



# Professional Indemnity for Construction

**POLICY WORDING**



# Important Information

## Introduction

Focus Underwriting is a trading division of IBL Limited  
AFS Licence number: 231203

You can contact us at [enquiries@focusuw.com.au](mailto:enquiries@focusuw.com.au) or on 1800 234 338 or at Level 21, 41 Exhibition Street Melbourne 3000.

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## Important information

### About this insurance policy

If **we** issue **you** with an insurance policy, **you** will be given a **schedule**. The **schedule** sets out the specific terms applicable to **your** cover and should be read together with the **policy** terms and conditions.

The **policy** terms and conditions, the **schedule** and any endorsements form **your** legal contract with **us**.

Please keep these documents for future reference.

**You** must read this entire document to understand the full terms and conditions of **your policy**.

### Agent of the insurer

Please note that in arranging the contract of insurance, **we** are acting under an authority given to **us** by the **insurer**, and **we** will be effecting the contract of insurance as agent of the **insurer**, and not as your agent.

### Duty of disclosure

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

**You** have this duty until **we** agree to insure **you**.

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

**You** do not need to tell **us** anything that:

- reduces the risk **we** insure **you** for; or
- is common knowledge; or
- **we** know or should know as an **insurer**; or
- **we** waive your duty to tell **us** about.

### If you do not tell us something

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

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

### Claims made insurance

**Your** professional indemnity **policy** is issued on a 'claims made' basis. This means that the policy responds: -

- a. to **claims** first made against **you** during the **period of insurance** and notified to the **insurer** during that **period of insurance**, providing that **you** were not aware at any time prior to the **policy** inception of circumstances which would have put a reasonable person in **your** position on notice that a **claim** may be made against **you**; and
- b. pursuant to Section 40 (3) of the *Insurance Contracts Act 1984 (Cth)* which states: "*where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance cover provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract*".

When the **policy** expires, no new notification can be made on the expired **policy** even though the event giving rise to the **claim** against **you** may have occurred during the **period of insurance**.

### General Insurance Code of Practice

This insurance complies with the Insurance Council of Australia's General Insurance Code of Practice, apart from any **claims** adjusted outside Australia.

Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

## Important Information

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### Privacy

IBL Limited, trading as Focus Underwriting (Focus), is committed to protecting **your** privacy in accordance with the Privacy Act 1998 (Cth) and the Australian Privacy Principles. **Our** Privacy Policy describes **our** current policies and practices in relation to the collection, handling, use and disclosure of personal information. It also deals with how **you** can complain about a breach of the privacy laws and how **you** can access the personal information **we** hold and how to have that information corrected.

Our contact details for all privacy enquiries are:

Focus Underwriting  
Level 21 41 Exhibition Street Melbourne 3000  
Phone: 1800 234 338  
Email: [enquiries@focusuw.com.au](mailto:enquiries@focusuw.com.au)  
Web: [www.focusuw.com.au](http://www.focusuw.com.au)

**Our** full Privacy Policy is contained on our website and **we** encourage you check regularly for any updates.

#### **What information do we collect and how do we use it?**

**We** collect from **you** all information **we** need to assess **your** application for insurance and to administer **your** insurance **policy** and any claims **you** may make. **We** provide any information that the **insurer** who provide **our** capacity requires to enable them to decide whether to insure **you** and on what terms. This **insurer** may in turn pass on this information to their reinsurers. Some of these companies are located outside Australia.

When **you** make a **claim** under **your policy**, **we** assist **you** by collecting information about **your claim**. Sometimes **we** also need to collect information about **you** from others. **We** provide this information to **your insurer** (or anyone **your insurer** has appointed to assist them to consider **your claim**, e.g. loss adjusters or legal advisers etc) to enable them to consider **your claim**. Again this information may be passed on to reinsurers.

#### **What if you don't provide some information to us?**

We can only fully consider **your** risk if **we** have all relevant information. The insurance laws also require **you** to provide **your insurers** with all the information they need in order to be able to decide whether to insure **you** and on what terms. **You** have a duty to disclose the information which is relevant to the **insurer's** decision to insure **you**. If **you** provide inaccurate or incomplete information **we** may not be able to provide **you** with **our** products or services.

### Your consent

By asking **us** to assist with **your** insurance needs, **you** consent to the collection and use of the information **you** have provided to **us** for the purposes described above.

### Retroactive Liability

This insurance does not provide cover in relation to acts, errors or omissions that occurred prior to the commencement of this insurance unless the **policy** is extended accordingly.

# General Terms and Conditions

## General policy conditions

The following general conditions apply to this **policy**.

### 1.1 Average Provision

This **policy** provides that where the amount required to dispose of a **claim** or **claims** exceeds the **limit of indemnity** in the **policy** then the **insurer** shall be liable only for a proportion of the total **costs and expenses**. This shall be the same proportion of the total expenses as the **policy** limit bears to the total amount required to dispose of the **claim** or **claims**.

### 1.2 Cancelling your policy

#### How you may cancel

**You** may cancel the **policy** at any time by telling **us** in writing that **you** want to cancel it. Where **you** involves more than one person, **we** will only cancel the **policy** when written instructions to cancel the **policy** is received from all persons named as the **insured**.

#### How we may cancel

**We** may only cancel a **policy** when the law says **we** can. Such cancellation shall take effect at the earlier of the following times:

- a. 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
- b. at 4.00 pm on the thirtieth (30<sup>th</sup>) business day after the day on which notification was given to **you**.

**We** will cancel **your policy** by telling **you** so in writing, either in person or by post to **your** last known address.

#### Return Premium

**We** will retain the pro-rata premium for the time the **policy** has been in place subject to any minimum premium.

**We** will return the premium that **you** have paid for the rest of the **period of insurance** (along with GST and any relevant charges where this is allowed).

When the premium is subject to adjustment, cancellation will not affect **your** obligation to supply to **us** such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

**You** are not entitled to receive a refund of any underwriting levy charged.

#### Premium funders

If the premium has been funded by a premium funding company which holds a legal right over the **policy** by virtue of a notice of assignment and irrevocable power of attorney, the return of premium calculated on the basis set out above shall be made to the premium funding company.

### 1.3 Changes to the policy

If **you** want to make a change to this **policy**, the change becomes effective when **we**:

- a. agree to it; and
- b. give **you** a new **policy schedule** and/or an **endorsement schedule** detailing the change.

