policy unless the Persons Insured has produced to the reasonable satisfaction of the Company all accounts, invoices, receipts and other documentation indicating that repairs have been effected or replacement has taken place, as the case may be.

The Company will not pay for:

- (a) the cost of any temporary repairs unless such repairs constitute part of the final repairs and do not increase the total repair cost or unless such temporary repairs can be shown to have been necessary to prevent further loss of or damage to the Contract Works and the cost thereof does not exceed an amount equal to such further loss or damage;
- (b) the cost of any alterations, additions or improvements.

#### **5. Duration of loss or damage**

All loss or damage resulting from storm, tempest, flood, cyclone or earthquake occurring during any period of 72 consecutive hours shall be considered as one instance of loss or 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 loss or 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.

#### **6. Automatic reinstatement**

In respect of instances of loss or damage indemnifiable under Section A of this Policy that exhaust or partially exhaust the Sum(s) Insured stated in the Schedule, the Sum(s) Insured stated in the Schedule shall be automatically reinstated subject to payment by the Policyholder of an additional premium calculated on the amount of the loss or damage applied to a rate not less than pro-rata of the rate agreed for the Period of Insurance calculated from the date of such loss or damage to the expiry of the Period of Insurance.

#### **7. Escalation**

The Sums Insured under Items 1, 2, 4, 5, and 6 of Section A of this Policy shall automatically increase during the Construction Period in the same proportion as any escalation in the price of the Contract Works where such escalation is the direct result of variations to the Contract Works within the provision of the Contract, or inflationary trends. Provided that such increase or increases do not exceed in total 15% of the sum of the value of the Contract Works at the time of award to the Principal Contractor by the Principal, plus the Sum(s) Insured in respect of Items 4, 5, and 6 at the commencement of the Period of Insurance and that additional premium is payable at the end of the Construction Period at the original rates in accordance with General Condition 4.

#### **8. Progress payments**

Where the Company has accepted liability to meet a claim under Section A of this Policy, and where the total liability of the Company in respect of such claim is estimated to exceed \$50,000 after application of the Deductible, the Company will pay at the request of the Persons Insured progress payments on account of such claim for such amounts and at such intervals as may be agreed, provided always that the Persons Insured making the request shall demonstrate to the reasonable satisfaction of the Company that the amount of the progress payment requested has actually been expended and provided further that the intervals between such progress payments shall be no less than thirty (30) days. Such progress payments shall be deducted from the amount finally determined in accordance with this Policy as being the liability of the Company for such claim.

#### **9. Waiver of subrogation**

For the purposes of Section A of this Policy, in the event of the Company indemnifying or making a payment to any Persons Insured, the Company shall not exercise any rights of subrogation against any other Persons Insured provided that this waiver only operates in favour of Persons Insured to the extent that the entity is insured against the particular risk indemnified under the Policy.



## 10. Exclusions

The Company shall not be liable for:

### 1. Defective works

the cost of repairing, replacing or rectifying Contract Works or any part thereof in which there is a fault, defect, error or omission in design, plan, specification, material or workmanship, but the Company will pay the cost of loss or damage resulting directly from such fault, defect, error or omission less the cost which would have been incurred in repairing, replacing or rectifying the faulty design plan specification material or workmanship had the loss or damage not occurred.

### 2. Breakdown

loss or damage to the Contract Works caused by its own electrical or mechanical breakdown failure or derangement except where the Person Insured claiming indemnity for such loss or damage is obliged under the terms of the Contract to remedy such loss or damage.

### 3. Inventory shortage

loss or damage discovered only at the time an inventory is taken, unless such loss or damage can be attributed by the Person Insured claiming indemnity to a specific event at a specific point in time.

### 4. Cash and securities

loss or damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes, securities and the like.

### 5. Consequential loss, fines and penalties

any consequential loss, or any loss of use, penalties (contractual or otherwise), fines or liquidated damages.

### 6. Wear and tear

loss or damage caused by wasting or wearing away, abrasion, corrosion, erosion, gradual deterioration or atmospheric conditions, or the cost of normal upkeep of or of making good the Contract Works.

### 7. Transit

loss or damage to materials for incorporation into the Contract Works occurring during the course of transit.

### 8. Cessation of work

loss or damage due to abandonment of the Contract Works, or to cessation of work for any other reason, except for the first thirty (30) days of any such cessation.

### 9. Misappropriation

loss or damage due to embezzlement or fraudulent misappropriation by any of the Persons Insured or their employee(s).

### 10. Electronic data

- (i) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- (ii) error in creating, amending, entering, deleting or using Electronic Data; or
- (iii) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur;

however, if a peril listed below (being a peril insured under Section A of this Policy but for this exclusion) is caused by any of the matters described in paragraphs (i) to (iii) above, then the Company will indemnify the Persons Insured, subject to all provisions of the Policy, against loss or damage to the Contract Works directly caused by such listed peril.

