

# S U R A LABOUR HIRE

---



# CONTENTS

---

<b>IMPORTANT INFORMATION</b>	<b>3</b>
<b>GENERAL DEFINITIONS</b>	<b>7</b>
<b>GENERAL CONDITIONS</b>	<b>8</b>
<b>GENERAL EXCLUSIONS</b>	<b>11</b>
<b>SECTION ONE BROADFORM LIABILITY</b>	<b>12</b>
<b>SECTION TWO MANAGEMENT LIABILITY AND PROFESSIONAL INDEMNITY</b>	<b>21</b>
<b>SECTION THREE HOST EMPLOYER LIABILITY</b>	<b>44</b>

## IMPORTANT INFORMATION

---

### ABOUT SURA LABOUR HIRE

SURA Labour Hire Pty Ltd ABN 67 604 373 088 (SURA Labour Hire) is an authorised representative of SURA Pty Ltd ABN 36 115 672 350 AFSL 294 313 and has developed this Labour Force Liability Insurance Policy which is underwritten by the Insurer(s) referred to below.

SURA Labour Hire Pty Ltd will be acting as the agent of the insurers and not as Your agent when issuing policies or dealing with or settling any claims.

#### Our contact details are:

Level 14, 141 Walker Street  
North Sydney NSW 2060  
PO Box 1813  
North Sydney NSW 2059  
Telephone: 02 9930 9500

### ABOUT THE INSURERS

This insurance is underwritten by certain Underwriters at Lloyd's.

Lloyd's has been insuring Australian risks for over 150 years and is licensed to write non-life insurance and reinsurance business under the Australian Insurance Act 1973.

Lloyd's Underwriters have strong financial security characteristics. However, please note that ratings can vary from time to time. You can check the Insurer's current ratings at the following website Standard & Poors: [www.standardandpoors.com](http://www.standardandpoors.com)

You or Your representatives can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Underwriters at Lloyd's is liable by requesting them from Us. In the event of loss, each Underwriter (and their Executors and Administrators) is only liable for their own share of the loss.

You should contact SURA Labour Hire Pty Ltd in the first instance in relation to this insurance.

#### Lloyd's contact details are:

Lloyd's Australia Limited  
Level 9, 1 O'Connell Street,  
Sydney, NSW 2000  
T: 02 8298 0700

### ASSUMED LIABILITY AND WAIVED RIGHTS

If You have entered into an agreement with another party:

- where You are assuming a greater liability than would apply had You not entered into that agreement; or
- which prevents You from taking a recovery action for indemnity or contribution from that party it may adversely affect Your rights to cover under this Policy.

### CLAIMS MADE INSURANCE

Some sections of the Management Liability and Professional Indemnity Cover in section 2 of this Labour Force Liability Insurance Policy are issued on a claims made basis. This means that these sections of the Policy respond:

- a) To claims first made against You during the Period of Insurance and notified to Us 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 might be made against You; and
- b) Pursuant to section 40 sub-section 3 of the Insurance Contracts Act, 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. You will not be entitled to indemnity under Your new Policy in respect of any claim arising out of circumstances of which You were aware at any time prior to Policy inception that would have put a reasonable person in Your position on notice that a claim might be made against You.

## COMPLAINTS AND DISPUTE RESOLUTION PROCESS

We view seriously any complaint made about Our products or services and will deal with it promptly and fairly.

If You have a complaint please first try to resolve it by contacting the relevant member of Our staff. We will seek to resolve the matter in accordance with the General Insurance Code of Practice and Our Dispute Resolution procedures. You can contact Us if You want more information on Our Dispute Resolution procedures.

If the matter is still not resolved, or You are not satisfied with the way a complaint has been dealt with, You should write to:

**Lloyd's Australia Limited**  
Level 9, 1 O'Connell Street,  
Sydney, NSW 2000  
T: 02 8298 0700

If You are a natural person or a small business, and You are not satisfied with the final decision, You may wish to contact the Financial Ombudsman Service Australia ("FOS"). The FOS is a free independent external disputes resolution service provided to customers to review and resolve complaints where We have been unable to satisfy Your concerns.

For further details You can visit their website at [www.fos.org.au](http://www.fos.org.au) or contact them:

**The Financial Ombudsman Service Australia**  
PO Box 3,  
Melbourne, VIC, 3001  
T: 1800 367 287  
E: [info@fos.org.au](mailto:info@fos.org.au)

## DISCLAIMER

When You enter into this Policy You confirm and warrant that You have read the Policy documents provided to You.

## YOUR DUTY OF DISCLOSURE

This Policy is subject to the Insurance Contracts Act 1984 (Act). Under that Act You have a Duty of Disclosure.

Before You take out insurance with Us, You have a duty to tell Us of everything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. If You are not sure whether something is relevant You should inform Us anyway.

You have the same duty to inform Us of those matters before You renew, extend, vary, or reinstate Your contract of insurance. The duty applies until the Policy is entered into, or where relevant, renewed, extended, varied or reinstated (Relevant Time). If anything changes between when the answers are provided to Us or disclosures are made and the Relevant Time, You need to tell Us.

Your duty however does not require disclosure of matters that:

- reduce the risk;
- are common knowledge;
- We know or, in the ordinary course of Our business, ought to know; or
- We have indicated We do not want to know.

If You do not comply with Your duty of disclosure, We may be entitled to:

- reduce Our liability for any claim;
- cancel the contract;
- refuse to pay the claim; or
- avoid the contract from its beginning, if Your non-disclosure was fraudulent.

## GENERAL INSURANCE CODE OF PRACTICE

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

The Code aims to improve:

- the quality, comprehension and accuracy of Policy documents and other information provided to consumers;
- employee and agent training and supervision;
- claims handling and dispute resolution.

For further information on the Code, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au) or alternatively you can request a brochure on the Code from Us.

## GOODS AND SERVICES TAX (GST)

The amount payable by You for this Policy includes an amount for GST.

When We pay a claim, Your GST status will determine the amount We pay. The amount that We are liable to pay under this Policy will be reduced by the amount of any Input Tax Credit (ITC) that You are or may be entitled to claim for the supply of goods or services covered by that payment.

You must advise Us of Your correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is Your entitlement to an ITC on Your premium as a percentage of the total GST on that premium. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a claim is less than the applicable Limit of Liability or the other limits applicable to this Policy, We will only pay the GST (less Your ITC) applicable to the settlement. This means that if these amounts are not sufficient to cover the whole claim, We will only pay the GST relating to Our share of the settlement for the whole claim. We will pay the claim by reference to the GST exclusive amount of any supply made by any Business of Yours which is relevant to the claim.

GST, ITC, BAS and Acquisition have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

## OUR AGREEMENT

This Labour Force Liability Insurance Policy is a legally enforceable contract between You and Us. In exchange for You having paid, or agreeing to pay, to Us the premium shown in the Schedule, We will provide the insurance cover described in the Policy for the Period of Insurance shown in the Schedule, subject to the terms, conditions and exclusions of the Policy, and any endorsements.

The Schedule will show the amount of any Deductible that applies to the Policy. The Deductible will apply to all claims and will be payable by You unless otherwise expressly stated.

## PRIVACY STATEMENT

In this Privacy Statement the use of "We", "Our" or "Us" means SURA Labour Hire and the Insurers unless specified otherwise.

In this Privacy Statement the use of "personal information" includes sensitive information.

We are committed to protecting the privacy of the personal information You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- deciding whether to issue a Policy,
- determining the terms and conditions of Your Policy,
- compiling data to help develop and identify other products and services that may interest clients, and
- handling claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not;
- whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual's racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal and sensitive information in order to provide You with the relevant services and/or products.

When You give Us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant personal information to Us.

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling claims, We may have to disclose Your personal and other information to other parties and service providers such as Our claim management partner, other insurers, reinsurers,

loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas, including but not limited to New Zealand, Singapore, United Kingdom, the Philippines, the European Union and the United States of America.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer Your Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Duty of Disclosure in this document.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Our privacy or You have any query on how Your personal information is collected or used, or any other query relating to Our Privacy Policies, please contact Us.

### RETROACTIVE DATE

If a retroactive date applies to a section of this Policy then it means that cover is excluded for any Wrongful Act occurring or committed prior to the retroactive date.

Our Policy also contains provisions that exclude cover for any Wrongful Act occurring or committed by a subsidiary and its directors, officers or employees prior to its acquisition or creation by You.

### SERVICE OF SUIT

The Insurers accepting this insurance agree that:

- if a dispute arises under this insurance, this insurance will be subject to Australian law and practice and the Insurers will submit to the jurisdiction of any competent court in the Commonwealth of Australia;
- any summons, notice or process to be served upon the Insurers may be served upon;

Lloyd's Australia Limited  
Level 9, 1 O'Connell Street,  
Sydney, NSW 2000

- if a suit is instituted against any of the Insurers, all Insurers participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

### SEVERAL LIABILITY

The Liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in the Schedule.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with any other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various parts in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

The insurers named hereon bind themselves each and for their own part and not one for another. Each insurer's liability under this contract shall not exceed that percentage or amount of the risk shown against that insurer's name.

# GENERAL DEFINITIONS APPLICABLE TO ALL SECTIONS OF THE POLICY

---

Some key words and terms used in this Policy, its Schedules and its endorsements have a special meaning.

If words and terms are only used in one Section of the Policy We will describe their special meaning in that Section. Wherever the following words or terms are used in the Policy, they mean what is set out below.

Unless the context requires another meaning, a reference to the singular includes the plural and vice versa.

**Limit of Liability** means the limit of Our liability under this Policy and as specified in the Schedule.

**Merger or Acquisition** means:

- a) the Insured or the Company consolidating with, merging into or selling all or substantially all of its assets such that the Insured or the Company is not the surviving entity; or
- b) any entity obtaining Control of the Insured or the Company.

**Period of Insurance** means the period shown in the Schedule.

**Policy** means Your contract of insurance with Us, and includes this document, the Schedule and any endorsements.

**Subsidiary** means:

- a) a subsidiary of Yours as defined in the Corporations Act 2001; or
- b) any body corporate in which You:
  - i) control the composition of the board of the body corporate; or
  - ii) are in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or
  - iii) hold more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- c) any body corporate which is a subsidiary of a body corporate described in (a) or (b) above; or
- d) any other body corporate whose accounts are consolidated into those of Yours in accordance with the relevant Australian Accounting Standard.

**Schedule** means new Policy schedule, renewal schedule or endorsement schedule issued by Us.

**We / Our / Us / Insurer** means SURA Labour Hire Pty Ltd ABN 67 604 373 088, and certain Underwriters at Lloyds.

# GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS OF THE POLICY

## ADJUSTMENT

If the premiums are calculated on statements and estimates furnished by You, You shall within a reasonable period (but no later than thirty (30) days) of the expiry of each Period of Insurance furnish to Us such information as We may require for such expired period and the premium for such period shall thereupon be adjusted by Us and the difference be paid by or allowed to You as the case may be subject to any minimum premium applicable.

You must keep a record of all information requested by Us, and must on reasonable notice allow Us or Our nominee to inspect and make copies of those records.

## ADMISSION OF LIABILITY

You shall not:

- a) make or give any admission, offer, promise or payment;
- b) take any action which may be considered to be an admission, offer, promise or payment;
- c) repudiate or settle a claim; without Our written consent.

## ASSIGNMENT

You cannot assign this Policy nor transfer any interests in it without Our written consent.

## AUTHORISATION

The Insured is the agent for each person who falls within the definition of You / Your / Insured in this Policy and each such person is bound by any statement, act or omission of the Insured for all purposes under this Policy.

If the Insured is more than one entity, then the first entity listed in the Schedule will be deemed to be the Insured.

## CANCELLATION

- a) This Policy may be cancelled at any time at Your request by notifying Us in writing.
- b) We may also cancel this Policy on any grounds subject to the Insurance Contracts Act 1984 (Cth) where We have given You written notice of such cancellation in accordance with the Act.

- c) Our notice of cancellation takes effect at the earlier of the following times:
  - i) the time when another Policy of insurance between You and Us or some other insurer, being a Policy that is intended by You to replace this Policy, is entered into; or
  - ii) 4.00 PM on the third (3rd) business day after the day on which notice was given to You.
- e) In the event that You cancel the Policy, We will deduct a pro rata proportion of the premium for the unexpired Period of Insurance from the date of cancellation, plus any government taxes or duties we cannot recover but always subject to a minimum premium being twenty five percent (25%) of the annual premium . In addition, We may charge an administration fee of up to twenty five percent (25%).
- f) In the event that you have made a claim under the Policy and we have agreed to pay the claim, no return of premium will be made for any unused portion of the premium.
- g) When the premium calculation is subject to reports of values, You must, in the event of cancellation, report the values and pay premium due up to the date of cancellation.