### 1.4 Complaints resolution

Any enquiry or complaint relating to this Insurance should be referred to Focus Underwriting in the first instance. If this does not resolve the matter or **you** are not satisfied with the way a complaint has been dealt with, **you** should contact:

Lloyd's Underwriters' General Representative in Australia  
Level 9, 1 O'Connell Street  
Sydney NSW 2000  
Telephone Number: (02) 8298 0783  
Who will refer your dispute to the Complaints Team.

Complaints that cannot be resolved by the Complaints Team may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

### 1.5 Defence and/or settlement

Subject to the provisions of the *Insurance Contracts Act 1984* (Cth), the **insured** shall not admit liability for or settle any **claim** (including any threat or intimation of a **claim** or any circumstances which may give rise to a **claim**, notified to the **insurer** during the **period of insurance**).

### 1.6 Deductible

In respect of each and every **claim** made against the **insured**, the **deductible** specified in the **schedule** shall be borne by the **insured** at the **insured's** own risk and uninsured. The **insurer** shall be liable to indemnify the **insured** only for the difference between the amount

## General Terms and Conditions

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of the **deductible** and the amount of the **limit of indemnity**, provided always that the indemnity for **costs and expenses** incurred with the prior written consent of the **insurer** shall not be subject to the **deductible**.

Where the **insurer** has paid a **claim** inclusive of the amount of the **deductible** the **insured** shall pay the amount of the **deductible** promptly to the **insurer**.

### 1.7 Governing law

The **policy** will be governed in accordance with the laws of Australia. Any disputes relating to interpretation will be submitted to the exclusive jurisdiction of the courts of Australia.

### 1.8 Headings

Any headings in the **policy** are included for the purpose of reference only and do not form part of the **policy** for interpretation purposes

### 1.9 How Goods and Services Tax (GST) affects any payments we make

In addition to the premium, **we** will charge **you** an amount on account of GST.

**You** must inform **us** of the extent to which **you** are entitled to an input tax credit for that GST amount each time that **you** make a claim under this **policy**. No payment will be made to **you** for any GST liability that **you** may have on the settlement of a claim if **you** do not inform **us** of **your** entitlement or correct entitlement to an input tax credit.

Despite the other provisions of this insurance (including provisions in the **policy** wording, the **policy schedule** and any **endorsement**), **our** liability to **you** will be calculated taking into account any input tax credit to which **you** are entitled for any acquisition which is relevant to **your** claim, to which **you** would have been entitled were **you** to have made a relevant acquisition; and

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

### 1.10 Insured notices

Any notice given by **us** to the first named **insured** within the **policy schedule** will be treated as notice to all parties comprising '**you**', '**your**' '**insured**', and it will be effective:

- a. immediately if it is delivered to **you** personally;

- b. if it is posted to **your** address last known to **us**, three business days after having been posted by **us**;
- c. immediately if it is sent by electronic communication.

### 1.11 Insurer notices

Any notices required to be given to the **insurer** including notification of **claims** or applications for indemnity may be made or notified to:

Focus Underwriting Level 21, 41 Exhibition Street  
Melbourne 3000. Telephone: 1800 234 338 Email  
[cm@focusuw.com.au](mailto:cm@focusuw.com.au) or [www.focusuw.com.au](http://www.focusuw.com.au).

### 1.12 Insurers several liability

The subscribing **insurers'** obligations under this **policy** to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing **insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reason does not satisfy all or part of its obligations.

### 1.13 Joint and several liability

Where the **insured** is an incorporated body and, where any legislation provides that directors of the **insured** are jointly and severally liable with the incorporated body for any civil liability incurred by it, then the **policy** shall indemnify all directors of the **insured** in respect of any liability so imputed, but only to the extent that such liability would have been covered by the **policy** if the civil action had been taken against the **insured** incorporated body alone. An unqualified **principal** (whether a director or otherwise) is not granted indemnity by reason of this provision in respect of civil liability of that **principal** unless the work, the subject of the **claim**, is work in respect of the profession stated in the **schedule** and was being done under the direct supervision or control of a qualified **principal** or a professionally qualified **employee** of the **insured**.

### 1.14 Multiple claims

All causally connected or interrelated civil liabilities shall jointly constitute a single civil liability under the **policy**.

Where conduct of an **insured** results in a civil liability or alleged civil liability and gives rise to more than one **claim**, all such **claims** shall jointly constitute one **claim** under the **policy**, and only one **limit of indemnity** and

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one **deductible** shall be applicable in respect of such **claim**.

### 1.15 Premium

We charge **you** a premium for the cover we provide **you** under this **policy**. The total premium we charge **you** will include any government charges such as stamp duty and GST. We may charge an underwriting levy which will also be included in **your** total premium. **Your** total premium and the breakdown of government and other charges is shown in **your policy schedule**.

**Your** insurance intermediary may also charge **you** a service or administration fee. This fee is not included in **your** premium shown in **your policy schedule**.

Factors that affect the premiums charged include:

- **Your** risk profile including **your** claims history
- The limits of indemnity selected by **you**
- Costs of reinsurance
- Any minimum premiums that apply
- Government taxes and duties

When **you** apply for this insurance we will tell **you** the total premium payable. We will also tell **you** when and how this premium is to be paid. If **you** fail to pay the premium or if **your** payment is dishonored the **policy** will be cancelled in accordance with the Insurance Contracts Act 1984 (Cth).

### 1.16 Service of suit

The **insurers** hereon agree that:

- a. in the event of a dispute arising under this Insurance, the **insurers** at the request of the **insured** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;
- a. any summons notice or process to be served upon the **insurers** may be served upon:

Lloyd's Underwriters' General  
Representative in Australia  
Level 9, 1 O'Connell Street  
Sydney NSW 2000  
Telephone Number: (02) 8298 0700  
who has authority to accept service and to enter an appearance on the **insurers'** behalf, and who is directed at the request of the **insured** to give a written undertaking to the

**insured** that he will enter an appearance on the **insurers'** behalf;

- b. if a suit is instituted against any one of the **insurers**, all **insurers** hereon will abide by the final decision of such Court or any competent Appellate Court.

### 1.17 Subrogation

The **insurer** shall be entitled to claim indemnity or contribution at any time in the name of the **insured** from any party against whom the **insured** may have such rights provided always that the **insurer** shall not exercise any subrogated rights of recovery against any **employee** of the **insured** unless the **claim** has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the **employee**.

### 1.18 Surrender or waiver of any right of contribution or indemnity

Where another person or company would be liable to compensate **you** or hold **you** harmless for part, or all, of any loss or damage otherwise covered by the **policy**, but **you** have agreed with that person either before or after the inception of the **policy** that **you** would not seek to recover any loss or damage from that person, **you** are not covered under the **policy** for any such loss or damage.