Further, this exclusion does not apply if a peril listed below (being a peril insured under Section A of this Policy but for this exclusion) causes any of the matters described in paragraphs (i) to (iii) above.

fire, explosion, lightning, windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, flood, freezing, weight of snow, impact by aircraft or other aerial objects dropped therefrom, impact by any road vehicle or animal, bursting overflowing discharging or leaking of water tanks, apparatus or pipes, 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.

Any terrorism exclusion in this Policy prevails over this Exclusion.

## 11. Piling

loss or damage to any;

- (a) individual pile or group of piles or any pile casings due to,
  - (i) an error in positioning, misplacement or misalignment, or
  - (ii) jamming or obstruction, or
  - (iii) extraction, retrieval or removal.
- (b) individual pile or group of piles that fail to pass any load bearing test or any other required design or performance criteria.
- (c) individual pile or group of piles that can not be driven to or fail to found at their specified depth or fail to meet the specified rejection parameters.

In addition, the Company shall not be liable for costs incurred for the rectification of disconnected or declutched sheet piles or the abandonment of any individual pile or group of piles.

# Section B – Legal liability

## 1. Definitions

1. **'Occurrence'** shall mean an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Damage to Property neither expected nor intended by any of the Persons Insured.
2. **'Personal Injury'** shall mean bodily injury, death, sickness, disease, disability, shock, fright, mental injury or mental anguish.
3. **'Damage to Property'** shall mean physical damage to or destruction of tangible property including the loss of use of tangible property at any time resulting from physical damage or destruction.
4. **'Property in Possession or Control'** shall mean tangible property in the possession or control of any of the Persons Insured or tangible property for which any of the Persons Insured are responsible, but does not include:
  - (a) personal possessions of visitors (not being any of the Persons Insured) to the Contract Site;
  - (b) premises and contents situated away from the Contract Site and not owned by any of the Persons Insured but which are temporarily occupied by any of the Persons Insured for the purpose of carrying out work in connection with the Contract Works;
  - (c) premises and contents not owned, leased or rented by any of the Persons Insured but temporarily occupied by any of the Persons Insured for the purpose of carrying out work in connection with the Contract Works; and
  - (d) vehicles, which are not owned by any of the Persons Insured or used in connection with the Contract Works, whilst within a car park at the Contract Site provided for use by visitors.

## 2. Compensation

1. Subject to the Limit of Indemnity specified in the Schedule under Section B of this Policy, the Company will indemnify the Persons Insured in respect of all sums which they shall become legally liable to pay as compensation for:
  - (a) Personal Injury; or
  - (b) Damage to Property,sustained during the Period of Insurance as a result of an Occurrence and in carrying out the Contract Works less the amount of the Deductible. Should more than one Deductible under Section B apply for any claim arising from or attributable to one Occurrence, such Deductibles shall not be aggregated and only the highest applicable Deductible under Section B shall apply.
2. And in addition the Company will pay:
  - (a) all costs and expenses incurred with the written consent of the Company;
  - (b) all legal costs for representation of any of the Persons Insured at any coroner's inquest or in any court of summary jurisdiction; and
  - (c) all claimant's charges, expenses and legal costs recoverable from the Persons Insured, to the extent that these costs and expenses are incurred in Australia in connection with a claim for compensation which is indemnifiable under Section B of this Policy.

## 3. Cross liabilities and waiver of subrogation

For the purpose of Section B of this Policy the term Persons Insured shall be considered to apply to each entity comprising the Persons Insured in the same manner as if a separate policy had been issued to each entity, and the Company waives all rights of subrogation or action which it may have or acquire against any Persons Insured. Provided that nothing contained in this clause shall operate to increase the Limit of Indemnity specified in the Schedule.

## 4. Exclusions

The Company shall not be liable for:

### 1. Liability under agreement

any liability assumed solely under any contract or agreement (other than the Contract) unless such liability would have attached notwithstanding the existence of such contract or agreement or is specifically agreed to in writing by the Company.

### 2. Subrogation waiver given by persons insured

except as provided in the Cross liabilities and waiver of subrogation clause of Section B of this Policy, any claim directly or indirectly arising from or in respect of any liability which is incurred or affected by reason of a Persons Insured at any time entering into a deed or agreement excluding, limiting or delaying the Person Insured's legal rights or recovery against another.

**3. Fines and damages**

any amount payable by way of aggravated, exemplary or punitive damages or any penalties (contractual or otherwise), fines or liquidated damages.

**4. Injury to employee**

any claim in respect of or arising out of Personal Injury to any Employee of the Persons Insured arising out of or in the course of his/her employment.

**5. Workers' compensation and industrial awards**

liability imposed by the provisions of any Workers' or Workmen's Compensation legislation or any Accident Compensation legislation or any industrial award, workplace agreement or any other agreement or determination.

**6. Defective works**

the cost of performing, completing, restoring, repairing, correcting or improving any part or parts of the Contract Works.

**7. Aircraft and watercraft**

any claim caused by or in connection with the ownership, possession or use by or on behalf of any of the Persons Insured of any vessel or craft made or intended to be water borne or air borne other than a watercraft or water vessel not exceeding 8 metres in length or a hand propelled boat or pontoon.