## CONDUCT OF CLAIM

- a) We may, if We so desire, take over and conduct in Your name the defence or settlement of any claim or prosecute in Your name for Our 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.
- b) We reserve entirely Our rights under this Policy, including Our right to agree or deny cover while We assess a claim or conduct the defence. Our rights under this Policy are not affected if We do not conduct the defence.
- c) We may, if We believe that any claim will not exceed the deductible, instruct You to conduct the defence of the claim, in which case We will (subject to the terms of this Policy) reimburse You for all reasonable Defence Costs if any payment You make to dispose of the claim exceeds the deductible.
- d) If You object to a proposal by Us to settle or compromise any claim payable under this Policy and wish to contest or litigate the matter, then You may so elect, but Our liability in respect of any such claim so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by Us, together with Defence Costs payable in accordance with the terms of this Policy and incurred up to the time of such election.



- e) Neither You nor We will be required to contest or litigate any claim if, in the opinion of Senior Counsel, reasonable attempts should be made to settle the claim. The Senior Counsel shall be mutually agreed upon, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. The cost to obtain the opinion will be advanced by Us and treated as Defence Costs.
- f) Senior Counsel shall provide the opinion in writing. In formulating the opinion Senior Counsel shall consider commercial matters including the amount of the claim, the actual and potential loss (including Defence Costs) that may reasonably be incurred in contesting the claim, the liability prospects and the prospect of recovering costs against the claimant in the event that the defence is successful. Senior Counsel shall also provide a settlement range within which reasonable attempts should be made to settle the claim.
- g) If it is the opinion of Senior Counsel that reasonable attempts should be made to settle the claim, You shall not object to Our attempt to do so.

### CONTRIBUTION TO COSTS

If We have not exercised our rights under the condition above headed Payment of Limit of Liability, Our liability to pay costs and expenses, where any sum or sums exceeding the appropriate Limit of Liability have to be paid to dispose of a claim or claims, shall be limited to such proportion of the said costs and expenses as such Limit of Liability bears to the amount actually so paid.

### CO-OPERATION AND MITIGATION

You shall at all times and at Your own cost provide Us with all information, evidence, documentation, assistance and co-operation and will execute such documents, including signed statements and affidavits, which We reasonably request.

You shall at all times and at Your own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to avoid or diminish and liability under this Policy, and to assist with the defence, investigation or settlement of any claim or proceedings against You.

You must not pursue a course of action which You know or ought reasonably to know will bring about any claim, unless this is undertaken to discharge Your duties under any relevant law.

You shall maintain records of all occurrences which may result in a claim being notified under this Policy.

We may make any investigation we deem necessary.

### GOVERNING LAW

This Policy will be governed in accordance with the laws of the Commonwealth of Australia. Any disputes arising out of this Policy will be subject to determination by any Court of competent jurisdiction within Australia according to the laws applicable to the jurisdiction.

### INTERPRETATION

In this Policy the singular includes the plural and vice versa and words indicating a gender includes every other gender.

Person includes bodies corporate, except in the term Insured Person when it does not include bodies corporate.

A reference in this Policy to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision (whether of the Commonwealth of Australia or elsewhere).

The titles and headings to the various sections of the Policy are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of such sections.

### MATERIAL CHANGES

You must notify Us as soon as reasonably practicable of any material change in the risk insured by this Policy.

You must notify Us immediately if You go into voluntary bankruptcy, receivership, liquidation or any other form of external administration or fail to pay debts or breach any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;

Where there is any material alteration to the risk We will be entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984.

We are entitled to amend the terms of this Policy and/or charge an additional premium based on Our assessment of any change in the risk insured by this Policy.

## NOTICES

Any communications to Us under this Policy must be sent by You to Us at Our address or facsimile number specified in the Schedule.

Notice to You may be given to You or Your agent at the broker name and address specified in the Schedule.

## NOTIFICATION

If an event occurs which may give rise to a claim under this Policy, You shall:

- a) inform Us of such event as soon as reasonably practicable, and within the Period of Insurance in which the claim is made or the loss is discovered;
- b) provide in writing if requested, including verification on oath, such particulars, documents and information as We may require as soon as reasonably practicable;
- c) immediately:
  - i) on receipt forward to Us every letter, writ, summons and process;
  - ii) inform Us in writing of any prosecution, inquest or other proceeding of which notice is given to You;
- d) provide all assistance which We may reasonably require.

## OTHER INSURANCE

If, at the time any claim arises under this Policy, there is any other insurance contract in force covering the same claim, You must notify Us as soon as reasonably practicable providing full details of such other insurance contract, including the identity of the insurer, the Policy number and such further information as We may reasonably require.

## OUR LIABILITY

- a) the observance of the terms, Conditions and Endorsements of this Policy by You in so far as they relate to anything to be done or complied with by You; and
- b) the truth of the statements and accuracy of the information provided in any submission and/or statements or answers provided in response to any requests for additional underwriting information; and

- c) the notification as soon as practicable by You of any alteration in risk which materially affects this insurance;
- shall be matters upon which Our liability under this Policy depends.

## PAYMENT OF LIMIT OF LIABILITY

We may at any time pay to You the appropriate Limit of Liability (after deducting therefrom any sum or sums already paid) or any lesser amount for which a claim or claims may be settled and thereupon We shall relinquish the conduct and control of and shall be under no further liability in connection with such claim or claims except for Defence Costs incurred prior to the date of such payment.

## VARIATION OF THE POLICY

No variation of this Policy will be effective, except when made by written endorsement.

# GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE POLICY

---

This Policy does not apply to, and We will not indemnify You for any actual or alleged liability in respect of:

## **TERRORISM**

injury to any person or property damage directly or indirectly caused by, resulting from or in connection with any:

- a) Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to such injury or property damage;
- b) action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.

For the purposes of this Exclusion an Act of Terrorism means 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 or reasons with the intention to influence any government and/or to put the public, or any section of the public, in fear.

## **WAR**

war, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

# SECTION ONE BROADFORM LIABILITY

## GENERAL DEFINITIONS APPLICABLE TO SECTION ONE

**Advertising Liability** means liability arising out of:

- a) the publication or utterance of defamation, both libel and slander except such publication, utterance or defamation made prior to the commencement of the Period of Insurance or made at Your direction with knowledge of the falsity thereof; or
- b) infringement of copyright or of title or slogan;
- c) unfair competition, misappropriation of advertising ideas or style of doing business; or
- d) invasion of right of privacy

related to advertising activities conducted by You or on Your behalf in the course of the Business, or by any Host Employer.

**Aggregate Limit of Liability** means the amount shown as the aggregate limit of liability in the Schedule. If no amount is shown, the aggregate limit of liability is no greater than the Limit of Liability.

**Business** means the business stated in the Schedule and also includes:

- a) the provision of its own canteen, sports, social and child care facilities or welfare organisations, and its own fire, first aid, medical and ambulance services, by You; and
- b) the carrying out of repairs, maintenance, alterations or additions to, or the demolition of, Your premises to which this Policy applies;

**Damage to Property** means:

- a) physical damage to or loss or destruction of tangible property including resultant loss of use; and
- b) loss of use of tangible property which has not been physically damaged lost or destroyed provided such loss or use is caused by physical damage of other tangible property during the period of insurance.

**Deductible** means the amount and type shown in the Schedule that You are to bear in relation to each claim resulting from an Occurrence.

The two types of Deductible are:

- a) Cost Inclusive, where the Deductible applies to all amounts payable under this Policy, including amounts payable for the purpose of defence and/or investigation of any claim; and

- b) Cost Exclusive, where the Deductible only applies where a compensatory damages and/or costs amount is to be paid on Your behalf to settle a claim.

**Defence Costs** means the costs and expenses We pay under Claims Defence set out in this Section of the Policy.

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

**Employee** means:

- a) any person engaged in the Business under a contract of service or apprenticeship with You (other than with a principal of the Insured), but excluding any person employed under such contract who does not satisfy the definition of 'worker' under any workers' compensation legislation; and
- b) any person or incorporated contractor on-hired by You to a third party on a temporary contract basis; and
- c) any person engaged by You (whether remunerated or not) for the purposes of receiving training or work experience.

**Employment Practices** means any employment related act, error, omission or conduct constituting actual, constructive or alleged wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual or workplace harassment (including the creation of a workplace environment conducive to such harassment) or wrongful discrimination by You.

**Host employer** means any third party to whom You have on-hired any person or incorporated contractor on a temporary contract basis.

**Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury, Damage to Property or Advertising Liability neither expected nor intended by You.

All Personal Injury, Damage to Property or Advertising Injury attributable to one original source, or one original cause, or one original prepared or acquired batch, shall be deemed to be one Occurrence.

**Personal Injury** means:

- a) bodily injury, death, sickness, disease, disability, shock, fright, mental injury, mental anguish or loss of consortium resulting from any of them;
- b) the effects of:
  - i) false arrest, false Imprisonment, wrongful entry, wrongful eviction, wrongful detention, malicious prosecution and humiliation;
  - ii) defamation, including libel and slander or invasion of right of privacy;
  - iii) assault and battery not committed by You or at Your direction unless committed for the purpose of preventing or eliminating danger to persons or property.

**Products** means anything, Including any packaging or container thereof as described in the Schedule (after it has ceased to be in Your possession or control) manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, repaired, serviced, treated, sold, supplied, resupplied or distributed in or from Australia or its external territories by You in the course of Your Business, and also includes:

- a) the design, formula or specification of such Products, and
- b) directions, markings, instructions, warnings or advice given or omitted to be given in connection with such Products, and
- c) anything in respect of which the Insured (including all Subsidiaries, now or hereafter constituted, of the Insured, whose place of incorporation is within Australia or its external territories) is taken or deemed to be the manufacturer by operation of a law of Australia or its external territories.

**Property** means any tangible, material or physical property but does not include Electronic Data.

**Property in Your Possession or Control** does not include:

- a) Your personal possessions, or those of any director, partner, executive officer, principal or personal representative of the Insured, or those of Your visitors;
- b) premises (and their contents) not owned, leased or rented by You but which are temporarily occupied by You for the purpose of carrying out work in connection with the Business;

- c) premises (including fixtures and fittings) leased or rented to You in respect of loss or damage caused other than by fire or explosion;
- d) Vehicles, not owned by You nor used in connection with the Business, whilst within a free car park provided by You for the use of customers, visitors or Employees;
- e) other Property temporarily in Your physical or legal control, including goods not belonging to You but being transported by You in a registered motor vehicle but only to the extent that there is no indemnity for such loss or damage provided to the owner of the vehicle. Our limit under this clause (e) does not exceed two hundred and fifty thousand Australian dollars (AUD250,000) for any one Occurrence. To the extent that this clause (e) relates to damage to goods carried in a registered motor vehicle, the Vehicles exclusion does not apply; and
- f) Property belonging to the Host Employer and being used as part of Your Business and with the Host Employer's consent.

**Retroactive Date** means the date identified in the Schedule of this Policy.

**Territorial Limits** means anywhere in the world, subject to the Jurisdiction and North American Exports exclusions in this Policy.

**Vehicle** means 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 or other attachment made or intended to be drawn by any such machine whilst attached thereto.

**You / Your / Insured** means:

- a) the Named Insured stated in the Schedule;
- b) every past or present director, partner, officer or Employee of Yours, but only while acting within the scope of their duties in such capacity;
- c) all Subsidiaries (now or hereafter constituted) of Yours, (including their directors, partners, officers, Employees or shareholders, but only while acting within the scope of their duties in such capacity) whose place of incorporation is within Australia or its external territories, and including any entity over which the subsidiary company is in a position to exercise effective direction or control;
- d) Your personal representative, in the event of Your death, but only in respect of liability incurred by You;

- e) any principal of the Insured, in respect of the vicarious liability of such principal arising out of Your acts or omissions, or the persons specified in paragraph (a) in the performance by them of work for that principal;
- f) any shareholder of Yours, but only for liability in respect of which You would have been entitled to indemnity if the claim had been made against You;
- g) any director, partner or senior executive of Yours in respect of private work undertaken by any Employee for such director or senior executive, and any such Employee whilst actually undertaking such private work; and
- h) any office-bearer, committee or member of Your own canteen, sports, social and child care facilities or welfare organisations and any member of Your own fire, first aid, medical or ambulance services in respect of claims arising from their duties connected with the activities of any such facilities, organisations or services;

The expression "Named Insured" shall mean the person or entities specified in the Schedule.

## WHAT YOU ARE INSURED AGAINST

In return for payment of the premium by You, We will indemnify You in respect of all sums by way of compensation which You shall become legally liable to pay, and all costs awarded against You, arising out of:

- a) Personal Injury;
- b) Damage to Property;
- c) Advertising Injury

happening during the Period of Insurance within the Territorial Limits as a result of an Occurrence and in connection with the Business.

We will indemnify you in respect of such amounts, less the Deductible shown in the Schedule, which is to be borne by You.

The amount payable by Us shall not exceed the Limit of Liability expressed in the Schedule for any one Occurrence.

Our total aggregate liability during any one Period of Insurance for all claims arising out of Products will not exceed the Aggregate Limit of Liability.

In the event of any claims for Personal Injury arising from a latent injury, disease or sickness, such injury, disease or sickness will be deemed to have happened on the day the injury, disease or sickness was first medically diagnosed.

## Claims Defence

If We agree to cover You under this Policy, We will take over and conduct in Your name the defence or settlement of any claim or action against You which We have agreed to cover under this Policy, even if groundless, false or fraudulent, and shall have full discretion in the conduct of any proceedings and in the settlement of the claim or action.