## Claims conditions

To enable the **insurer** to process a claim under this **policy** the following conditions apply.

### 1.19 Claims co-operation

At the **insured's** own expense, the **insured** shall give to the **insurer** all such information and assistance as they may reasonably require to enable them to investigate and defend any **claim** or any litigation against the **insured** or in the prosecution of any recovery action by the **insurer** and/or to enable the **insurer** to determine their liability under the **policy**. The **insured** and insurer agree to endeavor to maintain confidentiality and privilege to the extent possible, but the **Insured** otherwise agrees such waiver to the extent necessary for the legitimate underwriters' interests.. The **insured** shall, at its own expense, do all such things reasonably necessary and practicable to avoid or diminish any loss hereunder.

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### 1.20 Insurer's right to contest

If the **insured** refuses to consent to any settlement of any **claim** recommended by the **insurer** and elects to contest or continue any **legal proceedings** in connection with such **claim**, the **insurer's** liability shall not exceed the amount for which the matter could have been so settled (subject to the aggregate **limit of indemnity**) less the **deductible** specified in the **schedule** together with **costs and expenses** incurred up to the date of such refusal.

### 1.21 Making a claim

Focus Underwriting acts as agent of the **insurer**, in relation to receiving and managing **claims**.

#### The Claim Process

**Claims** or notifications must be reported in writing by completing a notification form which can be obtained by telephoning 1800 234 338, emailing [cm@focusuw.com.au](mailto:cm@focusuw.com.au) or from [www.focusuw.com.au](http://www.focusuw.com.au). Do not make any statement on the notification form that could be construed as an admission of fault. Confine **your** notification to statements of fact, and leave expressions of opinion for later discussion with a Claims Manager.

If the matter is urgent, advice can be obtained from one of our legally qualified Claims Managers.

Return the completed notification form with any supporting documents to:

Focus Underwriting  
Level 21, 41 Exhibition Street Melbourne 3000  
Fax: (03) 9500 2274  
Email: [cm@focusuw.com.au](mailto:cm@focusuw.com.au)

Receipt of **your** notification form will be acknowledged in writing. A Claims Manager will then evaluate the matter, and contact **you** if necessary, to obtain further information that may be required, and advise **you** as to the steps to be taken in the management of the matter.

### 1.22 Notification of claims

All **claims** must be promptly notified to the **insurer** in accordance with Clause 3.1 Indemnity Clause regardless of whether or not the **Insured** believes the quantum of any such **claim** is likely to be within or above the amount of the **deductible** specified in the **schedule**.

### 1.23 Senior counsel

Neither the **insurer** nor the **insured** shall require the other to contest or continue to contest any **legal**

**proceedings** in respect of any **claim** unless a **senior counsel** (to be mutually agreed upon by the **insured** and the **insurer**) shall advise that such **claim** should be contested.

In formulating such advice, **senior counsel** shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely **costs and expenses** and the prospects of the **insured** successfully defending the **claim**.

The cost of such **senior counsel's** opinion shall be regarded as part of the **costs and expenses** recoverable under the **policy**.

### 1.24 Severability and non-imputation

The **insurer** agrees that where the **policy** insures more than one party, any conduct on the part of any party or parties whereby such party or parties:

- a. failed to comply with the duty of disclosure in terms of the *Insurance Contracts Act 1984* (Cth); or
- b. made a misrepresentation to the **insurer** before this contract of insurance was entered into; or
- c. failed to comply with any terms or conditions of the **policy**;

shall not prejudice the right of the remaining parties to indemnity as may be provided by the **policy**; provided always that such remaining parties shall be entirely innocent of and have had no prior knowledge of any such conduct.

# General Definitions

## General Definitions

These meanings apply to the following words or terms used in this **policy**.

### 2.1 Adverse publicity event

means an event which, in the reasonable opinion of a **principal** of the **insured**, might cause the reputation of the **insured** to be seriously affected by adverse or negative publicity.

### 2.2 Appropriate professional qualifications

means professional qualifications which equip the person(s) to carry out the work or undertaking required to be carried out in the conduct of the profession stated in the **schedule**.

### 2.3 Business

means the carrying out of those functions normally associated with the conduct of the members of the profession stated in the **schedule**.

### 2.4 Claim

means:

- a. any originating process (in **legal proceedings** or arbitration), cross claim or counterclaim or third party or similar notice issued and served upon an **insured** claiming compensation or alleging any civil liability in connection with the conduct of the **business** of the **insured**; or
- b. any written communication received by the **insured** which alleges any civil liability in connection with the **business** of the **insured**.

All **claims** made against the **insured** arising from the same set of circumstances or the same causal event shall be treated as one **claim** for the purposes of the **policy**.

### 2.5 Continuity date

means the date specified in the **schedule**.

### 2.6 Control

means the meaning given by section 50AA of the Corporations Act 2001.

### 2.7 Costs and expenses

means the expenses incurred by or on behalf of the **insurer**, or by or on behalf of the **insured** with the **insurer's** prior written consent unless costs need to be incurred in order to mitigate against potential further loss, in the investigation, defence or settlement of a **claim** covered by the **policy** and shall include legal costs and disbursements.

### 2.8 Deed of Novation

means a deed or agreement which provides that the professional services contract between the **insured** and the **insured's** original client will be novated so that the rights and obligations of the **insured's** original client under the professional services contract are assumed by a new client.

### 2.9 Deductible

means the amount borne by the **insured** for each and every **claim** and not otherwise insured. Such amount shall be net of any input tax credit the **insured** may be entitled to claim for the GST.

### 2.10 Documents

means deeds, wills, agreements, maps, plans, books, letters, certificates, forms and documents of any nature whether written, printed or reproduced by any method and includes computer records and electronically stored data. Documents does not mean or extend to bearer bonds, coupons, stamps, bank notes, currency notes or any other negotiable instruments.

### 2.11 Employee

means a natural person who is not a **principal**, who:

- a. is engaged by the **insured** to provide professional services in the course of the conduct of the profession stated in **schedule**, directly for the **insured**; and
- b. is throughout the engagement directly controlled and supervised by the **insured** in the course of the conduct of the profession stated in the **schedule** at the time of the relevant act, error or omission giving rise to a **claim** under the **policy**.

### 2.12 Inception date of the policy

means the date on which the **period of insurance** as specified in the **schedule** commences.

### 2.13 Inquiry

means any investigation, examination, inquiry or other proceedings ordered or commissioned by any official body or institution empowered by law to investigate the conduct of the **business** of the **insured**.