**8. Vehicles**

any claim arising from or in connection with the ownership, possession or use by any of the Persons Insured of any Vehicle which is registered or required to be registered or insured under any law which applies to its use (hereinafter referred to as 'Statutory Insurance');

however this Exclusion will not apply if the said Persons Insured incur liability which arises out of:

- (a) the delivery or collection of goods to or from any Vehicle where Personal Injury or Damage to Property occurs beyond the limits of any carriageway or thoroughfare;
- (b) the loading or unloading of or the delivery or collection of goods to or from any Vehicle used in work undertaken by or on behalf of such Persons Insured but which is not in its or its employees' physical or legal control; or
- (c) the use of any Vehicle as a tool of trade,

provided that:

- (a) this Exclusion shall not apply where such claim did not arise in circumstances for which indemnity should be provided under any form of Statutory Insurance whether such insurance was effected or not; or
- (b) if the Persons Insured is entitled to indemnity pursuant to a separate policy of liability or motor vehicle insurance more specifically providing cover in respect of such liability, the Company shall not be liable for any claim under this Policy except to the extent that the Persons Insured's liability for any such claim exceeds the amount of cover payable under such other policy.

**9. Professional duty**

any claim arising out of any breach of a duty owed in a professional capacity by any of the Persons Insured or persons for whose breaches of such duty such Persons Insured may be legally liable, but this Exclusion does not apply to services rendered by any member of the Policyholder's first aid, medical or ambulance services as referred to in General Definition 1.4 arising in connection with such activities.

**10. Pollution**

- (a) any claim caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, the atmosphere or any watercourse or body of water (including ground-water) unless such discharge, dispersal, release or escape:
  - (i) is neither reasonably expected nor intended by any of the Persons Insured; and
  - (ii) is the consequence of a sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Period of Insurance;
- (b) any costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release or escape as described in (a) above, unless such costs or expenses are consequent upon an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identifiable point in time during the Period of Insurance and results in Personal Injury or Damage to Property none of which is otherwise excluded by this Policy.

Provided that the total aggregate liability of the Company during any one Period of Insurance, in respect of all claims arising from such Personal Injury or Damage to Property or such costs or expenses, shall not exceed the Limit of Indemnity stated in the Schedule in respect of Section B of this Policy.

#### 11. **Asbestos**

any claim in respect of or arising out of:

- (a) Personal Injury arising directly or indirectly out of or in any way connected with the inhalation of, or fears of the consequences of exposure to or inhalation of, asbestos, asbestos fibres or derivatives of asbestos;
- (b) cost and expense for cleaning up or removal of any asbestos, asbestos fibres or any derivatives of asbestos;
- (c) Damage to Property arising directly or indirectly out of or in any way connected with asbestos, asbestos fibres or derivatives of asbestos.

For the purpose of (c) above, Damage to Property also includes damage to or destruction of intangible property including the loss of use thereof.

#### 12. **Contract works**

any claim in respect of or arising out of Damage to Property where such property consists of or forms part of the Contract Works.

#### 13. **Electronic data**

any claim arising out of:

- (a) communication, display, distribution or publication of Electronic Data. However, this exclusion does not apply to Personal Injury;
- (b) (i) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;  
(ii) error in creating, amending, entering, deleting or using Electronic Data; or  
(iii) total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

Any terrorism exclusion in this Policy prevails over this Exclusion.

#### 14. **Existing underground services**

any claim arising from the presence of pre-existing underground services, cables or pipes of any kind unless prior to the commencement of works the Persons Insured:

- (a) has made a written request to the relevant public authorities or "Dial Before You Dig" information service or the owners of such pre-existing underground services; and
- (b) has obtained from the relevant public authorities or "Dial Before You Dig" information service or the owners of such underground services written confirmation of the exact position of such services; and
- (c) has subsequently verified the location of such underground services and indicated the location in situ.

#### 15. **Property in possession or control**

any claim in respect of any tangible property owned by or belonging to the Persons Insured or any Property in Possession or Control of the Persons Insured other than the Limit of Indemnity shown in the Schedule for Property in Possession or Control not being referred to as items a, b, c and d in Definition 4 of Section B of this Policy.

#### 16. **Hot work**

any claim for Damage to Property directly or indirectly caused by or arising out of or consequent upon arc or flame cutting, flame heating, arc or gas welding or similar operation in which welding equipment is used, unless such activity is conducted in strict compliance with the requirements of Australian Standard - Safety in welding and allied processes, Part 1: Fire precautions (AS1674.1-1997) or any amendments thereto or any reissue or replacement thereof.

### 5. **Territorial limits**

This Policy provides cover for:

- (a) legal liability in Australia incurred by any of the Persons Insured in connection with the Contract Works; and
- (b) claims for compensation made in Australia and does not cover any claims brought in a court of law, arbitration, tribunal, forum or other body entitled to impose enforceable orders against the Persons Insured outside of Australia.

# General exclusions

## (applicable to Sections A and B)

The Company shall not be liable for:

### 1. Radioactive contamination

any loss or damage to the Contract Works nor any Personal Injury or Damage to Property of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- (a) ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion or fission of nuclear fuel or
- (b) radioactive toxic explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

### 2. War

any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power.