We will also:

- a) pay all reasonable costs and expenses (other than loss of earnings), incurred by You with Our prior written consent, in the defence or settlement of any claim or action against You. This does not cover any loss of earning You suffer or compensate You for Your own time spent dealing with a claim.
- b) pay all interest accruing after judgement is entered or settlement is reached until We have paid, tendered or deposited such part of the settlement or judgement that does not exceed the Limit of Liability;
- c) pay all reasonable expenses incurred by You for first aid to others at the time of Personal Injury (other than the payment of any medical expenses by Us which is prohibited by law);

provided that the costs and expenses are incurred in connection with claims against You which are covered by this Policy. We will pay these Defence Costs in addition to the Limit of Liability.

Our liability to pay Defence Costs, where any sum or sums exceeding the appropriate Limit of Liability have to be paid to dispose of a claim or claims, shall be limited to such proportion of Defence Costs as such Limit of Liability bears to the amount actually so paid.

We shall not be obliged to pay any claim or judgement, or defend any claim or action, after the Limit of Liability has been exhausted by payment of judgements or settlement.

**CONDITIONS APPLICABLE TO SECTION ONE****Acquisition, Merger or Winding Up of the Insured**

If, during the Period of Insurance, any of the following events occur:

- a) 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 or arrangement or compromise or a winding up process in respect of the Insured

then this Policy will remain in force until the expiry of the Period of Insurance.

**Allocation of loss**

This condition applies to any part of any loss resulting from a claim which is in respect:

- a) of one person insured under this Policy; or
- b) of more than one person insured under this Policy, whether jointly or severally; or
- c) of one or more persons insured under this Policy and one or more persons or entities who are not insured under this Policy, whether jointly or severally,

and which is partly covered and partly not covered under this Policy, (together Loss to be Allocated).

We must determine a fair and reasonable allocation of the covered part of the Loss to be Allocated among the relevant persons insured under this Policy and Us having regard to the extent of the comparative responsibility of each of the persons insured under this Policy for the Loss to be Allocated. Our consideration of what is fair and reasonable should include without limitation, the following factors:

- a) the nature of the claim against each person insured under this Policy;
- b) the issues of fact and law in relation to each person insured under this Policy;
- c) the content and the manner of the conduct of any defence of the claim;
- d) the relative degree of personal responsibility for the loss;
- e) the extent to which the responsibility of each person insured under this Policy for the loss is joint, several or shared;

- f) the extent to which any person or entity, other than a person insured under this Policy, would obtain a benefit from the payment by Us;
- g) the extent to which the loss is solely of that each person insured under this Policy;
- h) the extent to which the issues in the claim against each person insured under this Policy are in common with the issues in the claim against any other person or entity;
- i) the extent to which the loss is partly covered and partly not covered under this Policy; and
- j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

If You wish to dispute Our determination of the allocation, the dispute must be referred for expert determination in accordance with the Australian Commercial Disputes Centre ("ACDC") Mediation Guidelines, to an expert agreed by the parties, or if the parties do not agree on an expert, an expert nominated by the then current CEO of ACDC or the CEO's nominee.

Each party agrees to sign an agreement with the expert that confirms the following:

- a) each party will pay an equal share of the fees for the appointed expert (to be charged at the expert's usual rate); and
- b) the expert may:
  - i) consider relevant industry practice;
  - ii) consider all information presented to the expert by either party;
  - iii) request more information from either party;
  - iv) request a meeting with the parties (to which they may bring their lawyers);
- c) the expert must decide within thirty (30) days after the agreement is signed, and need not give reasons; and
- d) the expert's decision will be binding on the parties and final; and
- e) the expert will exclude all liability of the expert to either party (including liability for negligence) to the full extent permitted by law.

This allocation applies for all purposes under this Policy.

Any Allocation of Loss will not apply to or create a presumption with respect to the allocation of other loss on account of such claim.

### Cross Liability and Non Imputation

Where there is more than one Insured it is agreed that:

- a) each Insured shall be covered as if it made its own proposal for this insurance; and
- b) any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured;
- c) any knowledge possessed by any Insured shall not be imputed to any other Insured.

### Inspection of Property

- a) We will be permitted but not obligated to inspect Your property and operations at any time.
- b) Neither Our right to inspect nor Our failure to inspect nor the making of any inspection nor any report of an inspection may be used by You or others in any action or proceedings involving Us.
- c) We may examine and audit Your books and records at any time during the Period of Insurance and within three (3) years thereafter but that examination and audit will be restricted to matters which in Our opinion are relevant to the Policy.

### Reasonable care

You, at Your own expense, shall take or cause to be taken all reasonable care to:

- a) maintain premises, plant, equipment and everything used in the Business in proper repair;
- b) employ only competent Employees;
- c) prevent the manufacture, sale or supply of defective products;
- d) prevent Personal Injury, Damage to Property and Advertising Injury;
- e) comply with all statutory obligations and regulations imposed by any authority; and
- f) remedy any defects or eliminate any dangers which may give rise to Personal Injury, Damage to Property and Advertising Injury.

### Subrogation and Recoveries

You will take all necessary steps to preserve Our rights of recovery. You will not, without Our prior consent in writing:

- a) release, agree not to sue, waive or prejudice, any such rights; or
- b) enter into any arrangement or compromise or do any act whereby any rights or remedies to which We would be subrogated are or may be prejudiced except in respect to a specific written request by a principal for whom You are performing work which is the subject of cover being provided under this Policy. This written specific request must have been taken place prior to the occurrence.

You agree to provide Us with all information, evidence, documentation, assistance and co- operation and to execute such documents, including signed statements and affidavits, which We reasonably request in the exercise of Your rights of recovery.

You will at all times and at Your own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to assist in the exercise of Your rights of recovery.

All recoveries obtained by You from other parties will be allocated, after the settlement of any claim under this Policy as follows:

- a) firstly, to Your benefit to reduce or extinguish the amount of Your loss to the extent that it would have been paid under this Policy but for the fact that such loss exceeds the sum of the Limit of Liability and the Deductible; and
- b) secondly, to Our benefit for all sums paid in settlement of loss arising under this Policy; and
- c) thirdly, to Your benefit for the Deductible under this Policy.

All recoveries will be applied as herein only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement of any claim under this Policy will be held for Our benefit and applied as stated herein after settlement if any is made.

Recoveries do not include any amount recovered from insurance, suretyship, reinsurance, security or indemnity taken for Our benefit.



## EXCLUSIONS APPLICABLE TO SECTION ONE

This Policy does not apply to, and We will not indemnify You for any actual or alleged liability in respect of:

### Advertising Injury

- a) arising out of breach of or failure to perform contract, other than misappropriation of advertising ideas under an implied contract;
- b) arising out of the failure of Products to conform with advertised performance, description, price or quality; or
- c) incurred by You if the Host Employer's occupation or business is advertising, broadcasting, publishing or telecasting.

### Aircraft and Watercraft

Personal Injury, Damage to Property or Advertising Injury directly or indirectly caused or contributed to, or arising from or in connection with:

- a) the operation, maintenance, ownership, possession or use by You or on Your behalf of any vessel or craft made or intended to be air borne;
- b) the operation, ownership, possession or use by You or on Your behalf of any vessel or craft made or intended to be water borne, other than:
  - i) a watercraft or water vessel not exceeding ten (10) metres in length which is owned or operated by others and used by You for business entertainment; or
  - ii) a hand propelled boat or pontoon;
- c) Products intended specifically for, and installed in or on, an aircraft or other aerial device, or caused by or arising out of Products which You knew would be so installed, where such Products are essential to the operation or navigation of an aircraft or other aerial device.

### Asbestos

- a) Personal Injury or Advertising 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; or
- b) that part of any loss, cost or expense for the cost of cleaning up or removal of any asbestos, asbestos fibres or any derivatives of asbestos; or

- 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 paragraph (c) above, 'damage' means physical damage, loss or destruction and resultant loss of use, and 'property' means any tangible or intangible property.

### Assault and Battery

Personal Injury or Damage to Property directly or indirectly caused or contributed to by, or arising from or in connection with, assault and battery committed by You or at Your direction unless reasonably necessary for the protection of persons or Property.

### Defamation

Personal Injury, Damage to Property or Advertising Injury directly or indirectly caused or contributed to by, or arising from or in connection with, the publication or utterance of a libel or slander or defamation of character:

- a) made prior to the commencement of the Period of Insurance;
- b) falsity thereof; or
- c) related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf, or by any Host Employer.

### Defective Work

the cost of performing, completing, correcting or improving any work done or undertaken by You.

### Electronic Data

- a) any claim contributed to by, or arising from or in connection with:
  - i) the communication, display, distribution or publication of Electronic Data;
  - ii) the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
  - iii) access to Your intranet (meaning internal company information and computing resources) which is made available through the world wide web; and

- iv) the operation and maintenance of Your web site;
  - v) any error in creating, amending, entering, deleting or using Electronic Data;
  - vi) the total or partial inability or failure to send, receive, access or use Electronic Data for any period of time or at all;
- b) Damage to Electronic Data or its storage media caused or contributed to by, or arising from or in connection with:
- i) the use of any computer hardware or software; or
  - ii) the provision of computer or telecommunication services by You or on Your behalf.

For the purposes of paragraph b), Damage means physical damage, loss, destruction and loss of use.

However, this exclusion does not apply to Damage to Property or Advertising Injury arising out of any material produced by a manufacturer in support of its product which is already in print and reproduced on its web site.

### Employment Liability

- a) statutory benefits liable to be paid by You pursuant to, or any other liability imposed by the provisions of, any workers' compensation legislation or similar legislation;
- b) liability or loss arising from or in connection with Employment Practices; and
- c) liability imposed solely by any industrial award or agreement or determination, or any contract of employment or workplace agreement;

except to the extent that Your common law liability for Personal Injury is not covered by any self-insurance arrangement, statutory fund, statutory scheme or other Policy of insurance required by law (or would not be covered by such insurance, fund or scheme if You had complied with Your legal obligations).

### Fines, Penalties and/or Liquidated Damages

any amount by way of aggravated, exemplary or punitive damages, or any additional damages resulting from the multiplication of compensatory damages, or in respect of fines or liquidated damages, or incurred under a penalty clause.

### Jurisdiction

- a) claims or legal actions made or undertaken against You in any country, state or territory outside the Commonwealth of Australia that require insurance to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance.
- b) claims or legal actions made or undertaken against You in any country on the continent of North America, or in states or territories subject to the jurisdiction of any such country;
- c) claims or legal actions made or undertaken against You to which the laws of any country on the continent of North America apply; and
- d) claims or legal actions made or undertaken against You arising out of the enforcement of any judgement, order or award obtained within, or determined pursuant to the laws of, any country on the continent of North America, or in the states, territories or protectorates of any such country.

However, exclusions (b), (c) and (d) above do not apply to any claims or legal actions made or undertaken against You arising from non-manual work carried out by any of Your Employees and/or directors, partners or proprietors provided that at the time of carrying out that work such person was normally resident within Australia or its external territories.

### Liability under Agreement

liability assumed solely under any contract or any other agreement unless and to the extent that such liability:

- a) would have attached in the absence of such contract or agreement;
- b) is specifically allowed by Our written endorsement or specifically allowed under this Policy;
- c) would have been implied by law;
- d) is assumed by You under a lease of real or personal property, other than a provision which obliges You to effect insurance in respect of the subject matter of that lease; or
- e) is assumed by You under a warranty of fitness or quality in respect of Products.

This exclusion does not apply to any liability assumed where You enter into a written contract which sets aside the proportionate liability provisions of the Civil Liability Act 2002 (NSW) or similar Acts of other States or Territories.

### Loss of Use

claims in respect of the loss of use of tangible property which has not been physically damaged, lost or destroyed resulting from:

- a) a delay in or lack of performance by You or on Your behalf of any contract or agreement, or
- b) the failure of Products or work performed by You or on Your behalf to meet the level of performance, quality, fitness or durability warranted or represented by You, but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or loss or destruction of Products or work performed by You or on Your behalf after such Products or work have been put to their intended use by any person or organisation other than You.

### North American Exports

Personal Injury, Damage to Property or Advertising Injury:

- a) happening in any country on the continent of North America, or in states or territories incorporated in or administered from or by such country; and
- b) caused by or arising out of Products exported by You to any such country, state or territory.

### Pollution

- a) Personal Injury or Damage to Property caused by or arising directly or indirectly out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration 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 groundwater), unless such discharge, dispersal, release or escape:
  - i) is neither reasonably expected nor intended by You; and
  - ii) is the consequence of a sudden and instantaneous cause which takes place in its entirety at a clearly identifiable place and point in time during the Period of Insurance.
- b) costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release or escape as described in (a) above, however this exclusion does not apply to removal, nullifying or clean-up costs or expenses that are consequent upon an unexpected, unintended, sudden and instantaneous cause which takes

place in its entirety at a clearly identifiable place and point in time during the Period of Insurance and results in Personal Injury or Damage to Property neither of which is otherwise excluded by this Policy.

- c) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others.
- d) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the continent of North America or in any country to which the laws of the United States of America or Canada apply.