## General Definitions

### 2.14 Insured, you, your, yours

means:

- a. the person, persons, partnership, company, or other entity specified under the heading “Insured” in the **schedule** including their predecessors in business; and
- b. any person who is or may become, during the **period of insurance**, a **principal**, partner, director or **employee** of anyone or any entity referred to in sub-clause a); and
- c. any former **principals**, partners, directors or **employees** of any person or entity referred to in sub-clause a), and only in respect of work undertaken for and on behalf of any entity referred to in sub-clause a); and
- d. the estate, heirs, legal representatives or legal assigns of any natural person insured under the **policy** in the event of the death or legal incapacity of such person.

### 2.15 Insurer, us, we our

means certain underwriters at Lloyd’s via Focus Underwriting.

### 2.16 Joint Venture

means an enterprise for the conduct of the **business** carried out in common by the **insured** with a third party or parties.

### 2.17 Known circumstances

means any circumstance(s) of which the **insured** was aware at the inception **date of the policy** and which the **insured** knew or ought reasonably to have known might give rise to a **claim** under the **policy**.

### 2.18 Legal proceedings

means any proceeding commenced whether by Writ, Summons, Complaint or the like in any court of law, other than in the United States of America or Canada or their territories or protectorates.

### 2.19 Limit of Indemnity

means the limit of the **insurers(s)** liability under the **policy** as specified in the **schedule**.

### 2.20 Merger or Acquisition

means

- a. the **insured** consolidating with, merging into or selling all or substantially all of its assets such that the **insured** is not the surviving entity; or
- b. any entity obtaining **control** of the **insured**.

### 2.21 Outgoing Principals

means any person who was a qualified **principal** of the **insured** at any time but who is no longer, or who during the currency of the **policy** ceases to be, a **principal** of the **insured**.

### 2.22 Period of Insurance

means the period shown in the **schedule**.

### 2.23 Policy

means:

- a. the Insuring Clauses, Additional Benefits, Exclusions, Conditions, Definitions and **schedule** herein;
- b. the Endorsement(s) attaching to and forming part hereof either at the commencement of or during the **period of insurance**;
- c. the proposal completed by the **insured**; and
- d. the fee declaration completed by the **insured**.

### 2.24 Premium

means the premium specified in the **schedule** or the premium relating to any Endorsement to the **policy**.

### 2.25 Principal

means a person being a partner, director or sole practitioner of the **insured** (deemed to be “qualified” only if, at the time the work giving rise to a **claim** hereunder was undertaken, he or she held the **appropriate professional qualifications**) but does not mean an **employee** of the **insured**.

## Definitions

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| 2.26<br>Public relations expenses | means the reasonable costs, charges, fees and expenses of a public relations firm or consultant engaged to prevent or limit the adverse effects of or negative publicity from an <b>adverse publicity event</b> , which the <b>insured</b> may engage with the prior written consent of the <b>insurer</b> , but only during the first thirty days immediately following the <b>adverse publicity event</b> . |
| 2.27<br>Schedule                  | means the <b>schedule</b> to the <b>policy</b> .  |
| 2.28<br>Senior counsel            | means a barrister in active practice who is entitled to use the post-nominals Q.C. or S.C. in any one or more superior court in Australia or New Zealand.   |
| 2.29<br>Spouse                    | means a lawful <b>spouse</b> , domestic partner (including without limitation same sex partner) or any person deriving similar status by reason of the common law or statute.   |
| 2.30<br>Subsidiary                | means a <b>subsidiary</b> of the <b>insured</b> as defined in the Corporations Act 2001.  |

# Policy Coverage

## Your insurance under this policy

### 3.1 Indemnity clause

The **insurer** will indemnify the **insured** up to the **limit of indemnity** specified in the **schedule** for any amount which the **insured** may become legally liable to pay for any **claim(s)** caused by or arising out of any civil liability.

Provided that the **claim(s)** is:

- a. first made against the **insured** and notified in writing to the **insurer** during the **period of insurance**;
- b. arising from the conduct of the profession specified in the **schedule**;
- c. in connection with the **business** of the **insured**;
- d. committed or alleged to have been committed subsequent to the retroactive date specified in the **schedule**;

For the avoidance of doubt civil liability includes any breach of the provisions of the Competition and Consumer Act 2010(Cth), the Fair Trading Act 1987(NSW), the Fair Trading Act 1985 (Vic) or similar legislation enacted by the other states or territories of the Commonwealth of Australia or the Dominion of New Zealand, which does not constitute a breach of the penal or criminal provisions of those statutes.

#### 3.1.1 Breach of contract

The **insurer** will indemnify the **insured** for breach or alleged breach of contract for the provision of professional services in the conduct of the **business** of the **insured**.

#### 3.1.2 Costs and expenses

Subject to Clause 1.1 (Average Provision) and in addition to the **limit of indemnity**, the **insurer** will pay the **costs and expenses** incurred with the **insurer's** prior written consent, in the investigation, defence or settlement of any such **claim(s)** up to an amount equal to, but not exceeding in the aggregate, the **limit of indemnity** in respect of any one **claim** or series of **claims** arising out of one causal event.

## Additional benefits

For the avoidance of doubt, the following coverage is provided in accordance with, and subject to, the terms, conditions, exclusions and limitations of the **policy**. Unless otherwise specified the following additional benefits do not increase the **limit of indemnity**.

### 3.2 Breach of privacy: Costs and expenses, fines and penalties

The **insurer** will pay reasonable **costs and expenses** incurred by the **insured**, with the prior written consent of the insurer unless costs need to be incurred in order to mitigate against potential further loss, for notifying any client, third party or regulator in accordance with the **insured's** legal or regulatory duties as a result of any actual, alleged or suspected breach of privacy. Such breach shall be first discovered by the **insured** and notified to the **insurer** during the **period of insurance** in relation to personal data collected in connection with the **business** of the **insured**, regardless of whether a **claim** has been made against the **insured**.

Notwithstanding Exclusion 4.20 (Taxes and Punitive Damages) the **insurer** will indemnify the **insured** for any fines and penalties incurred in relation to such actual, alleged or suspected breach of privacy under the Privacy Act 1988 (Cth), and any subsequent amendments or similar legislation.

The indemnity provided by this Additional Benefit shall not include:

- a. **public relations expenses**, (as these are the subject of separate coverage under the **policy**);
- b. wages, overtime, salaries or fees paid to officers or **employees**; or
- c. the cost to comply with any injunctive relief.

The sub-limit for this Additional Benefit will not exceed the amount specified in the **schedule**.

The **deductible** as specified in the **schedule** does not apply to this Additional Benefit.