### 3. Terrorism

except to the extent provided in the Terrorism Insurance Act 2003 (Cth), any loss or damage to the Contract Works or for any Personal Injury or Damage to Property of whatsoever nature directly or indirectly caused by, resulting from or in connection with Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss or damage to the Contract Works, Personal Injury or Damage to Property.

This Policy also excludes loss or damage to the Contract Works, Personal Injury or Damage to Property of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to Terrorism.

# Policy conditions

## (applicable to Sections A and B)

To the extent allowed by the Insurance Contracts Act 1984 (Cth) the following General and Claims Conditions apply and in the event of breach the Company may refuse indemnity.

### General conditions

#### 1. Observance of terms and disclosure of material facts

Any liability of the Company under this Policy shall depend upon:

- (a) observance of the terms and Conditions of this Policy by any of the Persons Insured in so far as they relate to anything to be done or complied with by any of the Persons Insured; and
- (b) the truth of verbal and written statements made to the Company by any of the Persons Insured prior to entering into this Policy.

#### 2. Reasonable care

The Persons Insured at their own expense shall take or cause to be taken all reasonable care to:

- (a) maintain premises, plant, equipment and everything used in the Contract Works in proper repair;
- (b) engage only competent Employees;
- (c) comply with all statutory obligations and regulations imposed by any authority;
- (d) comply with all reasonable recommendations made by the Company;
- (e) comply with all manufacturers' and suppliers' recommendations and requirements; and
- (f) prevent loss or damage, or Personal Injury or Damage to Property and safeguard the Contract Works at all times.

#### 3. Alteration of risk

The Persons Insured must notify the Company as soon as possible by facsimile, e-mail or in writing of any material changes in the Contract Works and confirm such notification by providing full details in writing. In such event the Persons Insured must at their own expense take such additional precautions as may be necessary to minimise the risk of any claim arising under the Policy. No material change will be covered by this Policy unless agreed to in writing by the Company.

#### 4. Adjustment

Where the premium has been calculated on the basis of an estimate of the value of the Contract Works furnished by the Policyholder, the Policyholder shall within a reasonable period after the expiry of the Construction Period furnish to the Company full information as to the actual value of the Contract Works and the premium already paid shall thereupon be adjusted by the Company and the difference be paid by or allowed to the Policyholder as the case may be (subject to any minimum premium applicable) by applying the agreed rate of premium to the said actual value.

#### 5. Inspection

The Company reserves the right to inspect any Contract Site and examine any records or documentation at any time and shall provide reasonable notice to the Policyholder or its representatives. The Policyholder upon receipt of such notice must at its own expense cooperate and allow the Company, its agents or representatives full access as soon as is practicable.

#### 6. Jurisdiction

Any dispute(s) arising out of or in relation to this Policy must only be subject to determination by a competent court of jurisdiction within Australia.

#### 7. Cancellation

The Policy may be cancelled:

- (a) at any time at the request of the Policyholder or their legal representative in writing to the Company, and the premium shall be adjusted on a pro rata basis having regard to the unexpired component of the Period of Insurance, after the premium on the value of Contract Works commenced prior to cancellation has been adjusted in accordance with General Condition 4 as at the date of cancellation;
- (b) by the Company in accordance with the Insurance Contracts Act 1984 (Cth) by giving the Policyholder at least 3 business days written notice.

#### 8. Assignment

The Policyholder must obtain the Company's prior written consent before it can assign or transfer its interest in this Policy to any other entity or party.

## 9. Goods and Services Tax

The premium charged for this Policy may attract an amount on account of GST.

The Persons Insured must inform the Company of the extent to which they are entitled to an Input Tax Credit for the premium each time that a claim is made under this Policy. No payment will be made to the Persons Insured for any GST liability that they may acquire on the settlement of a claim if the Persons Insured have not informed the Company of its entitlement or correct entitlement to an Input Tax Credit.

Despite the other provisions of this Policy, the Company's liability will be calculated taking into account:

- (a) any Input Tax Credit to which the Persons Insured are entitled for any Acquisition relevant to a claim, or to which the Persons Insured would have been entitled were the Persons Insured to have made a relevant Acquisition; and
- (b) the GST exclusive amount of any Supply made by the Persons Insured's business which is relevant to the Persons Insured's claim.

If the Sum(s) Insured or Limit of Indemnity is not sufficient to cover the Persons Insured's loss, the Company will only pay GST (less any relevant Input Tax Credit) that relates to the Company's proportion of the Persons Insured's loss. The Company will pay that GST amount in addition to the Sum(s) Insured or Limit of Indemnity.

'GST', 'Input Tax Credit', 'Acquisition' and 'Supply' have the meaning given in the 'A New Tax System (Goods and Services Tax) Act 1999 (Cth).'