Provided that Our total aggregate liability under paragraphs (a) and (b) above for all such discharges, dispersals, releases or escape during any one Period of Insurance (and for all other claims indemnifiable under this Policy as a result of the same Occurrence(s)) shall not exceed the Limit of Liability stated in the Schedule in respect of pollution liability.

### Product Defect

Damage to Products if attributed to any defect in them or their harmful nature or unsuitability.

For the purposes of this exclusion, Damage means physical damage, loss, destruction and loss of use.

### Professional Duty

liability arising out of any breach of a duty owed in a professional capacity by You and/or any person(s) for whose breaches You may be held legally liable, but this exclusion does not apply to:

- a) the rendering of or failure to render any first aid, medical, health or emergency advice or services by persons employed by You to provide such advice and services;
- b) claims where such breach is in relation to advice or services given gratuitously;
- c) claims arising out of advice given in respect of the use or storage of Products;

### Property in Possession or Control

Damage to:

- a) Property belonging to You, or leased or rented to You;
- b) Property in Your Possession or Control; or
- c) that part of Property upon which You are or have been working.

For the purposes of this exclusion, Damage means physical damage, loss, destruction and loss of use.

### Radioactive Contamination

Personal Injury, Damage to Property or Advertising Injury directly or indirectly caused or contributed to by, or arising from or in connection with:

- a) ionising radiation or contamination by radioactivity 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; or
- c) any action taken in controlling, preventing, suppressing or in any way relating to paragraphs (a) and (b) above.

### Repair or Replacement

claims arising out of or resulting from the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of, or from making any refund on the price paid for, Products or of any Property of which they form a part, if such Products or Property are withdrawn from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition in them, provided that this exclusion does not apply to liability for physical damage to or destruction of Products caused by other Products if they were physically independent at the time of such physical damage or destruction.

### Tobacco

Personal Injury caused by or arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- a) tobacco or tobacco smoke; or
- b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

### Vehicles

Personal Injury or Damage to Property directly or indirectly caused or contributed to by, or arising from or in connection with the operation, ownership, possession or use by You of any Vehicle which is 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 to:

- a) Personal Injury where Statutory Insurance does not provide indemnity for reasons not involving a breach by You of legislation relating to Vehicles;
- b) Personal Injury or Damage to Property caused by or arising out of the delivery or collection of goods to or from any Vehicle where such Personal Injury or Damage to Property occurs beyond the limits of any carriageway or thoroughfare;
- c) damage to Property:
  - i) caused by or arising out of the loading or unloading of goods to or from any Vehicle;
  - ii) caused to, or caused by, Vehicles not owned by You but being operated or used in work undertaken by You or on Your behalf in the course of the Business but only to the extent that indemnity is not available to You under any other Policy of insurance arranged by You or the owner of the Vehicle. In any event, liability under this clause (c) (ii) is limited to two hundred and fifty thousand Australian dollars (AUD250,000) any one Occurrence;
  - iii) caused by or arising out of the use of any Vehicle as a tool of trade, or the use of plant forming part of Your Vehicle as a tool operating at any worksite, but excluding damage to Property caused by or arising while the Vehicle is transporting or carting goods.

## SECTION TWO MANAGEMENT LIABILITY AND PROFESSIONAL INDEMNITY

### GENERAL DEFINITIONS APPLICABLE TO SECTION TWO

**Asbestos** means asbestos in whatever form including, without limitation, asbestos products or products containing asbestos.

**Benefits** means:

- a) fringe benefits and perquisites; or
- b) amounts due or payments made in connection with superannuation or an employee benefit plan or pension scheme; or
- c) share or stock options or any other right to purchase, acquire or sell shares or stock; or
- d) bonuses, or employee or management incentive schemes or similar.

**Business Crisis Consultant Fees** means the reasonable costs, charges, fees and expenses of an independent management consultant engaged to minimise the effect of the Business Crisis Event, but only during the first thirty (30) days immediately following the Business Crisis Event.

**Business Crisis Event** means any one of the following unforeseen events which, in the reasonable opinion of the Managing Director (or equivalent) of the Company, if left unmanaged has the potential to lead to an imminent decrease of thirty percent (30%) or more of the Company's consolidated revenues:

- a) the loss of a major customer or contract of the Company; or
- b) the sudden and unexpected death or injury of any Insured Person; or
- c) the unexpected imposition of a tax bill; or
- d) the recall of any product manufactured, distributed or sold by You; or
- e) the illegal tampering with or contamination of any product manufactured, distributed or sold by You.

**Claim** means:

- a) a written communication, including electronic communications, to You, containing a demand for compensation or damages, alleging an act, error, omission, conduct, facts or circumstances that may constitute a Wrongful Act; or

- b) a civil proceeding commenced by the service of a written complaint, summons, statement of claim, writ or similar pleading or an arbitral process, cross-claim or counter claim against You alleging an act, error, omission, conduct, facts or circumstances that may constitute a Wrongful Act; or
- c) any criminal proceeding commenced by a summons or charge of an Insured Person, Company arising from a Wrongful Act; or
- d) any official investigation, examination, inquiry or other proceedings which gives rise to Representation Expenses.

Claim does not mean an action solely for declaratory or injunctive relief where there is no demand for compensation or damages.

**Company** means:

- a) the Insured; and
- b) Subsidiaries of the Insured prior to or as at the commencement of the Period of Insurance, but cover only applies in respect of Wrongful Acts or any dishonest or fraudulent act committed or alleged to have been committed subsequent to the acquisition or creation of such Subsidiary.

**Conflict of Interest** means any actual or perceived competing professional or personal obligation or financial interest which You have in dealing with Your client(s) that includes, but is not limited to, any related but undisclosed commission, fee or other benefit payable to You.

**Consumer Protection Act** means any of the following:

- a) Fair Trading Act 1992 (ACT)
- b) Fair Trading Act 1987 (NSW)
- c) Consumer Affairs and Fair Trading Act 1996 (NT)
- d) Fair Trading Act 1989 (QLD)
- e) Fair Trading Act 1987 (SA)
- f) Fair Trading Act 1990 (TAS)
- g) Fair Trading Act 1999 (VIC)
- h) Fair Trading Act 1987 (WA)
- i) Competition and Consumer Act 2010 (Cth)

and any amendment, consolidation or re-enactment of any of those Acts.

**Control** means the definition of control in the Corporations Act 2001.

**Covered Property** means tangible property other than Money and Securities.

**Defence Costs** means Your share, according to the Allocation of Loss Claims Condition, of necessary and reasonable costs, charges, fees and expenses (other than regular or overtime wages, salaries, fees or Benefits of the Insured Persons or Trustees) incurred by You with Our prior written consent, in defending, investigating or settling covered Claims.

**Director** means any natural person who was prior to the Period of Insurance, or is during or after the Period of Insurance a validly appointed director (as defined in the Corporations Act 2001 or any equivalent provision in the jurisdiction in which the Company is incorporated) of the Company.

**Discovered / Discovery** means when any Director, Officer, senior manager of Yours or Trustee, not in collusion with an Employee committing a dishonest or fraudulent act, first becomes aware of facts which would cause a reasonable person in the circumstances to believe that Loss covered by this Policy has occurred, or is likely to occur, regardless of when the act or acts causing or contributing to such Loss occurred and even though the exact amount or details of Loss may not then be known.

**Employee** means any natural person who was prior to the Period of Insurance, or is during or after the Period of Insurance an employee of the Company, (which will include trainees, casual, part-time, seasonal, temporary, voluntary and work experience personnel) acting in such capacity, but excludes Directors and independent contractors.

**Employment Wrongful Act** means any employment related act, error, omission or conduct constituting actual, constructive or alleged: wrongful dismissal, discharge or termination of employment; wrongful failure to employ or promote; wrongful deprivation of career opportunity; misleading representation or advertising in respect of employment; wrongful disciplinary action; negligent employee evaluation; wrongful demotion; breach of employment contract; sexual or workplace harassment (including the creation of a workplace environment conducive to such harassment); wrongful discrimination; failure to grant tenure; invasion of privacy or defamation, committed by You.

**Endorsement** means any document which is described as an endorsement to this Policy and intends to vary it. An Endorsement does not affect or increase the Limit of Liability, or any other term, except to the extent specifically provided in the Endorsement. For the avoidance of doubt, each Endorsement is otherwise subject to all the terms of this Policy.

**Excess** means the sum of:

- a) the Excess specified in the Schedule; and
- b) any amount payable under a Specified Policy; and
- c) under the Outside Directorships Extension, any other indemnity available from a Non-Profit Outside Entity or Outside Entity.

**Fidelity Loss** means direct financial or physical loss of Money, Securities and Covered Property belonging to, leased by or in the care, custody or control of the Company, sustained by the Company caused by any dishonest or fraudulent act committed by an Employee (whether acting alone or in collusion with any other person). Fidelity Loss does not mean:

- a) regular or overtime wages, salaries, fees or Benefits earned in the normal course of employment; or
- b) damages of any type, including but not limited to punitive, exemplary or aggravated damages.

**Full Annual Premium** means the annual premium payable by You, including any additional premium which becomes payable in respect of the Period of Insurance in question.

**Insured Person** means any natural person who was prior to the Period of Insurance, or is during or after the Period of Insurance a Director, Officer or Employee of the Company.

**Labour Hire Services** means the following services of the Company:

- a) placement of candidates in permanent positions, in its capacity as employment agent;
- b) temporary placement of Employees and independent contractors with third parties for the provision of on-hired services;
- c) the provision of the services for which on-hired Professional Workers have been supplied to third parties;
- d) employment consulting services in the areas of occupational health and safety, human resources, human resources relations, human resources management, employment, outsourcing, and psychological testing;
- e) training and induction in all areas, including group training; and
- f) payroll management for Employees and independent contractors.

**Labour Hire Services Wrongful Act** means an act, error, omission, conduct, misstatement, misleading statement, neglect, defamation, infringement of rights of intellectual property or breach of: duty; trust; contract; warranty of authority; statute or confidentiality, actually or allegedly committed by You in the conduct of the Labour Hire Services, but does not include an Employment Wrongful Act.

**Loss** means:

- a) the amount, whether determined by judgment, verdict or award for which You are legally liable to a third party for a Claim and includes damages, compensation orders, interest and claimant's costs and expenses; and
- b) a settlement of a Claim by a third party against an Insured Person, which complies with Settlement Claims Condition; and
- c) Defence Costs; and
- d) under Insuring Clause 4, in the event that the Company is ordered to reinstate or re-employ an Employee, the cost to the Company of complying with any order to pay salary or wages, or damages calculated by reference to salary or wages, to an Employee for the period from the date of the purported dismissal or termination to the date on which the court, tribunal or similar body delivered its judgment to the Parties; and
- e) under Insuring Clause 6, Fidelity Loss; and
- f) under Insuring Clause 7, Business Crisis Consultant Fees; and
- g) under the Fraud Investigator Expenses Extension, all reasonable expenses incurred by the Company with Our prior written consent, solely to investigate, prove and substantiate the amount of the Policy Claim; and
- h) under the Lost Documents Extension, costs and expenses reasonably incurred in replacing or restoring lost or damaged Documents; and
- i) under the Occupational Health and Safety Expenses, Pollution Expenses and Representation Expenses Extensions, Representation Expenses; and
- j) under the Statutory Pecuniary Penalties Extension and the Statutory Company Pecuniary Penalties Optional Extension only, statutory pecuniary penalties

each subject to the Allocation of Loss Claims Condition.

Loss does not mean:

- a) taxes, fines and penalties imposed by law, other than those covered under the Pecuniary Penalties Extension; or
- b) punitive, exemplary or aggravated damages.

**Management Liability Limit of Liability** means the Management Liability Limit of Liability specified in the Schedule.

**Management Wrongful Act** means any act, error, omission, conduct, misstatement, misleading statement, neglect or breach of: duty; trust; contract; warranty of authority; statute or confidentiality, actually or allegedly committed by:

- a) the Company; or
- b) any Insured Person in his or her capacity:
  - i) as an Insured Person; or
  - ii) under the Outside Directorships Extension, only, as a director or officer of, or as the holder of a position of equivalent status in, any Non-Profit Outside Entity or Outside Entity,

or any matter claimed against any Insured Person solely by reason of his or her serving in such capacities,

but does not include any Employment Wrongful Act, Labour Hire Services Wrongful Act or Trustee Wrongful Act.

**Money** means, without limitation, legal tender including bank notes, coins, bullion, cheques, bills of exchange, promissory notes, and claims on bank deposits and accounts.

**Non-Executive Director** means any Director who, at the time of the alleged Wrongful Act, is not an Officer or Employee of any Company, or a paid consultant to the Company.

**Non-Profit Outside Entity** means any non-profit organisation of any kind that is exempt from the payment of income tax, other than a Subsidiary.

**North America** means the United States of America and Canada and in each case its territories and protectorates.

**Officer** means any natural person who was prior to the Period of Insurance, or is during or after the Period of Insurance:

- a) a company secretary of the Company; or
- b) a person:
  - i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company; or
  - ii) who has the capacity to affect significantly the Company's financial standing; or
  - iii) in accordance with whose instructions or wishes the Directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Company),

other than:

- vi) a receiver, or receiver and manager; or
- v) an administrator or an administrator of a deed of company arrangement; or
- vi) a liquidator; or
- vii) a trustee or other person administering a compromise or arrangement made between the Company and someone else.