### 3.3 Claims preparation costs

The **insurer** will pay reasonable professional fees and such other expenses payable by the **insured** to third parties with the **insurer's** prior written consent, which consent will not be unreasonably withheld, for the preparation of any **claim** that is covered by this **policy**.

Provided that such claims preparation costs shall not include any **costs and expenses**.

The sub-limit for this Additional Benefit will not exceed the amount specified in the **schedule**.

## Policy Coverage

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The **deductible** as specified in the **schedule** does not apply to this Additional Benefit.

This Additional Benefit is payable in addition to the **limit of indemnity**.

### 3.4 Consultants, sub-contractors and agents

The **insurer** will indemnify the **insured** in respect of any **claim** made against the **insured** arising from any conduct giving rise to civil liability committed or alleged to have been committed on the part of any consultant, subcontractor or agent for whose conduct the **insured** is legally liable.

Provided that such coverage shall not extend to any such consultant, subcontractor or agent.

For the purposes of this Clause a **consultant, sub-contractor and agent** shall mean a person or persons that have entered into a contract for services with the **Insured** and is not an **employee** or a **Principal** of the **Insured**.

### 3.5 Continuity of cover

Notwithstanding the provisions of Clause 3.1 (Indemnity Clause), the exclusions of the **policy** and only in the absence of fraudulent non disclosure, the **insurer** will accept a **claim** notification under the **policy** where:

- a. a **claim** is made during the currency of the **policy** against the **insured** by reason of a fact or circumstance which occurred prior to the **period of insurance** shown in the **schedule**; and
- b. the **insurer** was the **insured's** professional indemnity **insurer** at the time when the **insured** first became aware of the circumstance(s) which subsequently gave rise to the **claim**; and
- c. but for the failure of the **insured** to have notified the **insurer** of the **known circumstance(s)** when the **insured** first had knowledge of such circumstance(s), the **insured** would otherwise have been entitled to indemnity in accordance with the terms and conditions of the **policy** in force at the time the circumstance(s) ought to have been notified; and
- d. the **insurer** has continuously been the **insured's** professional indemnity **insurer** from the date when the **insured** first became aware of the **claim** circumstance(s) in respect of which notification should have been given

and the date when such notification was given.

Notwithstanding the above, the indemnity provided by this Additional Benefit will be the lesser of the available **limit of indemnity** under the **policy** or the earlier policy and otherwise subject to the terms and conditions provided under the **policy**. For the purposes of this Additional Benefit, insofar as the **insured** was insured through Focus Underwriting at the time when the **insured** first became aware of the circumstance(s) which subsequently gave rise to the **claim** after the **continuity date** and remained continuously insured through Focus Underwriting up to the date of commencement of this **policy**, the provisions of this clause apply as though the previous insurer(s) was the **insurer**.

### 3.6 Court attendance

The **insurer** will pay the court attendance costs of any **principal** or **employee** of the **insured** who is legally required to attend court as a witness in respect of any **claim** covered by the **policy**.

The sub-limit for this Additional Benefit will not exceed the amount specified in the **schedule**.

The **deductible** as specified in the **schedule** does not apply to this Additional Benefit.

### 3.7 Employee dishonesty

For the purposes of this Clause an **employee** shall mean a person or persons in the direct service of the **insured** but in the case of an incorporated body shall exclude any director.

Provided a dishonest fraudulent criminal or malicious act or omission is not committed by the **insured**, the **insurer** shall indemnify the **insured**, in accordance with Clause 3.1 (Indemnity Clause) hereof for any **claim(s)** arising from the conduct of its professional **business**, for legal liability to third parties by reason of:

- a. dishonest, criminal, fraudulent or malicious acts or omissions of an **employee** of the **insured**; or
- b. misappropriation or theft of funds by an **employee**

## Policy Coverage

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Indemnity under this Additional Benefit shall be limited to the **limit of indemnity** specified in the **schedule** and that no indemnity shall be given for civil liability involving the same **employee(s)** where there have been previous notifications under this benefit.

### 3.8 Fidelity

The **insurer** will indemnify the **insured** against loss of money belonging to or held in trust by the **insured** caused directly by any act of fraud or dishonesty committed by any **employee** or **principal** of the **insured** in the conduct of the **business** and discovered and notified to the **insurer** during the **period of insurance**.

Provided that:

- a. no person committing or condoning such fraud or dishonesty shall be entitled to indemnity;
- b. the **insured** must immediately take all reasonable steps to prevent further loss;
- c. if the **insurer** so requests the **insured** shall take all reasonable steps to effect recovery from the person committing or condoning such fraud or dishonesty;
- d. the following will be deducted from any amount payable under this **policy**;
  - i. any monies which but for such fraud or dishonesty would be due from the **insured** to the person committing or condoning such act;
  - ii. any monies held by the **insured** and belonging to such person; and
  - iii. any monies recovered following action as described in 3.8 c) above;
- e. the **insurer** shall not be liable in respect of any **claim** arising from any fraud or dishonesty committed by any person after the discovery in relation to that person of reasonable cause for suspicion of fraud or dishonesty.

The sub-limit for this Additional Benefit will not exceed the amount specified in the **schedule**.

The **deductible** as specified in the **schedule** does not apply to this Additional Benefit.

## 3.9 Inquiry and Hearings Representation Costs

### 3.9.1 Coronial Inquests

Where the **insured** is required by law to attend any Coronial Inquest arising directly from or out of an occurrence in connection with the conduct by the **insured** of the profession stated in the **schedule**, the **insurer** will pay all reasonable legal costs, charges and

expenses arising out of the legal representation incurred by the **insured** with the prior written consent of the **insurer** unless costs need to be incurred in order to mitigate against potential further loss

### 3.9.2 Registration Board Proceedings

In so far as any complaint (which may form the basis of a **claim** against the **insured** as covered by the **policy**) lodged during the **period of insurance** against the **insured** with any professional regulatory authority, or in so far as any statutory or professional body claims jurisdiction to enquire into or adjudicate in any such matter, relates to a **claim**, or circumstances which may give rise to a **claim**, under the **policy** then the **policy** shall pay, within the terms, including limits, of Clause 3.1 (Indemnity Clause) of the **policy**, all reasonable costs, charges and expenses incurred by or on behalf of the **insurer** or by or on behalf of the **insured** with the **insurer's** prior written consent unless costs need to be incurred in order to mitigate against further loss, in respect of the investigation and defence of the **insured** at such proceedings.