## Claims conditions

### 1. Notification

If any loss or damage to the Contract Works or Personal Injury or Damage to Property occurs which may give rise to a claim under this Policy the Persons Insured shall:

- (a) as soon as reasonably practicable:
  - (i) inform the Company of such occurrence;
  - (ii) provide in writing if requested, including verification on oath, such particulars, documents and information as the Company may require;
  - (iii) take all steps within their power both to effect repairs expeditiously and to minimise the extent of the Personal Injury or Damage to Property;
  - (iv) preserve the property affected and make it available for inspection by the Company, its employees or agents; and
  - (v) in respect of instances of loss or damage caused by theft or burglary or malicious damage, inform the Police;
- (b) immediately:
  - (i) on receipt forward to the Company every letter, writ, summons and process; and
  - (ii) inform the Company in writing of any prosecution or inquest of which they are given notice;
- (c) provide all assistance which the Company may reasonably require.

### 2. Admission of liability

None of the Persons Insured shall:

- (a) make any admission of liability;
  - (b) take any action which may be considered to be an admission of liability;
  - (c) repudiate or settle a claim,
- without the prior written consent of the Company.

### 3. Conduct of claim

The Company may if it so desires take over and conduct in the name of any of the Persons Insured the defence or settlement of any claim or prosecute in the name of any of the Persons Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

### 4. Payment of limit of indemnity

In relation to any claim under Section B of this Policy the Company may at any time pay at its discretion to any of the Persons Insured claiming to be indemnified the appropriate Limit of Indemnity (after deducting therefrom any sum or sums already paid) or any lesser amount for which such claim or claims may be settled and thereupon the Company shall relinquish the conduct and control of and shall be under no further liability in connection with such claim or claims except for costs and expenses incurred prior to the date of such payment.



If the Company has not exercised its rights under this Condition 4, the liability of the Company to pay costs and expenses where the total amount paid to dispose of the claim exceeds the appropriate Limit of Indemnity, shall be limited to such proportion of the said costs and expenses as such Limit of Indemnity bears to the amount paid to dispose of the claim.

**5. Other insurance**

In the event of any claim being made under this Policy, the Persons Insured must notify the Company of any other insurance covering the same loss or damage to the Contract Works or Personal Injury or Damage to Property of which the Persons Insured are aware.

**6. Subrogation**

Except as expressly provided in the Waiver of Subrogation clause in Section A or the Cross liabilities and waiver of subrogation clause in Section B of this Policy, the Persons Insured shall at the request and at the expense of the Company do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Company for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from any parties to which the Company shall be or would become entitled or subrogated upon its paying for or making good any loss or damage to the Contract Works under Section A of this Policy or Personal Injury or Damage to Property under Section B of this Policy, whether such acts or things shall be or become necessary or required before or after their indemnification by the Company. The Persons Insured shall not in any case be entitled to abandon any property to the Company.

# Endorsements

The following Endorsements apply to and form part of this Policy but only where the identifying number has been entered under 'Endorsements Applicable' in the Schedule, and where applicable, an amount is entered in the Schedule against the appropriate Item. The terms, Conditions and Exclusions of this Policy remain otherwise unaltered.

## 1. Materials in store – Away from the contract site

It is hereby agreed and declared that the Company will indemnify the Persons Insured in the terms of Section A of this Policy against unforeseen physical loss of or damage to materials and components intended for incorporation in the Contract Works and whilst in storage, not exceeding 90 days in duration, within Australia, subsequent to manufacture, provided such loss or damage occurs during the Construction Period.

Provided always that such indemnity shall be payable only in respect of materials and components belonging to or in the possession or control of any of the Persons Insured and which are awaiting transport to the Contract Site.

Provided further that the liability of the Company under this Endorsement for any one instance of loss or damage shall not exceed the Sum Insured stated in the Schedule as applying to Item 1b, and shall be subject to the Deductible.

## 2. Transit

It is hereby agreed and declared that the Company will indemnify the Persons Insured in terms of Section A of this Policy against unforeseen physical loss of or damage to materials intended for incorporation in the Contract Works and arising from fire, flood, collision and overturning of the conveyance in which they are being transported or by theft or malicious damage, all of which must occur within Australia during the Construction Period and in the course of transit to the Contract Site.

Transit shall mean the period:

1. beginning with the completion of loading in an undamaged condition; and
2. continuing thence during transport:
  - (a) by road;
  - (b) by inland waterway;
  - (c) by rail;
  - (d) by a licenced airline operating a regular scheduled service (including transshipment incidental thereto); and
3. ending with the completion of unloading at the Contract Site.

Provided always that such indemnity shall be payable only in respect of materials belonging to or in the possession or control or the responsibility of any of the Persons Insured.

Provided further that the liability of the Company under this Endorsement for any one instance of loss or damage shall not exceed the Sum Insured stated in the Schedule as applying to Item 1 (c) and shall be subject to the Deductible.

## 3. Pre-existing property – Static cover plus cover arising out of the contract works

It is hereby agreed and declared that the Company will indemnify the Persons Insured in terms of Section A of this Policy against unforeseen physical loss of or damage to 'Pre-existing Property', being buildings or structures situated at the Contract Site, existing at the commencement of the Construction Period, and owned by the Principal or for which any of the other Persons Insured is responsible provided such loss or damage occurs during the Construction Period.