**Outside Entity** means any company specified in the Schedule or by Endorsement, other than a Subsidiary.

**Policy Claim** means a written demand by or on behalf of the Company to Us for payment of Loss under this Policy.

**Policy Committee** means a prescribed Policy committee for the purposes of Part 9 of the Superannuation Industry (Supervision) Act 1993.

**Pollutants** means any solids, liquids, gaseous or thermal irritants, contaminants, smoke, vapour, soot, fumes, odour or any other air emission, acids, alkalis, chemicals, waste materials, waste water, oil or oil products, infectious biological or medical waste, Asbestos, electric or magnetic or electromagnetic fields, noise and any ionising radiations or contamination by radioactivity.

**Pollution** means:

- a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of Pollutants into or on real or personal property, water or the atmosphere; or
- b) any direction or request to test for, monitor, clean up, treat, detoxify or neutralise Pollutants.

**Products** means all goods sold or supplied by You including (but not limited to) vehicles, caravans, trailers, boats, engines, materials, accessories and spare parts.

**Professional Indemnity Limit of Liability** means the Professional Indemnity Limit of Liability specified in the Schedule.

**Professional Worker** means any person or incorporated contractor (sole practitioner only) who the Company on-hires to a third party on a temporary contract basis for roles where a tertiary degree (or equivalent including TAFE courses and training and experience of not less than five (5) years) is required in order to fulfil the requirements of the role. For clarification, Professional Worker does not include any incorporated contractor (unless a sole practitioner), any secretarial staff, clerical staff, labourers, any blue collar workers or trades people of any description.

**Proposal** means the signed proposal form and declaration completed in respect of this Policy, including any renewal declaration and any information supplied by You about any matter or risk the subject of or relevant to this insurance or Policy.

**Related Claims** means all Claims arising directly or indirectly from or in respect of the same or causally related or continuous or repeated Wrongful Acts whether committed by one or more of the Insured and whether directed to or affecting one or more than one person or legal entity.



**Representation Expenses** means:

- a) the Insured Person's, Company or Trustee's; and
- b) under the Occupational Health and Safety Expenses Extension, the Company's share, according to the Allocation of Loss Claims Condition, of necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or Benefits of the Insured Person, Company or Trustee) incurred by:
  - i) That Insured Person, Company or Trustee; and
  - ii) under the Occupational Health and Safety Expenses Extension, the Company,

with Our prior written consent, in preparing for, attending and being represented at any official investigation, examination, inquiry or other proceedings (other than the Company's or Superannuation Fund's own internal investigation) ordered or commissioned by any regulator, government body or authority, governmental or administrative agency, official body or institution, legally constituted industry or professional board into the affairs of the Company or the conduct of the Insured Persons in their capacity as such or as a director or officer of, or the holder of a position of equivalent status in a Non-Profit Outside Entity or Outside Entity or Trustees in their capacity as such, provided that notice of the investigation, examination, inquiry or other proceedings is first received by You and notified to Us during the Period of Insurance.

**Securities** means shares, stocks, bearer instruments, derivatives, bonds, warrants, debentures, units in shares, units in trusts (including any evidence of indebtedness or other equity or debt security), rights under a depositary receipt or other securities (or interests therein) of whatever nature.

**Specified Policy** means:

- a) any insurance contract under which the Insured or any Insured is entitled to an indemnity and which is specified in the Proposal or by Endorsement; or
- b) any renewal or replacement of that insurance contract.

**Spouse** means a lawful spouse or any person deriving similar status by reason of the common law or statute.

**Superannuation Fund** means a corporate superannuation fund established for the benefit of employees of the Company, but excludes any industry, master or self-managed superannuation fund.

**Trustee** means any Insured Person who:

- a) was prior to the Period of Insurance, or is during or after the Period of Insurance a:
  - i) duly appointed trustee of the Superannuation Fund; or
  - ii) member of the Policy Committee of the Superannuation Fund, to the extent that such person's activities concern the administration of that Superannuation Fund as is contemplated under the Superannuation Industry (Supervision) Act 1993; or
- b) was prior to or at the commencement of the Period of Insurance a trustee of the Superannuation Fund duly appointed by a court or regulatory body or pursuant to statute.

**Trustee Wrongful Act** means any means any act, error, omission, conduct, misstatement, misleading statement, neglect, defamation or breach of: duty; contract; confidentiality; trust or statute, actually or allegedly committed by any Trustee in connection with the Superannuation Fund, but does not include any Employment Wrongful Act.

**Wrongful Act** means:

- a) a Management Wrongful Act; or
- b) an Employment Wrongful Act; or
- c) a Labour Hire Services Wrongful Act; or
- d) a Trustee Wrongful Act.

**You / Your / Insured** means:

- a) the Company; and
- b) the Insured Persons;
- c) any Trustee; and
- d) for the purposes of Insuring Clause 9 only, Professional Workers.

## WHAT YOU ARE INSURED AGAINST

Where an Insuring Clause is listed as 'Not Included' in the Schedule then there is no cover under that Insuring Clause nor under the Extensions to that Insuring Clause.

### Management Liability

#### Insuring Clause 1: Directors and Officers Liability

We will pay, on Your behalf, Loss resulting from Claims first made against the Insured Persons and notified to Us during the Period of Insurance based on Management Wrongful Acts for which the Company has not agreed to provide indemnity.

#### Insuring Clause 2: Company Reimbursement

We will pay, on behalf of the Company, Loss resulting from Claims first made against the Insured Persons and notified to Us during the Period of Insurance based on Management Wrongful Acts if, and to the extent that, the Company has agreed to provide indemnity to the Insured Persons for such Loss.

#### Insuring Clause 3: Company Liability

We will pay on behalf of the Company, Loss resulting from Claims first made against the Company and notified to Us during the Period of Insurance based on Management Wrongful Acts.

#### Insuring Clause 4: Employment Practice Liability

We will pay, on Your behalf, Loss resulting from Claims first made against You and notified to Us during the Period of Insurance, where such Loss is in respect of or arising out of an Employment Wrongful Act.

Our total liability under this Insuring Clause will not exceed in the aggregate, the Employment Practice Liability Sub-limit specified in the Schedule.

#### Insuring Clause 5: Trustee Liability

We will pay, on behalf of the Trustee, Loss resulting from Claims first made against the Trustee and notified to Us during the Period of Insurance, based on Trustee Wrongful Acts in connection with the Superannuation Fund.

#### Insuring Clause 6: Fidelity

We will pay the Company for Policy Claims for Fidelity Loss first Discovered and notified to Us during the Period of Insurance.

Our total liability under this Insuring Clause will not exceed in the aggregate, the Fidelity Sub-limit specified in the Schedule.

#### Insuring Clause 7: Business Crisis Consultant Fees

We will pay on behalf of the Company, Business Crisis Consultant Fees incurred by the Company in responding to a Business Crisis Event that first occurs during the Period of Insurance. Our total liability under this Insuring Clause will not exceed in the aggregate, the Business Crisis Consultant Fees Sub-limit specified in the Schedule.

#### Insuring Clause 8: Tax Audit Costs

We shall pay on behalf of the Company necessary Tax Audit Costs reasonably incurred by the Company up to the completion of the audit or investigation provided that the Company first received a Tax Audit Notice from the Australian Taxation Office during the Period of Insurance and notified to Us of such notice during the Period of Insurance.

We shall only pay Tax Audit Costs under this Extension if:

- a) all taxation and other returns are submitted within the time limits prescribed by all relevant statutes and regulations or as required by or on behalf of the Australian Taxation Office or within the extensions of time granted by the Australian Taxation Office.
- b) upon the Company or any other person acting on the Company's behalf becoming aware of any error or deficiencies in any information, return of income or any other documentation furnished to the Australian Taxation Office, the Australian Taxation Office is notified accordingly without delay.
- c) all taxes are paid by the due date or within any extension granted by the Australian Taxation Office.
- d) a full and complete disclosure of all income including capital gains as required by any legislation is made by the Company or any other person acting on the Company's behalf.
- e) all correspondence, requests and inquiries from the Australian Taxation Office are dealt with within reasonable time.
- f) direct access to the Accountant or Registered Tax Agent is granted to Us and full cooperation by them is given to Us.

- g) At Our request the Company instructs all Accountants or Registered Tax Agents, lawyers or other persons or organisations engaged by the Company to produce to Us, without delay, any documents or information or advice in the Company's or their possession which We shall require in connection with any claim made under Tax Audit Costs Extension

We are not liable to indemnify the Company for any Claim, Loss or loss in respect of Tax Audit Costs in connection with:

- a) any improper, unwarranted or unjustified delay, refusal or failure to comply with any request made by or on behalf of the Australian Taxation Office, for the production of documents or the furnishing of information by You;
- b) inquiries from the Australian Taxation Office which are not related to an identified intention to conduct an audit or likely future audit;
- c) any audit or investigation concerning income earned or where the source of income is outside Australia and its external territories, or where the services giving rise to the audit are performed by persons or any corporate entity ordinarily resident outside Australia;
- d) matters arising under customs legislation;
- e) any audit or investigations, notice of which or information as to their likely conduct, was received by You or any person acting on Your behalf, prior to the Period of Insurance. Receipt of such communication will have occurred where the Australian Taxation Office makes communication with You or any other person acting on Your behalf;
- f) any fraudulent act, error, omission or fraudulent misrepresentation committed by You or on Your behalf;
- g) the imposition of or seeking to impose any tax, penalty tax, costs, interest, fine or any fees or expenses in connection with any criminal prosecution;
- h) an audit or investigation of a return of income that has not been prepared or reviewed by the Accountant or Registered Tax Agent, except where the return is a prescribed sales tax return or a prescribed payroll tax return;
- i) Tax Audit Costs incurred after the audit or investigation has been completed. The aggregate Sub-Limit of Liability for all payments under this extension shall not exceed one hundred thousand Australian dollars (AUD100,000).

The Company will be liable for a Tax Audit Costs deductible of one thousand Australian dollars (AUD1,000) for each and every claim.

For the purposes of this extension Tax Audit Costs means any fees, charges or disbursements of an Accountant or Registered Tax Agent or any other consultant who is not an Insured Person engaged by or replacing the Accountant or Registered Tax Agent, for work undertaken in connection with the audit or investigation.

For the purposes of this extension Tax Audit Notice means any notification from the Australian Taxation Office, office of state revenue, or any other Australian Commonwealth, State or Territory department, body, agency or authority, relating to the Insured's liability to pay income tax, payroll tax, fringe benefits tax, capital gains tax, A New Tax System (Goods and Services Tax), superannuation payments tax, termination payments tax, land tax, stamp duty or sales tax (including the amount of any such tax) only.

For the purposes of this extension Accountant or Registered Tax Agent means a person who is not an Insured and is recognised by either the Institute of Chartered Accountants or the Australian Society of Accountants, or any other person registered by the Australian Taxation Office as a tax agent, engaged by You for the purpose of preparing, or supervising the preparation of, or reviewing prior to dispatch, all returns and statements required by the Australian Taxation Office, in respect of any liability to pay tax by the Company. Subject otherwise to all other terms, conditions, exclusions and limitations of this insurance.

### Professional indemnity cover

#### Insuring Clause 9: Labour Hire Professional Indemnity Insuring Clause

We will pay on Your behalf, Loss resulting from Claims first made against You and notified to Us during the Period of Insurance based on liability at law for Labour Hire Services Wrongful Acts in the conduct of the Labour Hire Services.

### Limits of Liability and Excess

If the Insured is comprised of more than one entity, the Management Liability Limit of Liability, Professional Indemnity Limit of Liability and Excess applies to the group of such entities as a whole.

### Management Liability Limit of Liability

Our liability to You under Insuring Clauses 1, 2, 3, 4, 5, 6, 7 and 8 of this Policy will not exceed the Management Liability Limit of Liability in the aggregate for all:

- a) Loss resulting from all Claims first made and notified to Us during the Period of Insurance; and
- b) Policy Claims for Fidelity Loss first Discovered and notified to Us during the Period of Insurance; and
- c) Business Crisis Consultant Fees incurred in responding to a Business Crisis Event first occurring during the Period of Insurance.

We have no liability under Insuring Clauses 1, 2, 3, 4, 5, 6, 7 and 8 of this Policy for any amount above the Management Liability Limit of Liability.

The purchase of any Extended Reporting Period will not increase or reinstate the Management Liability Limit of Liability or any Sub-limit of Liability, which will be Our maximum liability for the Period of Insurance and Extended Reporting Period, combined.

### Professional Indemnity Limit of Liability

Our liability to You under Insuring Clause 9 of this Policy will not exceed the Professional Indemnity Limit of Liability in the aggregate for all:

- a) Loss resulting from all Claims first made and notified to Us during the Period of Insurance; and
- b) Policy Claims for costs and expenses reasonably incurred in replacing or restoring lost or damaged Documents for loss or damage first discovered by You and notified to Us during the Period of Insurance.

We have no liability under Insuring Clause 9 of this Policy for any amount above the Professional Indemnity Limit of Liability.