### 3.9.3 Safe Design Investigations, Examinations and Prosecutions

Notwithstanding Exclusion 4.20 (Taxes and Punitive Damages) the **insurer** will:

- a. indemnify the **insured** for any fine or pecuniary penalty in respect of a proceeding, official investigation or notice issued against, commenced or served upon the **insured** during the **period of insurance** pursuant to legislation in Australia alleging (or which might result in an allegation) that the **insured** has breached occupational workplace health and safety laws;
- b. indemnify the **insured** for any compensatory civil penalty awarded in the jurisdiction of Australia during the **period of insurance**; and
- c. pay all reasonable costs, charges and expenses incurred by the **insured** with the prior written consent of the **insurer** in the defence of any fine or penalty which, if imposed, would be indemnified by a or b above.

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### 3.9.4 Limit of Cover

The sub-limit for this Additional Benefit will not exceed the amount specified in the **schedule**.

The **deductible** as specified in the **schedule** does not apply to clauses 3.9.1.1, 3.9.2 or 3.9.3 c of this Additional Benefit.

### 3.10 Intellectual property

The **insurer** will indemnify the **insured** in respect of any inadvertent infringement in the conduct of the **business** of the **insured** of copyright, moral rights, trademarks, registered designs or patents, or any breach of confidentiality.

### 3.11 Joint ventures

In relation to **claims** against the **insured** in its professional capacity as a **joint venture** partner:

- a. The **insurer** will indemnify the **insured** for the **insured's** civil liability for **claims** first made against the **insured** within the **period of insurance** in its professional capacity as a **joint venture** partner providing the person(s) allegedly responsible for the civil liability hold **appropriate professional qualifications** and:
  - i. the **insured** had disclosed the nature of the **joint venture** to the **insurer** before the **insured** knew or ought reasonably to have known of circumstances which might give rise to the **claim**; and
  - ii. the **insured** has declared fees derived from the **joint venture** where required to do so by the **insurer**.
- b. If subclause (a) applies and the **insured** and the other **joint venture** partner(s) have agreed in their Joint Venture Agreement that all **claims** against the **joint venture** will be apportioned between them on a fixed percentage basis without regard to fault, then provided that the agreed apportionment is proportionate to the extent of the **insured's** obligations under the agreement and is fair and reasonable taking account of the total fees the **insured** is to derive from the **joint venture**, exclusion clauses 4.3 (Assumed Liability) and 4.23 (Waiver of Rights) shall not apply to that apportionment;
- c. Without affecting subclause (b), the **insurer** is entitled to exercise subrogation rights contained in clause 1.17 (Subrogation) of this **policy**;
- d. Where the **insured** has not disclosed the Joint Venture to the **insurer** in accordance with subclause (a), and/or where required by the

- e. **insurer**, the **insured** has not declared the fees from the Joint Venture:
  - i. the **insurer** will only indemnify the **insured** in relation to a **claim** arising out of a **joint venture**, including a Third Party Claim, where the **claim** directly relates to a breach of the **insured's** professional duty, but only on the condition that the **insured** pay the additional premium that would have been applied if the **insured** had made the disclosures to the **insurer** as required;
  - ii. where indemnity is extended to the **insured** under subclause (d) (i) the **insurer's** liability is limited to the extent of the **insured's** civil liability arising from the **claim** and the **insurer** will not indemnify the **insured** for any legal or contractual liability or other legal obligations assumed under the **joint venture** or otherwise by agreement unless such liability would have attached to the **insured** in the absence of such agreements.

### 3.12 Libel and slander

The **insurer** will indemnify the **insured** in respect of any **claim** made against the **insured**, by any person, for libel or slander by reason of words written or spoken provided that such **claim** arises out of or in the course of the conduct of the **business** of the **insured**.

### 3.13 Loss of documents

If during the **period of insurance** the **insured** first discovers that any **documents** which are, the property of or entrusted to the **insured**, which may be now or hereafter be, or be supposed or believed to be, in the custody of the **insured**, or in the custody of any person to or with whom such **documents** have been entrusted, lodged or deposited by the **insured** in the ordinary course of the **business** have while within Australia or New Zealand (or while in transit in and between Australia and New Zealand or by land, sea or air anywhere in the world until delivery to the addressee or their representatives) been destroyed, damaged, lost or Policy Coverage

## Policy Coverage

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mislaid and after diligent search cannot be found, the **insurer** shall indemnify the **insured** against:

- a. legal liability which may attach to the **insured** in consequence of such **documents** having been so destroyed, damaged, lost or mislaid, and

Provided that:

- a. the **insurer** is notified within 28 days of the **Insured** having received notice of discovering the destruction, damage, loss or mislaying of the **documents**.

### 3.14 Mitigation costs

The **insurer** will indemnify the **insured** for the direct costs and expenses necessarily and reasonably incurred in respect of any action taken to mitigate a loss or potential loss that otherwise would be the subject of a **claim** under the **policy** provided that:

- a. the **insured** first discovers the relevant act, error or omission which would give rise to the loss during the **period of insurance** and notifies the **insurer** during the **period of insurance**;
- b. the **insured** provides written notice to the **insurer** during the **period of insurance** of their intention to take such action prior to incurring any costs and expenses, unless costs need to be incurred in order to mitigate against further loss;
- c. the **insured** obtains from the **insurer** a written consent prior to incurring such costs and expenses, unless costs need to be incurred in order to mitigate against further loss;
- d. the onus of proving entitlement to indemnity pursuant to this Additional Benefit shall be upon the **insured**;
- e. the costs and expenses incurred by the **insured** in proving entitlement to indemnity pursuant to this Additional Benefit shall be met by the **insured**.

The sub-limit for this Additional Benefit will not exceed the amount specified in the **schedule**.

The **deductible** as specified in the **schedule** does not apply to this Additional Benefit.

### 3.15 Newly created or acquired subsidiary

If during the **period of insurance** the **insured** acquires or creates a new **subsidiary**, the **insurer** will indemnify such new **subsidiary** in respect of any **claim** first made against the **subsidiary** and notified to the **insurer**

- b. **costs and expenses** of whatsoever nature incurred by the **insured** with the prior written consent of the **insurer** in replacing or restoring such **documents** provided that such **costs and expenses** shall be supported by accounts approved by a competent person nominated by the **insurer**.

during the period beginning on the date of acquisition or creation and ending thirty days thereafter or at expiry of the **period of insurance**, whichever is the lesser period, resulting from the conduct of the **business** by such new **subsidiary**, but not in respect of any such **claim** resulting from any act, error or omission occurring or committed prior to the date the **subsidiary** was created or acquired.