Provided further that the liability of the Company under this Endorsement for any one instance of loss or damage shall not exceed the Sum Insured stated in the Schedule as applying to Item 3, and shall be subject to the Deductible.

For the purpose of this Endorsement Contract Works shall include Pre-existing Property.

### Additional exclusions:

The Company shall not be liable for any:

1. damage to floor, wall and ceiling finishes or coverings of the Pre-existing Property;
2. loss or damage to contents of the Pre-existing Property;
3. consequential loss of any nature whatsoever.

#### **4. Pre-existing property – Cover arising out of the contract works**

It is hereby agreed and declared that the Company will indemnify the Persons Insured in terms of Section A of this Policy against unforeseen physical loss of or damage to 'Pre-existing Property' being buildings or structures situated at the Contract Site, existing at the commencement of the Construction Period, and owned by the Principal or for which any of the other Persons Insured is responsible provided such loss or damage:

1. arises out of the performance of the Contract Works; and
2. occurs during the Construction Period.

Provided further that the liability of the Company under this Endorsement for any one instance of loss or damage shall not exceed the Sum Insured stated in the Schedule as applying to Item 3, and shall be subject to the Deductible.

For the purpose of this Endorsement, Contract Works shall include Pre-existing Property.

##### **Additional exclusions**

The Company shall not be liable for any:

1. damage to floor, wall or ceiling finishes or coverings of the Pre-existing Property;
2. loss of or damage to contents of the Pre-existing Property;
3. consequential loss of any nature whatsoever.

#### **5. Employees' personal effects**

It is hereby agreed and declared that the Company will indemnify Employees of the entities noted in sub-clauses 1, and 3 of Persons Insured in terms of Section A against unforeseen loss of or damage to their personal effects whilst at the Contract Site.

Provided that the maximum liability of the Company under this Endorsement for any one instance of loss or damage shall not exceed the amount specified in the Schedule as applying to Item 7, and shall not exceed in respect of any one Employee the sum of \$500 and shall be subject to the Deductible.

For the purpose of this Endorsement, Contract Works shall include Employees' personal effects not otherwise excluded by the Policy.

#### **6. Testing and commissioning – Mechanical installation/erection**

In terms of Section A where the Contract Works consist of works of mechanical installation or erection, the following Additional Exclusions shall apply during the period when the Contract Works or any part of them are being tested or commissioned, provided that such period shall not exceed the period stated in the Schedule or a maximum of 3 months in total, whichever is the lesser, beginning with the commencement of testing obligations under the Contract or the application of test loads and ending with:

1. the completion of testing or commissioning obligations under the Contract;
2. the issue of a certificate of practical completion;
3. the taking into commercial use of the Contract Works;
4. the expiry of the testing and commissioning period specified above; or
5. the expiry of the Construction Period,

whichever occurs first.

Provided that simple functional checks of components or individual machines which do not involve the imposition of any loads carried out within an installation which is a complex of machines, and prior to the commencement of testing of the installation as a whole, will not be classed as testing for the purposes of this Endorsement.

##### **Additional exclusions**

The Company shall not be liable for any loss or damage:

1. arising out of the imposition of abnormal conditions, intentional overloading or experiments;
2. resulting from testing or commissioning of used machinery, plant or equipment;
3. to or spoilage of any feedstock materials.

#### **7. Contractor's plant, equipment and tools**

It is hereby agreed and declared that the Company will indemnify the Policyholder in terms of Section A of this Policy against unforeseen physical loss of or damage to plant, equipment and tools, owned by the Policyholder or for which they are held responsible by contract and which are used in the performance of the Contract Works whilst at the Contract Site.

Provided that the Company shall not be liable for;

1. loss or damage to any vessels or craft made or intended to be water borne, or air borne, or any item of plant, equipment or tools mounted thereon;

2. loss or damage to any piling plant and any ancillary equipment used in connection with any piling operations
3. (a) the costs of repairing or replacing parts requiring periodic or frequent replacement, repair or maintenance where such costs are as a result of the inherent consumable or replaceable nature of such parts;
- (b) loss or damage caused by its own electrical or mechanical breakdown failure or derangement.

The maximum liability of the Company for any one instance of loss or damage shall not exceed the amount specified in the Schedule as applying to Item 8 and shall be subject to the Deductible.

For the purpose of this Endorsement Contract Works shall include contractor's plant, equipment and tools not otherwise excluded by the Policy.

#### 8. Annual declaration – Run-off basis

1. For the purpose of this Endorsement, Definition 3 of the General Definitions shall be replaced with the following:

'Contract Works' shall mean works of engineering, construction or mechanical installation or erection, including formwork, falsework, temporary works, temporary buildings including all associated contents other than employees' personal effects, scaffolding, hoardings, Principal supplied or free issue materials, materials for incorporation in the works, and additions and alterations to or refurbishment of pre-existing buildings or structures, all of which are carried out in their entirety within Australia, provided that:

- (a) none of the Contract Works is specified in the Schedule under 'Types of Contract Works Excluded';
- (b) none of the Contract Works shall exceed in value at the time of award the amount specified in the Schedule under Item 1;
- (c) the commencement date of the Contract Works shall fall between the Policy Dates specified in the Schedule;
- (d) the total duration of the Construction Period for each separate Contract Works shall not exceed the unbroken period of months specified in the Schedule; and
- (e) the total duration of the Maintenance Period for each separate Contract Works shall not exceed the period of months specified in the Schedule,

provided further that notwithstanding cancellation or non-renewal of this Policy, cover shall continue for all Contract Works commenced prior to the date of cancellation or non-renewal until expiry of any Maintenance Period, subject to payment of any additional premium and statutory charges.