The purchase of any Extended Reporting Period will not increase or reinstate the Professional Indemnity Limit of Liability or any Sub-limit of Liability, which will be Our maximum liability for the Period of Insurance and Extended Reporting Period, combined.

### Excess

You are liable for the amount of Loss that is less than the Excess for each:

- a) Claim; and
- b) Policy Claim.

The Excess is deducted from Loss payable before the application of the Management Liability Limit of Liability, Professional Indemnity Limit of Liability or Sub-limit of liability.

We have no liability for the amount of Loss that is less than the Excess.

You agree that the Excess specified in the Schedule must be retained by You and is to remain uninsured.

The Excess will not apply to the Fraud Investigator Expenses Extension, the Lost Documents Extension, Business Crisis Consultant Fees or any Loss directly payable by any Insured who is a natural person.

### Related Claims

For the purpose of the calculation of the Management Liability Limit of Liability, Professional Indemnity Limit of Liability, any Sub-limit of or Excess, all Related Claims will be deemed to be one Claim and cover for all Related Claims will be provided as follows:

- a) if the first Related Claim is first made during this Period of Insurance and notified to Us during this Period of Insurance or any applicable Extended Reporting Period, then cover for all subsequent Related Claims will only be provided under this Policy; and
- b) if the first Related Claim was first made and notified to Us during a period prior to this Period of Insurance, during which You had cover with Us, then cover for all Related Claims will only be provided under that earlier Policy with Us, subject to the terms, excess and limit of liability of that earlier Policy; and
- c) if the first Related Claim was first made during a period prior to this Period of Insurance, during which You did not have cover with Us, then no cover for any Related Claim will be provided under this Policy.

### Related Fidelity Loss

For the purpose of the calculation of the Fidelity Sub-limit or Excess, all Policy Claims for Fidelity Loss sustained as a result of the same or causally related acts, causes or events will be deemed to be one Policy Claim regardless of when during the Period of Insurance or prior thereto such acts occurred.

### Retroactive Date

The Policy shall only provide cover with respect to Wrongful Acts committed after the retroactive date specified in the Schedule.

### EXTENSIONS APPLICABLE TO SECTION TWO

Unless otherwise stated, any payment made under each of these Extensions will be part of and not in addition to the Professional Indemnity Limit of Liability or the Management Liability Limit of Liability as applicable to the stated Insuring Clause in relation to which the payment is made pursuant to the Extension. These Extensions only extend the stated Insuring Clauses.

### Acquisition or Creation of New Subsidiaries

Insuring Clauses 1, 2, 3, 4, 5, 6 and 9 are extended as follows:

If, during the Period of Insurance, the Company acquires or creates a new Subsidiary that has total assets (by reference to the new Subsidiary's most recent financial statements as at the time of acquisition or creation) that are no greater than the total assets of the Company (by reference to the Company's most recent financial statements as at the time of acquisition or creation), then the definition of Company will be extended to include the new Subsidiary, but cover only applies in respect of Wrongful Acts or any dishonest or fraudulent act committed or alleged to have been committed subsequent to the acquisition or creation of such Subsidiary.

The inclusion of such new Subsidiary does not extend the definition of Labour Hire Services.

The definition of Company will not be extended to include any new Subsidiary acquired or created by the Company that:

- a) has any of its Securities listed on any exchange in North America; or
- b) is domiciled or incorporated in North America.

### Advancement of Defence Costs and Representation Expenses

Insuring Clauses 1, 2, 3, 4, 5 and 9 and the Representation Expenses Extension, Occupational Health and Safety Expenses Extension and Pollution Expenses Extension are extended as follows:

We will advance Defence Costs and, under the Representation Expenses Extension, Occupational Health and Safety Expenses Extension and Pollution Expenses Extension, Representation Expenses. However, if and to the extent that You are not entitled to cover for Loss under the terms of this Policy, then We will cease to advance Defence Costs and Representation Expenses and any amounts previously advanced shall be repaid to Us by You within thirty (30) days following a request by Us for such repayment.

If a Claim alleges a Wrongful Act or illegal or improper conduct as described in the Dishonest or Criminal Intent / Improper Conduct Exclusion, then We will advance Defence Costs and Representation Expenses in respect of such Claim until it is found by way of an admission by You, judgment or adjudication that such Insured did in fact commit such Wrongful Act or engage in such illegal or improper conduct and any amounts previously advanced shall be repaid to Us by You within thirty (30) days following a request by Us for such repayment.

### Company Statutory Pecuniary Penalties

Insuring Clauses 3, 4 and 9 are extended to cover, to the extent permitted by law, any statutory pecuniary penalties imposed upon the Company based on Wrongful Acts, except for any statutory pecuniary penalties imposed:

- a) pursuant to any Consumer Protection Act; or
- b) pursuant to any law regulating air, marine or vehicular traffic; or
- c) directly or indirectly as a result of or in connection with a requirement to pay taxes, duties, rates, levies, charges, fees or any other revenue raising measure;
- d) where the Company knew, or where a reasonable person in the circumstances ought reasonably to have known, prior to the Period of Insurance that the Company had contravened a law and committed an offence pursuant to that law; or

- e) as a result of further Wrongful Acts committed after the Company first knew, or where a reasonable person in the circumstances ought reasonably to have known, that the Company had contravened a law and committed an offence pursuant to that law, and which led to the imposition of increased or additional statutory pecuniary penalties.

The cover provided under this Extension will only apply to such statutory pecuniary penalties imposed in the jurisdiction of Australia and pursuant to the laws of Australia.

Our total liability under this Extension will not exceed in the aggregate, the Company Statutory Pecuniary Penalties Sub-limit specified in the Schedule.

In the event of any conflict between this Extension and the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion, this Extension shall apply.

In the event of any conflict between this Extension and the Pollution Exclusion, this Extension shall apply, except where Pollution arises directly or indirectly from or in respect of the Insured's liability as owner or operator of any aircraft, marine craft or motor vehicle of any kind.

### Continuity

Insuring Clauses 1, 2, 3, 4, 5 and 9 are extended as follows:

In the absence of fraudulent non-disclosure or fraudulent misrepresentation, where a Claim that would otherwise be covered by this Policy is excluded by the Known Claims and Circumstances Exclusion, then cover is provided under this Policy, provided that:

- a) You first became aware of the fact, event, circumstance or Wrongful Act that gave rise to the Claim after the Continuity Date specified in the Schedule; and
- b) You were insured against the Wrongful Act by Us at the time when You first became aware of such fact, event, circumstance or Wrongful Act and has since been insured continuously by Us, under a Policy of which this Policy is a replacement; and
- c) no Related Claim has been made against You prior to the Period of Insurance.

- d) The cover provided under this Extension will be in accordance with this Policy, except that:

- i) if the excess applicable to the Policy in force at the time when You first became aware of such fact, event, circumstance or Wrongful Act is higher than the Excess specified in the Schedule, then that higher amount will be deemed to be the Excess specified in the Schedule in respect of such Claim; and
- ii) if the amount of the limit of liability applicable to the Policy in force at the time when You first became aware of such fact, event, circumstance or Wrongful Act is lower than the amount of the Professional Indemnity Limit of Liability or Management Liability Limit of Liability, as applicable, then that lower amount will be deemed to be the amount of the Professional Indemnity Limit of Liability or Management Liability Limit of Liability, as applicable, in respect of such Claim.

### Extended Reporting Period

Insuring Clauses 1, 2, 3, 4, 5, 6 and 9 are extended as follows:

In the event that this Policy is neither renewed nor replaced at the end of the Period of Insurance with insurance that covers substantially the same risk exposure as this Policy, You will be entitled to purchase an Extended Reporting Period of ninety (90) days.

The Extended Reporting Period begins immediately following the expiry of the Period of Insurance and ends on the earlier of 4.p.m. Local Standard Time on the ninetieth (90th) day thereafter, or at the time on the effective date on which You obtain insurance that covers substantially the same risk exposure as this Policy.

The additional premium for the Extended Reporting Period will be twenty five percent (25%) of the Full Annual Premium.

The entitlement to purchase the Extended Reporting Period lapses upon expiry of the Period of Insurance.

The application to purchase the Extended Reporting Period must be received by Us prior to the expiry of the Period of Insurance, and payment of the additional premium must be made to Us within thirty (30) days of the same date.

In the event that a Merger or Acquisition takes place, You will not be entitled to purchase the Extended Reporting Period.

During the Extended Reporting Period You may continue to notify Us of:

- a) Claims, but only Claims based on Wrongful Acts committed or alleged to have been committed prior to expiry of the Period of Insurance.
- b) Policy Claims, but only Policy Claims for Fidelity Loss caused by dishonest or fraudulent acts committed prior to expiry of the Period of Insurance.

Any notification to Us during this Extended Reporting Period will be deemed to have been first notified to Us during the Period of Insurance.

#### Extended Reporting Period for Retiring Directors and Officers

Insuring Clauses 1, 2 and 4 are extended as follows:

In the event that the this Policy is neither renewed nor replaced at the end of the Period of Insurance with insurance covering at least substantially the same risk exposure as Insuring Clauses 1 and 2, then any Director or Officer who retires from all paid employment and office during the Period of Insurance, but prior to a Merger or Acquisition, shall be entitled to an Extended Reporting Period of three hundred and sixty five (365) days immediately following expiry of the Period of Insurance.

During the Extended Reporting Period the Director or Officer may continue to notify Claims to Us, but only Claims based on Wrongful Acts committed or alleged to have been committed prior to the date of retirement.

Any Claim made and notified to Us during this extended reporting period will be deemed to have been first made and notified to Us during the immediately preceding Period of Insurance.

#### Fraud Investigator Expenses

If Insuring Clause 6 is noted as included in the Schedule it is extended to cover all reasonable expenses (excluding overtime wages, salaries, fees and other internal costs incurred in the normal course of business) incurred by the Company with Our prior written consent, solely to investigate, prove and substantiate the amount of the Policy Claim.

Our total liability under this Extension will not exceed in the aggregate the Fraud Investigator Expenses Sub-limit specified in the Schedule.

#### Legal Representatives

Insuring Clauses 1, 2, 4, 5 and 9 are extended as follows:

If an Insured Person or Trustee dies or becomes legally incapable or bankrupt, then this Policy will afford cover for Loss resulting from Claims:

- a) first made against such Insured Person's or Trustee's estate, heirs, executors or other legal representatives; and
- b) notified to Us,

during the Period of Insurance based on Wrongful Acts by such Insured Person or Trustee. However, the estate, heirs, executors or other legal representatives must comply with the terms of this Policy.

#### Lost Documents

Insuring Clause 9 is extended as follow:

We will pay the Company for Policy Claims for costs and expenses reasonably incurred by them in replacing or restoring lost or damaged Documents where such loss or damage is first discovered by You and notified to Us during the Period of Insurance, provided that:

- a) such loss or damage is sustained while the Documents are either in transit or in the care, custody or under the control of the Insured or of any person to whom You have entrusted them; and
- b) where the Documents are in electronic format, You or any person to whom You have entrusted them, have in place sufficient and proper procedures for the security and the daily back-up of the Documents.

Our total liability under this Extension will not exceed one hundred thousand dollars (AUD100,000) in the aggregate.

The Excess does not apply to this Extension.

### Occupational Health and Safety Expenses

Subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension, Insuring Clauses 1, 2, and 3 are extended as follows:

Notwithstanding the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion We will pay, on behalf of You:

- a) Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against You and notified to Us during the Period of Insurance, based upon occupational health and safety law which results from a Wrongful Act; and
- b) Representation Expenses, where the subject matter of the official investigation, examination, inquiry or other proceedings is occupational health and safety law.

Under this Extension, Representation Expenses also includes necessary and reasonable costs, charges and expenses (other than regular or overtime wages, salaries, fees or Benefits of the Insured Person) incurred with Our prior consent, in representing and assisting You at a visit from an inspector of a workplace health and safety authority in connection with and following a workplace safety incident, provided that notice of the visit is given to You and is notified to Us during the Period of Insurance.

The cover provided under this Extension will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

Our total liability under this Extension to Insuring Clause 3 will not exceed in the aggregate, the Company Occupational Health and Safety Expenses Sub-limit specified in the Schedule.

If there is an entitlement to payment under the Pollution Expenses Extension then there is no entitlement to payment under this Extension.

### Outside Directorships

Insuring Clauses 1, 2 and 4 are extended to include as an Insured Person a person who, at the written request of the Company was prior to the Period of Insurance, or is during or after the Period of Insurance a director or officer of, or occupies a position of equivalent status in, any Non Profit Outside Entity or Outside Entity.

Any cover afforded by this Extension will be specifically excess of:

- a) any indemnity; or
- b) any insurance contract specified in the Schedule or by Endorsement,

available from or through the Non-Profit Outside Entity or Outside Entity.

You must notify Us of any insurance contract under which any Insured Person is entitled to an indemnity in respect of an Outside Entity as soon as reasonably practicable, providing full details of such other insurance contract, including the identity of the insurer, the Policy number and such further information as We may reasonably require.