The **insurer** may, at its discretion, offer to extend cover for such new **subsidiary** beyond that period. In order for cover for such new **subsidiary** to be extended beyond that period, the **insured** must, prior to the end of that period:

- a. give the **insurer** written notice of any such acquisition or creation together with such additional information as reasonably required so that the **insurer** can exercise its discretion whether or not to extend the cover;
- b. accept any notified alteration in the terms of the **policy**; and
- c. pay any additional **premium** required by the **insurer**.

Provided that this Additional Benefit does not apply to:

- a. any new **subsidiary** acquired or created by the **insured** that is domiciled or incorporated in the United States of America or its territories or protectorates; and
- b. the conduct of **business** that is not the same as that conducted by the **insured** and covered under the **policy** prior to the acquisition or creation of such **subsidiary**.

## Policy Coverage

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### 3.16 Novation

The **insurer** will indemnify the **insured** in respect of any **claim** made against the **insured** arising out of the **insured** having entered into a **deed of novation** provided that this clause does not extend the **policy** to cover:

- a. liabilities that were not otherwise covered by the **policy** prior to novation; or
- b. any additional or duplicated liability where the **deed of novation** imposes upon the **insured** liability to both the original client and the new client in respect of the same professional services.

### 3.17 Outgoing principals

The **insurer** will provide indemnity in respect of any **claim** made against any former partner, director, **principal** or **employee** of the **insured** or any entity that previously directed the business now being conducted by the **insured** for any civil liability incurred on the part of such person in the conduct of the **business** of the **insured**.

### 3.18 Principal's previous business

Provided that the **principal(s)** was a qualified **principal** of a prior **business** then, notwithstanding Exclusion 4.14 (Other Business) the **policy** will indemnify such **principal(s)** in respect of **claims** otherwise within the scope of the **policy** arising from that prior **business**.

For the purposes of this Additional Benefit the retroactive date shown in the **schedule** shall read without limitation of date but **claims** arising from **known circumstances** are excluded from cover.

### 3.19 Prior corporate entity

In the event of a **claim** against the incorporated body(ies) who have previously directed the business now being conducted by the **insured** firm or incorporated body, the **policy** will extend, at the express written request of the **insured**, and on the agreement of the **insurer**, made subsequent to the notification to the **insurer**, and upon the written agreement of the **insured** incorporated body(ies) to be bound by all the terms, exclusions and conditions of the **policy**, to indemnify such incorporated body(ies) as if they were named **insured**.

Provided that the **policy** shall not respond to any **claim** made against the said incorporated body(ies) named in the said proposal arising from work undertaken after the conduct of such business has passed to the **insured** firm or incorporated body, unless such work

was undertaken in the conduct by the **insured** of the profession stated in the **schedule**.

The **insured** identified in the **schedule** shall be jointly and severally liable for the payment of the **deductible** on behalf of the named incorporated body(ies).

### 3.20 Project/Construction Managers

Where the **insured** is retained for a fee or other benefit as Project or Construction Manager then the **policy** shall provide coverage to the **insured** in accordance with clause 3.1 (Indemnity Clause) but only in respect of design consultancy, project construction co-ordination or advice where such activities are carried out by persons holding **appropriate professional qualifications** to perform the **insured's** professional duty.

However, the **policy** shall not cover **claims** arising from:

- a. failure to procure or maintain any financing for the payment of contract work or services in connection therewith for any cause whatsoever;
- b. the final cost of a project or any part thereof exceeding a pre-set financial limit to which the **insured** agreed to be bound;
- c. any incorrect inadequate or misleading representations or estimates by the **insured** in relation to profit or return on capital;
- d. bankruptcy, liquidation or insolvency of any of the parties involved in the project;
- e. use or repair of any real or personal property or ownership, rental, occupation, deemed occupation, leasing, maintenance or operation of any real or personal property;
- f. bodily injury, sickness, disease or death sustained in the course of their employment to or of any person arising out of their employment by the **insured** under either a contract of service or an apprenticeship with the **insured**.

## Policy Coverage

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### 3.21 Public relations expenses

The **insurer** will indemnify the **insured** for **public relations expenses** incurred by the **insured** in respect of an **adverse publicity event** that first occurs and is notified to the **insurer** during the **period of insurance**.

The sub-limit for this Additional Benefit will not exceed the amount specified in the **schedule**.

The **deductible** as specified in the **schedule** does not apply to this Additional Benefit.

### 3.22 Retroactive cover

Unless a retroactive date is specified in the **schedule**, the **policy** shall provide cover in respect of civil liability or alleged civil liability irrespective of when the **insured's** conduct giving rise to the civil liability or alleged civil liability occurred.

Where a retroactive date is specified in the **schedule**, the **policy** shall only provide cover in respect of civil liability or alleged civil liability where the **insured's** conduct giving rise to the civil liability or alleged civil liability occurred after the retroactive date.

### 3.23 Run off cover

If, during the **period of insurance**, any of the following events occur:

- a. **merger or acquisition** of the **insured**; or
- b. the appointment of a receiver, controller, administrator or liquidator to the insured or the commencement of a scheme of arrangement or compromise or a winding up process in respect of the insured;

then the **policy** will remain in force until the expiry of the **period of insurance**, but only in respect of a **claim** resulting from any act, error or omission occurring or committed prior to the event described in parts a) or b) of this Additional Benefit.

### 3.24 Spousal liability

If a **claim** against an **insured** includes a **claim** against an **insured's spouse** solely by reason of:

- a. such **spouse's** legal status as a **spouse** of such **insured**; or
- b. such **spouse's** ownership interest in property which the claimant seeks as recovery for **claims** made against such **insured**, then the **spouse's** legal liability for compensation resulting from such **claim** will be treated for the purposes of the **policy** as the liability of the **insured**.

This Additional Benefit does not apply to the extent the **claim** alleges any act, error or omission by such **insured's spouse**.

# General Exclusions

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The **insurer** shall not be liable for any **claim(s)** or loss including **costs and expenses**, claims preparation costs, inquiry and hearings representations costs, court attendance costs or direct costs and expenses incurred in respect of any action taken to mitigate any amount which the **insured** would be legally liable to pay, arising from or in respect of or as a result of:

## 4.1 Aircraft

the ownership, use, maintenance or operation of any aircraft, boats, automobiles or vehicles of any kind by or on behalf of the **insured**.

## 4.2 Asbestos

arising directly or indirectly out of or resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity.

## 4.3 Assumed liability

any liability assumed by the **insured** under any express warranty, guarantee or agreement unless such liability would have attached to the **insured** notwithstanding such express warranty, guarantee or agreement.