2. Contract Works that are within the 'Types of Contract Works Excluded' specified in the Schedule or have a value at the time of award in excess of the amount specified in the Schedule under Item 1 may only be covered under this Policy if specifically agreed and at terms to be agreed by the Company.
3. This Policy may be extended to include Difference in Conditions Contract Works if specifically agreed and providing a Difference in Conditions Contract Works premium rate, a value of Difference in Conditions Contract Works and a Difference in Conditions Contract Works Provisional Premium are shown in the Schedule. **'Difference in Conditions Contract Works'** shall mean all contract works undertaken by the Policyholder and for which the Policyholder is not responsible to effect a policy of insurance to cover such contract works. All Difference in Conditions Contract Works that are not of a similar type to the Contract Works insured under this Policy are excluded.

Difference in Conditions Contract Works will only be included in this Policy if any other policy of insurance that covers the Difference in Conditions Contract Works is notified to the Company and specified in an Endorsement to this Policy.

Where Difference in Conditions Contract Works are covered by this Policy, the Company agrees to indemnify the Policyholder for any loss or damage, Personal Injury or Damage to Property that is not recoverable from the other policy of insurance specified in an additional Endorsement to this Policy, and for amounts in excess of those amounts recoverable from the other policy of insurance, providing such loss or damage, Personal Injury or Damage to Property would, but for the existence of the other policy of insurance, be recoverable from this Policy and the Company's liability for such loss or damage, Personal Injury or Damage to Property shall not exceed the Sums Insured and Limits of Liability specified in the Schedule.

4. The Provisional Premium specified in the Schedule shall be calculated using the agreed premium rate shown in the Schedule and applied to the estimated total value of all Contract Works provided by the Policyholder, which may become insurable under this Policy.

Where the Policy is extended to provide cover for Difference in Conditions Contract Works an additional premium shall be payable, calculated by applying the agreed Difference in Conditions Contract Works premium rate shown in the Schedule and applied to the estimated total value of all Difference in Conditions Contract Works provided by the Policyholder.

The Provisional Premium(s) shall be adjusted in accordance with General Condition 4 and subject to payment of the minimum premium by applying the minimum premium percentage shown in the Schedule.

5. For the purpose of this Endorsement only,

'Personal Injury' shall mean bodily injury, death, sickness, disease, disability, shock, fright, mental injury, mental anguish. Injury if consisting of or relating to a latent medical condition shall be deemed to have occurred in respect of each claim at the time when that condition was first medically diagnosed.

'Damage to Property' shall mean physical damage to or destruction of tangible property including the loss of use thereof at any time resulting therefrom. Damage if attributable to a latent cause shall be deemed to have occurred in respect of each claim when first discovered.

#### 9. Annual declaration – Transfer basis

1. For the purpose of this Endorsement, Definition 3 of the General Definitions shall be replaced with the following:

'Contract Works' shall mean works of engineering, construction or mechanical installation or erection, including formwork, falsework, temporary works, temporary buildings including all associated contents other than employees' personal effects, scaffolding, hoardings, Principal supplied or free issue materials, materials for incorporation in the works, and additions and alterations to or refurbishment of pre-existing buildings or structures, all of which are carried out in their entirety within Australia, provided that:

- (a) none of the Contract Works is specified in the Schedule under 'Types of Contract Works Excluded';
- (b) none of the Contract Works shall exceed in value at the time of award the amount specified in the Schedule under Item 1;
- (c) the total duration of the Construction Period for each separate Contract Works shall not exceed the unbroken period of months specified in the Schedule; and
- (d) the total duration of the Maintenance Period for each separate Contract Works shall not exceed the period of months specified in the Schedule,

provided further that:

- (a) in respect of Section A of this Policy, all instances of loss or damage shall occur between the Policy Dates specified in the Schedule; and
- (b) in respect of Section B of this Policy, all Personal Injury and Damage to Property shall be sustained between the Policy Dates specified in the Schedule.

2. Contract Works that are within the 'Types of Contract Works Excluded' specified in the Schedule or have a value at the time of award in excess of the amount specified in the Schedule under Item 1 may only be covered under this Policy if specifically agreed and at terms to be agreed by the Company.

3. This Policy may be extended to include Difference in Conditions Contract Works if specifically agreed and providing a Difference in Conditions Contract Works premium rate, a value of Difference in Conditions Contract Works and a Difference in Conditions Contract Works Provisional Premium are shown in the Schedule. '**Difference in Conditions Contract Works**' shall mean all contract works undertaken by the Policyholder and for which the Policyholder is not responsible to effect a policy of insurance to cover such contract works. All Difference in Conditions Contract Works that are not of a similar type to the Contract Works insured under this Policy are excluded.