We will not be liable under this Extension for Loss resulting from any Claim by a Non-Profit Outside Entity or Outside Entity, or any director or officer of, or any person of equivalent status in a Non-Profit Outside Entity or Outside Entity, except for any Claim:

- a) resulting from an Employment Wrongful Act; or
- b) solely for a contribution or indemnity in respect of a Claim which is brought against another Insured Person and is covered under this Policy; or
- c) by that Non-Profit Outside Entity or Outside Entity as a statutory derivative action, but not voluntarily solicited or assisted by that Non-Profit Outside Entity or Outside Entity or by a director or officer of, or a person of equivalent status in, that Non-Profit Outside Entity or Outside Entity; or
- d) by a liquidator, administrator or receiver or equivalent in any jurisdiction, but not voluntarily solicited or assisted by that Non-Profit Outside Entity or Outside Entity or by a director or officer of, or a person of equivalent status in, that Non Profit Outside Entity or Outside Entity; or
- e) by a Non-Profit Outside Entity or Outside Entity pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001.



## Pollution Expenses

Subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension, Insuring Clauses 1, 2 and 3 are extended as follows:

Notwithstanding the Bodily Injury and Property Damage Exclusion, the Occupational Health and Safety Law Exclusion or the Pollution Exclusion, We will pay:

- a) on Your behalf, Defence Costs incurred in defending Claims (other than a civil claim for compensation or damages) first made against You and notified to Us during the Period of Insurance, based on Pollution which results from a Wrongful Act; and
- b) on behalf of the Insured Person, Company, Representation Expenses, where the subject matter of the official investigation, examination, inquiry or other proceedings is Pollution,

The cover provided under this Extension will only apply to Claims made in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand

Our total liability under this Extension will not exceed in the aggregate, the Pollution Expenses Sub-limit specified in the Schedule.

## Representation Expenses

Insuring Clauses 1, 2, 3, 4, 5 and 9 are extended as follows:

We will pay Representation Expenses on behalf of the Insured Person, Company or Trustees subject to the provisions of the Advancement of Defence Costs and Representation Expenses Extension.

If there is an entitlement to payment under the Occupational Health and Safety Expenses Extension or the Pollution Expenses Extension, then there is no entitlement to payment under this Extension.

Our total liability under this Extension to Insuring Clause 9 will not exceed in the aggregate, the Labour Hire Representation Expenses Sub-limit specified in the Schedule.

## Spouses

Insuring Clauses 1, 2, 4, 5 and 9 are extended as follows:

If a Claim against an Insured Person or Trustee includes a claim against such Insured Person's or Trustee's Spouse solely by reason of (i) such Spouse's legal status as a Spouse of such Insured Person or Trustee, or (ii) such Spouse's ownership interest in property which the claimant seeks as recovery for Claims made against such Insured Person or Trustee, then all loss which such Spouse becomes legally liable to pay resulting from such Claim will be treated for the purposes of this Policy as Loss.

This Extension does not apply to the extent the Claim alleges any act, error or omission by such Insured Person's or Trustee's Spouse.

## Statutory Pecuniary Penalties

Insuring Clauses 1, 2, 4, 5 and 9 are extended to cover, to the extent permitted by law, any statutory pecuniary penalties imposed upon the Insured Person or Trustee based on Wrongful Acts.

In the event of any conflict between this Extension and the Bodily Injury and Property Damage Exclusion or the Occupational Health and Safety Law Exclusion, this Extension shall apply.

In the event of any conflict between this Extension and the Pollution Exclusion, this Extension shall apply, except where Pollution arises directly or indirectly from or in respect of Your liability as owner or operator of any aircraft, marine craft or motor vehicle of any kind.

The cover provided under this Extension will only apply to such statutory pecuniary penalties imposed in the jurisdictions of Australia and New Zealand and pursuant to the laws of Australia or New Zealand.

Our total liability under this Extension will not exceed in the aggregate, the statutory Pecuniary Penalties Sub-limit specified in the Schedule.

### Sub-contractors and Consultants

Insuring Clause 9 is extended as follows:

Insuring Clause 9 covers the acts, errors or omissions of sub-contractors and consultants, but only in respect of Your liability at law for Labour Hire Services Wrongful Acts in the conduct of the Labour Hire Services provided by the sub-contractor and/or consultant on Your behalf. Cover will not extend to the sub-contractor and/or consultant who committed the act, error or omission for any Claim in connection with dishonesty.

### Subsidiary Run-off cover

Insuring Clauses 1, 2, 3, 4, 5, 6, and 9 are extended as follows:

If a Subsidiary ceases to be a Subsidiary during the Period of Insurance, then this Policy will remain in force in respect of Subsidiary until the expiry of the Period of Insurance as follows:

- a) under Insuring Clauses 1, 2, 3, 4, 5 and 9, only in respect of Loss resulting from Claims based on Wrongful Acts committed or alleged to have been committed; and
- b) under Insuring Clause 6, only in respect of Fidelity Loss sustained,

prior to the time such Subsidiary ceases to be a Subsidiary.

There shall be no cover in respect of such Subsidiary under Insuring Clause 9 for Business Crisis Consultant Fees in responding to a Business Crisis Event occurring after the time such Subsidiary ceases to be a Subsidiary.

## CONDITIONS APPLICABLE TO SECTION TWO

### Acquisition, Merger or Winding Up of the Insured

If, during the Period of Insurance, any of the following events occur:

- a) 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 or arrangement or compromise or a winding up process in respect of the Insured,

then this Policy will remain in force until the expiry of the Period of Insurance:

- c) under Insuring Clauses 1, 2, 3, 4, 5 and 9, only in respect of Loss resulting from Claims based on Wrongful Acts committed or alleged to have been committed; or under Insuring Clause 6, only in respect of Fidelity Loss sustained, prior to the events described in a or b above.

There shall be no cover under Insuring Clause 7 for Business Crisis Consultant Fees in responding to a Business Crisis Event occurring as a result of, or after, the events described in a) or b) above.

### Company Failure to Indemnify

Where Insuring Clause 2 applies and the Company is in liquidation (other than voluntary liquidation) and has insufficient funds available to indemnify the Insured Persons for Loss as agreed, then the Excess applicable to the Company specified in the Schedule is not payable to Us.

### Confidentiality

You must not disclose the existence or terms of this Policy, including without limitation the Limit of Liability, the nature of the insurance or the premium payable under the Policy to any person who is not an Insured except where:

- a) You are required by law or stock exchange rules to do so; or
- b) We provide Our prior written consent to such disclosure.

### Disclosure

Each Insured represents that the information about that Insured supplied to Us before the Period of Insurance in respect of this Policy is correct, true and complete. You acknowledge that We rely on this information and this representation.

No breach of this Policy or knowledge or information possessed by the Company or any Insured Person shall be imputed to another except as provided for above.

### Jurisdiction

Except where otherwise provided, this Policy provides cover for Claims made anywhere in the world except for those Claims:

- a) brought in a court of law, arbitration, tribunal forum or other body entitled to impose enforceable orders against You in North America; or

- b) arising from the enforcement of any judgment, order or award in respect of any action brought in any court of law in North America

### Other Notices

Any communications to Us under this Policy, including any application to purchase an Extended Reporting Period, must be sent by You to Us at Our address or facsimile number specified in the Schedule.

Notice to the Insured may be given to You or Your agent at the broker name and address specified in the Schedule.

### Severability and Imputation

For the purposes of this Policy, any knowledge or information possessed by any past, present or future chief executive officer, chief operating officer, chief financial officer, chief legal officer (or similar positions) or chairman of the board of directors shall be imputed to the Company.

The Proposal made to Us prior to entering into this Policy shall be construed as separate applications for cover by the Company and each Insured Person and, except as provided for above, no information provided by or representation made by one, shall be imputed to another.

### EXCLUSIONS APPLICABLE TO SECTION TWO

These Exclusions apply to all the terms of this Section of the Policy unless otherwise stated. Where an Exclusion applies to a particular Insuring Clause then it also applied to the Extensions to that Insuring Clause.

We will not be liable for:

#### Asbestos

Loss resulting from Claims or Policy Claims arising directly or indirectly from or in respect of Asbestos, Asbestos fibres or derivatives of Asbestos.

#### Benefits

Loss resulting from Claims arising directly or indirectly from or in respect of an actual or alleged violation of the responsibilities, obligations or duties imposed by any law relating to workers compensation, unemployment insurance, retirement benefits, social security or disability benefits.

This Exclusion will not apply to Insuring Clauses 1, 2 or 9.

### Bodily Injury and Property Damage

- a) under Insuring Clauses 1, 2, 3, 4 and 5, We will not be liable for Loss resulting from Claims for bodily injury, any form of psychiatric, psychological or mental injury, illness, disease or death of any person, or damage to or destruction of any tangible property, including any consequent loss of use thereof except that this Exclusion will not apply in respect of any actual or alleged psychiatric, psychological or mental injury alleged in any Claim by any Insured Person resulting from any Employment Wrongful Act; and
- b) under Insuring Clause 9, We will not be liable for Loss resulting from Claims arising directly or indirectly from or in respect of:
- i) bodily injury, illness or disease or death of any person, provided that this Exclusion does not apply to any form of purely psychiatric, psychological or mental injury sustained by any person; or
  - ii) damage or destruction of any tangible property, including any consequent loss of use thereof or any consequential loss;

unless as a result of breach of professional duty by You.

### Capital Raising

Loss resulting from Claims arising directly or indirectly from or in respect of any offer for the raising of capital by debt or equity, including but not limited to any prospectus.

### Dishonest or Criminal Intent / Improper Conduct

Loss resulting from Claims against any Insured arising directly or indirectly from or in respect of:

- a) any Wrongful Act committed by that Insured with wilful, reckless, dishonest, fraudulent, malicious or criminal intent; or
- b) that Insured improperly using their position to gain an advantage for that Insured or someone else or to cause a detriment to the Company; or
- c) that Insured improperly using information obtained as a result of their position to gain an advantage for that Insured or someone else or to cause a detriment to the Company,

in each case only if established by any admission by the Insured, judgment, or other adjudication.

For the purpose of this Exclusion, the fact that one Insured has committed or is alleged to have committed the conduct described in a), b) or c) above will not be imputed to any other Insured.

### Fading and Mould

We will not be liable under the Lost Documents Extension, for Policy Claims for costs and expenses incurred in replacing or restoring lost or damaged Documents where such loss or damage is caused by fading, mould, vermin, pest infestation, wear, tear or any other gradually operating cause.

### Industrial Relations

Loss resulting from Claims arising directly or indirectly from or in respect of collective industrial or labour relations including but not limited to: strikes; lock-outs; demarcation disputes; negotiating awards or enterprise agreements; collective redundancies; obligations to consult representatives and employees in relation to redundancies and other actions that arise; other than Claims based on an individual employment relationship.

This Exclusion will not apply to Insuring Clauses 1 or 2.

### Insolvency

- a) Loss resulting from Claims; or
- b) Business Crisis Consultant Fees

arising directly or indirectly from or in respect of the insolvency (whether actual, deemed or otherwise) of the Company including but not limited to:

- i) the aforementioned companies continuing to trade whilst insolvent; or
- ii) the failure of the Company to enter into voluntary administration as and when the Insured Persons knew or reasonably ought to have known that the Company was insolvent or likely to become insolvent; or
- iii) the incurring of debt by the Company when the Company was insolvent or became insolvent by incurring that debt, or by incurring at that time debts including that debt; or
- iv) the failure of the Company to meet its financial commitments as and when they fall due; or
- v) any breach by any Insured Persons of any duty (whether imposed by common law, statute or by reason of the Insured Person being a fiduciary or otherwise) in allowing the Company to become insolvent; or

- vi) any omission or decision made or course of action taken by any Insured Person that results in the Company becoming insolvent or continuing to trade whilst insolvent; or
- vii) any representation made by an Insured Person as to the solvency or future prospects of the Company at a time when the Company was insolvent or likely to become insolvent; or
- viii) the Company entering into a transaction that is voidable; or
- ix) the appointment of a liquidator or receiver.

### Insured v Insured

Loss, other than Defence Costs, resulting from any Claim by the Company except for any Claim:

- a) by the Company as a statutory derivative action, but not voluntarily solicited or assisted by the Company or an Insured Person; or
- b) by a liquidator, administrator, or receiver or equivalent in any jurisdiction, but not voluntarily solicited or assisted by an Insured Person; or
- c) by the Company pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001.

### Known Claims and Circumstances

Loss resulting from Claims arising directly or indirectly from or in respect of any fact, event, circumstance or Wrongful Act:

- a) known to any Insured at the inception of this Policy and which a reasonable person in the circumstances might reasonably expect to give rise to a Claim; or
- b) which has been or should reasonably have been the subject of any written notice given under any Policy of which this Policy is a direct or indirect renewal or replacement; or
- c) alleged in, discovered in, relating to or underlying any Claim made against any Insured prior to the inception of this Policy.

### Major Shareholder

Loss resulting from Claims (whether in the name of the Company or not) by any shareholder having directly or indirectly Control of fifteen per cent or more of the Company.

### Motor, Marine, Aircraft

Loss resulting from Claims that are claims for compensation or damages arising directly or indirectly from or in respect of Your liability as owner or operator of any aircraft, marine craft or motor vehicle of any kind.