## 4.4 Claims and circumstances known at inception

any **claim** made against the **insured** prior to the commencement of the **period of insurance**; nor in respect of any **claim(s)** or circumstance(s) notified under any previous policy; nor in respect of any known **claim(s)** or **known circumstances**; nor in respect of any **claim(s)** or circumstance(s) noted on the proposal form, declaration or underwriting information being the basis of the **policy**.

## 4.5 Director's liability

liability or alleged liability of the **insured** or any **principal** of the **insured** arising solely from the duties of the **insured** or such **principal** as a director or officer of any company.

## 4.6 Dishonesty

any actual or alleged dishonest, fraudulent, malicious, criminal or deliberate conduct of or on behalf of the **insured**, or any **employee(s)** of the **insured** or agent(s) of the **insured** other than as provided for under Additional Benefit 3.7 (Employee Dishonesty).

## 4.7 Employer's liability

bodily injury, mental injury, sickness, disease or death of any **employee** of the **insured** or damage to or destruction of any property of any **employee**, including loss of use, arising out of, or in the course of, their employment.

## 4.8 Goods Sold

the sale or supply of goods by or on behalf of the **insured**.

## 4.9 Insolvency

the insolvency or bankruptcy or liquidation of the **insured**.

## 4.10 Joint Venture, Project or Construction Business

any activities or the performance of or by the **insured** of services, where the **insured**:

- a. was involved as a joint venturer or partner, or
- b. acted as a Project or Construction Manager

except where otherwise expressly covered elsewhere in the **policy**.

## 4.11 Jurisdiction and territory

- a. any **claim** or action brought in a Court of law or pursuant to an arbitral process within the territorial limits of, or governed by the laws of, the United States of America or Canada or their territories or protectorates; or
- b. the enforcement of any judgment, order or award obtained within, or determined pursuant to, the laws of the United States of America or Canada or their territories or protectorates; or
- c. any act, error or omission committed or alleged to have been committed within the territorial limits of the United States of America or Canada or their territories or protectorates.

## 4.12 Nuclear risks

- a. ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise; or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or  
the storage, transport, assembly, disassembly, maintenance or operation of any nuclear weapon or nuclear component thereof.

## General Exclusions

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### 4.13 Occupier's liability

liability incurred or alleged to have been incurred as a result of any occupation or ownership of any real property by the **insured**.

### 4.14 Other business

the conduct of any business not conducted by or on behalf of the **insured** or for the benefit of the **insured**.

### 4.15 Pre-purchase Building Inspections

any pre-purchase building inspection activities undertaken or allegedly undertaken by or on behalf of the **insured**.

### 4.16 Professional Fees

any action for a refund of professional fees whether by way of damages or otherwise.

### 4.17 Real Estate Developer, Builder, Manufacturer

arising directly or indirectly from the **insured** undertaking or allegedly undertaking:

- a. the manufacture, sale or distribution of any product or process or patented production process (including any breach of any express or implied warranty);
- b. construction, fabrication, erection, installation, assembly, alteration, repair or servicing activities or any form of building contracting;
- c. faulty or inadequate workmanship;
- d. real estate or property development by or on behalf of the **insured**. However, this Exclusion shall not apply to **claim(s)** by independent third parties arising out of the actual or alleged negligence of the **insured** in the conduct of the **business** of the **insured**.

### 4.18 Related parties

any matter(s) in respect of which a **claim** is made against the **insured**:

- a. by any person or entity named as an **insured** in the **policy**; or
- b. by any company or trust operated or controlled by an **insured** and/or by **employees**, nominees or trustees of an **insured** or in which that **insured** or that **insured's spouse** or child has a direct or indirect financial interest; or
- c. by any person or entity advised or induced by the **insured** or by anyone acting on the **insured's** behalf to invest in or lend money to any company being a company or trust referred to in the preceding subclause, or to

any person or entity named as an **insured** under the **policy**; or

- d. by the **insured's spouse**, de facto partner or child;

except where a **claim** by a party referred to in subclause a), b) or d) above seeks contribution from an **insured** to a claim made by a third party (not being a party referred to in subclauses a-d above) and that claim, if made directly against the **insured**, would have been covered by the **policy**.

### 4.19 Sanction Limitations

any **claim** payment or benefit that would expose the **insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America

### 4.20 Taxes and punitive damages

punitive and/or exemplary and/or aggravated damages, fines and/or penalties imposed by law and/or taxes (other than GST) is excluded to the extent that providing cover would breach an Australian law.

### 4.21 Toxic Mould

arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:

- a. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins;
- b. any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins

## General Exclusion

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### 4.22 Trading debts

any trading debt incurred or alleged to have been incurred by the **insured** or any guarantee given by the **insured** or alleged to have been given for any debt.

### 4.23 Waiver of rights

the **insured** having at any time forgone, excluded or limited a right of recovery.

### 4.24 War/terrorism

- a. war, invasion, acts of foreign enemies, or hostilities (whether war is declared or otherwise); or
- b. insurrection, civil or military uprising, rebellion, civil war or usurped power; or
- c. terrorism; being any act of any person or group of people, involving the use of or threat of force or violence, where the purpose of the act by its nature or context is to further a political, religious or ideological aim and/or to intimidate or influence a government (whether lawfully constituted or otherwise), the public or any section of the public; or
- d. the confiscation, nationalisation, requisition or destruction of, or damage to, any property by or under order (whether lawful or otherwise) of any government, public or local authority; or
- e. the imposition of any economic, trade or political sanctions (whether lawful or otherwise) by any sovereign power.

### 4.25 Cyber & Data Protection Law

- 1) the use of, or inability to use, a **Computer System**, no cover otherwise provided under this contract shall be restricted solely due to the use of, or inability to use, a **Computer System**.
- 2) any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly caused by, directly resulting from or directly arising out of:
  - a) a **Cyber Act**; or
  - b) any partial or total unavailability or failure of any **Computer System**;  
provided the **Computer System** is owned or controlled by the insured or any other party acting on behalf of the insured in either case; or  
the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the insured.
- 3) any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:

- a) to the insured or any other party acting on behalf of the insured by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the insured;
- b) by any utility provider, but only where such failure or interruption of service impacts a **Computer System** owned or controlled by the insured or any other party acting on behalf of the insured.
- 4) This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount for actual or alleged breach of **Data Protection Law** by the insured or any other party acting on behalf of the insured.
- 5) any cover for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the insured or any other party acting on behalf of the insured in this contract shall not apply to **Data**.

For the purposes of this endorsement the following definitions apply:

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

**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**.

**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**.

**Data Protection Law** means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).