Difference in Conditions Contract Works will only be included in this Policy if any other policy of insurance that covers the Difference in Conditions Contract Works is notified to the Company and specified in an Endorsement to this Policy.

Where Difference in Conditions Contract Works are covered by this Policy, the Company agrees to indemnify the Policyholder for:

- (a) all instances of loss or damage; and
- (b) all Personal Injury and Damage to Property sustained,

between the Policy Dates specified in the Schedule which are not recoverable from the other policy of insurance and any amounts in excess of those amounts recoverable from the other policy of insurance specified in an additional Endorsement to this Policy, providing such loss or damage, Personal Injury or Damage to Property would, but for the existence of the other policy of insurance, be recoverable from this Policy and the Company's liability for such loss or damage, Personal Injury or Damage to Property shall not exceed the Sums Insured and Limits of Liability specified in the Schedule.

4. The Provisional Premium specified in the Schedule shall be calculated using the agreed premium rate shown in the Schedule and applied to the estimated total value of all Contract Works provided by the Policyholder, which may become insurable under this Policy.

Where the Policy is extended to provide cover for Difference in Conditions Contract Works an additional premium shall be payable, calculated by applying the agreed Difference in Conditions Contract Works premium rate shown in the Schedule and applied to the estimated total value of all Difference in Conditions Contract Works provided by the Policyholder.

The Provisional Premium(s) shall be adjusted in accordance with General Condition 4 and subject to payment of the minimum premium by applying the minimum premium percentage shown in the Schedule.

5. For the purpose of this Endorsement only,

'Personal Injury' shall mean bodily injury, death, sickness, disease, disability, shock, fright, mental injury, mental anguish. Injury if consisting of or relating to a latent medical condition shall be deemed to have occurred in respect of each claim at the time when that condition was first medically diagnosed.

'Damage to Property' shall mean physical damage to or destruction of tangible property including the loss of use thereof at any time resulting therefrom. Damage if attributable to a latent cause shall be deemed to have occurred in respect of each claim when first discovered.

#### **10. Builder's liability - Completed operations (annual declaration policies only)**

Provided either Endorsement 8 or Endorsement 9 also applies, and the Policyholder is a builder or a building contractor, and subject to the Limit of Indemnity specified in the Schedule in respect of this Endorsement, the Company will in terms of Section B of this Policy indemnify the Policyholder in respect of all sums which it shall become legally liable to pay as compensation for:

- (a) Personal Injury; or
- (b) Damage to Property,

sustained during the Period of Insurance as a result of an Occurrence and in connection with the Completed Contract Works less the amount of the Deductible shown in the Schedule as applicable to this Endorsement.

And in addition the Company will pay:

- (a) all costs and expenses incurred with the written consent of the Company;
- (b) all legal costs for representation of the Policyholder at any coroner's inquest or in any court of summary jurisdiction; or
- (c) all claimant's charges, expenses and legal costs recoverable from the Policyholder,

to the extent that these costs and expenses are incurred in connection with a claim for compensation which is indemnifiable under this Endorsement.

Further, and in respect solely of this Endorsement, it is agreed that:

- (a) Completed Contract Works shall mean works of building construction or erection or additions and alterations to or refurbishment of buildings, all of which have been carried out in their entirety within Australia and in respect of which at the time of the Personal Injury or Damage to Property all liability under the relevant Contract had ceased; and
- (b) the Company shall not be liable for Personal Injury or Damage to Property caused by the defective design, formula or specification by the Policyholder of any Completed Contract Works referred to in (a) above which defective design, formula or specification took place prior to the time all liability under the relevant Contract had ceased.

**11. Builder's liability - Non-contract works activities (annual declaration policies only)**

Provided either Endorsement 8 or Endorsement 9 also applies, and the Policyholder is a builder or a building contractor, and subject to the Limit of Indemnity specified in the Schedule in respect of this Endorsement, the Company will in terms of Section B of this Policy indemnify the Policyholder in respect of all sums which it shall become legally liable to pay as compensation for:

- (a) Personal Injury; or
- (b) Damage to Property,

sustained during the Period of Insurance as a result of an Occurrence and in connection with any Non-Contract Works activity specified in the Schedule which reasonably forms part of the Policyholder's business less the amount of the Deductible shown in the Schedule as applicable to this Endorsement.

And in addition the Company will pay:

- (a) all costs and expenses incurred with the written consent of the Company;
- (b) all legal costs for representation of the Policyholder at any coroner's inquest or in any court of summary jurisdiction; and
- (c) all claimant's charges, expenses and legal costs recoverable from the Policyholder,

to the extent that these costs and expenses are incurred in connection with a claim which is indemnifiable under this Endorsement.

Further and in respect solely of this Endorsement, it is agreed that Non-Contract Works shall not include any business activity conducted by the Policyholder that involves Contract Works as otherwise provided for under this Policy and as described in the Schedule and any other applicable Endorsements.

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