### Nuclear

Loss resulting from Claims or Policy Claims arising directly or indirectly from or in respect of:

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

### Occupational Health and Safety Law

Loss resulting from Claims arising directly or indirectly from or in respect of any breach of occupational health and safety law.

### Occupiers Liability

Loss resulting from Claims that are claims for compensation or damages arising directly or indirectly from or in respect of the actual or alleged occupation of land or buildings by You.

### Pollution

Loss resulting from Claims arising directly or indirectly from or in respect of Pollution including without limitation any Claim for financial loss to the Company arising directly or indirectly from Pollution.

### Product Liability and Product Recall

Loss resulting from Claims arising directly or indirectly from or in respect of:

- a) Your manufacture, distribution and/or sale of products; or
- b) the recall of any products manufactured, distributed and/or sold by You.

### Professional Services

Loss resulting from Claims arising directly or indirectly from or in respect of:

- a) any breach of duty in respect of any professional services or professional advice by You; or
- b) any breach of any contract for the provision of professional services or professional advice by You.

except that this Exclusion will not apply:

- i) under Insuring Clauses 1, 2 or 5 in respect of any actual or alleged professional services or professional advice which is provided by an Insured Person when acting solely in their capacity as an Insured Person, or as a Trustee and in circumstances where such professional services or professional advice is provided to the Insured and not to third parties in the course of the Company's professional business; or
- ii) under Insuring Clause 9, to professional services or professional advice to the extent that they are included within Labour Hire Services.

### ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 3: COMPANY LIABILITY

Under Insuring Clause 3, We will not be liable for:

#### Contractual Liability

Loss resulting from Claims arising directly or indirectly from or in respect of any actual or alleged breach of any term of any contract, whether express or implied.

#### Intellectual Property Rights

Loss resulting from Claims arising directly or indirectly from or in respect of any alleged or actual breach of any other party's intellectual property rights, or infringement or violation of any trade secret.

#### Privacy Rights

Loss resulting from Claims arising directly or indirectly from or in respect of any alleged or actual breach of any other party's privacy rights.

**Restrictive Trade Practices**

Loss resulting from Claims arising directly or indirectly from or in respect of any alleged or actual restrictive trade practices including but not limited to the Competition and Consumer Act 2010 (Cth) or similar legislation in other jurisdictions, or tortious interference with any other party's business or contractual relationships.

**Superannuation Funds**

Loss resulting from Claims arising directly or indirectly from or in respect of any alleged or actual Wrongful Act in connection with any superannuation fund.

**ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 4: EMPLOYMENT PRACTICE LIABILITY**

Under Insuring Clause 4, We will not be liable for:

**Employee Entitlements**

Loss payable for, or in respect of, or calculated by reference to:

- a) salary or wages earned prior to the date of termination; or
- b) Benefits; or
- c) any amount not indemnified by the Company for which any Insured is absolved for payment by reason of any covenant, agreement or court order; or
- d) payment for time in lieu of notice, severance or redundancy.

**Injunctive Relief or Accommodation**

Loss payable for, or in respect of, or calculated by reference to:

the cost of complying with any injunctive or other non-monetary relief or any agreement to provide any such relief; or

costs incurred by any Insured to make any accommodation in respect of working practices or otherwise on the basis of a person's disability or family responsibilities or as may be required under any law relating anti-discrimination.

In the event of an inconsistency between this Exclusion and the definition of Claim, the provisions of this Exclusion shall prevail.

**Liability of Others**

Loss resulting from Claims arising directly or indirectly from or in respect of the liability of others assumed by any Insured under any contract or agreement unless such liability would have attached in the absence of such contract or agreement.

**Specified Period Employment Contract**

- a) Loss, other than Defence Costs and claimant's costs and expenses, resulting from Claims arising directly or indirectly from or in respect of a breach of a specified period employment contract; and
- b) Defence Costs and claimant's costs and expenses resulting from Claims arising directly or indirectly from or in respect of a breach of a specified period employment contract:
  - i) unless and until You have received legal advice based on the facts as they existed as at time of the actual or alleged breach from a competent legal adviser stating that You have reasonable legal grounds to amend or terminate such specified period employment contract; and
  - ii) provided that You have not received legal advice from a competent legal adviser stating that You do not have reasonable legal grounds to terminate specified period employment contract.

For the purposes of this Exclusion a specified period employment contract will be a specified period employment contract irrespective of whether or not such contract provides for a qualified or unqualified right to terminate the contract on notice prior to its expiry date.

**Unfair Employment Contract**

Loss resulting from Claims arising directly or indirectly from or in respect of:

- a) a contract of employment alleged to be unfair; or
- b) the seeking of relief pursuant to Section 106 of the Industrial Relations Act (NSW) 1996 or Section 276 of the Industrial Relations Act (Queensland) or similar legislation in other jurisdictions.

**ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 6: FIDELITY**

Under Insuring Clause 6, We will not be liable for Policy Claims for:

**Confidential Information**

Fidelity Loss arising directly or indirectly from or in respect of the accessing or disclosure of any confidential information, including but not limited to trade secret information, computer programs, confidential processing methods or other confidential information of any kind except where such accessing or disclosure enables the commission of any act otherwise covered under Insuring Clause 6.

**Damage to Premises**

Fidelity Loss arising directly or indirectly from or in respect of damage or destruction to Your premises.

**Discovery Outside the Period of Insurance**

Fidelity Loss first Discovered prior to the commencement of the Period of Insurance or after the expiry of the Period of Insurance.

**Dishonesty or Fraud of Director or Employee Shareholder**

Fidelity Loss arising directly or indirectly from or in respect of any dishonest or fraudulent act committed by:

- a) a Director or Trustee; or
- b) an Employee acting in collusion with a Director or Trustee; or
- c) an Employee having at any time more than five per cent Control of or interest in the Company.

**Indirect or Consequential Loss**

indirect or consequential loss of any kind, including but not limited to loss of income, potential income, interest, profits or dividends, whether or not earned or accrued.

**Loss of Records**

Loss of or damage to records, manuscripts, accounts, microfilms, tapes or other records or the cost of reproducing any information contained in such lost or damaged records.

**Loss Sustained After Discovery**

Fidelity Loss, or that part of any Fidelity Loss, caused by an Employee, which is sustained after Discovery of any dishonest or fraudulent act committed by such Employee.

**Profit and Loss Computation and Inventory Comparison**

Fidelity Loss or that part of any Fidelity Loss, the proof of which is dependent solely upon:

- a) a profit and loss computation or comparison; or
- b) a comparison of inventory records with an actual physical count,

provided that where the Company establishes wholly apart from such computation or comparison that it has sustained Fidelity Loss caused by an identified Employee, then it may offer its inventory records and actual physical count of inventory in support of the amount of Fidelity Loss claimed.

**Retroactive Date**

Fidelity Loss sustained prior to the retroactive date specified in the Schedule.

**Territory**

Fidelity Loss arising directly or indirectly from or in respect of any dishonest or fraudulent act committed in whole or part outside of Australia or New Zealand.

**Trading Loss**

Fidelity Loss arising directly or indirectly from or in respect of any authorised or unauthorised trading in Money, Securities or Covered Property by an Employee, whether acting alone or in collusion with any other person and whether or not such trading is in the name of the Company and whether or not such trading is in a genuine or fictitious account.

**ADDITIONAL EXCLUSIONS APPLICABLE TO INSURING CLAUSE 9: PROFESSIONAL INDEMNITY**

Under Insuring Clause 9, We will not be liable for Loss resulting from Claims:

**Assumed Liability**

- a) arising directly or indirectly from or in respect of any liability assumed by You under any express warranty, guarantee, hold harmless agreement, indemnity clause or the like unless such liability would have attached to You in the absence of such agreement; or
- b) arising directly or indirectly from or in respect of any liability assumed by You outside the normal course of the Labour Hire Services.

This exclusion does not apply where You enter into a written contract which sets aside the proportionate liability provisions of the Civil Liability Act 2002 (NSW) or similar Acts of other States or Territories.

**Conflict of Interest**

arising directly or indirectly from, or in respect of, any Conflict of Interest in connection with the provision of the Labour Hire Services which You have failed to disclose.

**Defective Workmanship**

arising directly or indirectly from or in respect of the rectification of defective or faulty workmanship or the replacement of defective or faulty Products in connection with the Labour Hire Services.

**Employment Agents - Dishonesty of Staff Supplied**

Loss resulting from Claims against You arising directly or indirectly from or in respect of the dishonesty of any person supplied to a client by You occurring or allegedly occurring during the course of any secondment, employment, placement or contract with such client.

**Employment Agents – Persons Supplied**

Loss resulting from Claims against You arising directly or indirectly from or in respect of acts, errors or omissions of any person who has been placed in a permanent position by You in Your capacity as employment agent.

**Financial Product and Services**

arising directly or indirectly from or in respect of providing:

- a) financial product advice, issuing, dealing or arranging for others to deal in financial products; or
- b) a financial service,

except that this Exclusion will not apply to such activities to the extent that they are included within Labour Hire Services.

For the purposes of this Exclusion, “financial product advice”, ‘issuing’, ‘dealing’, ‘financial product’ and ‘financial service’ have the meaning set out in Part 7.1 of the Corporations Act 2001 (Cth).

**Midwifery and Maternity/Obstetrics procedures**

Under Insuring Clause 9 We will not be liable for Claims in connection with midwifery or maternity/obstetrics procedures.

**Related Parties or Financial Interests**

by any:

Insured; or

- a) any entity that is a Subsidiary or parent of an Insured; or
- b) any entity of which an Insured has or has held at least a twenty percent (20%) financial interest and has had or has board representation on that entity; or
- c) by members of an Insured’s family, which means the estates, heirs, legal representatives, assigns or relatives (whether related by consanguinity or affinity) or trustees or beneficiaries of any trust created or maintained by or for the benefit of such individuals.

**Trading Debts**

arising directly or indirectly from or in respect of any liability for any trading debt incurred, or any guarantee in respect of such debt given, by You.



## CLAIMS CONDITIONS APPLICABLE TO SECTION TWO

### Basis of Valuation of Fidelity Loss

#### Allocation of Loss

This Claims Condition applies to any part of any Loss resulting from a Claim which is in respect:

- a) of one Insured only; or
- b) of more than one Insured, whether jointly or severally; or
- c) of one or more Insured and one or more persons or entities who is or are not an Insured, whether jointly or severally, and which is partly covered and partly not covered under this Policy, (together 'Loss to be Allocated')

We must determine a fair and reasonable allocation of the covered part of the Loss to be Allocated among the relevant Insureds and Us having regard to the extent of each Insured's comparative responsibility for the Loss to be Allocated. Our consideration of what is fair and reasonable should include without limitation, the following factors:

- a) the nature of the Claim against each Insured;
- b) the issues of fact and law in relation to each Insured;
- c) the content and the manner of the conduct of any defence of the Claim;
- d) the relative degree of personal responsibility for the Loss;
- e) the extent to which Your responsibility for the Loss is joint, several or shared;
- f) the extent to which any person or entity, other than that Insured, would obtain a benefit from the payment by Us;
- g) the extent to which the Loss is solely of that Insured;
- h) the extent to which the issues in the Claim against that Insured are in common with the issues in the Claim against any other person or entity;
- i) the extent to which the Loss is partly covered and partly not covered under this Policy;
- j) in the event of a settlement, the likely comparative responsibility had the settlement not occurred.

If You wish to dispute Our determination of the allocation, each party agrees that the dispute must be referred for expert determination in accordance with the Australian Commercial Disputes Centre ("ACDC") Mediation Guidelines, to an expert agreed by the parties, or if the parties do not agree on an expert, an expert nominated by the then current CEO of ACDC or the CEO's nominee.

Each party agrees to sign an agreement with the expert that confirms the following:

- a) each party will pay an equal share of the fees for the appointed expert (to be charged at the expert's usual rate); and
- b) the expert may:
  - i) consider relevant industry practice;
  - ii) consider all information presented to the expert by either party;
  - iii) request more information from either party;
  - iv) request a meeting with the parties (to which they may bring their lawyers); and
  - v) the expert must decide within thirty (30) days after the agreement is signed, and need not give reasons; and
  - vi) the expert's decision will be binding on the parties and final; and
  - viii) the expert will exclude all liability of the expert to either party (including liability for negligence) to the full extent permitted by law.

This allocation applies for all purposes under this Policy including the Advancement of Defence Costs and Representation Expenses Extension and the Subrogation and Recoveries Claims Condition.

Any allocation of Loss will not apply to or create a presumption with respect to the allocation of other Loss on account of such Claim.

#### Covered Property

In respect of Loss of Covered Property We will not be liable for more than the actual cash value of Covered Property at the time of Loss or the actual cost of repairing or replacing the Covered Property with property of similar quality or value whichever is the lesser.

## Securities

In respect of Loss of Securities We will not be liable for more than the actual market value of the Securities at the close of business on the business day immediately preceding the day on which the Loss was Discovered or the actual cost of replacing the Securities, whichever is less, plus the cost of posting any required lost instrument bond (which cost will be paid by Us on Your behalf).

The Indirect or Consequential Loss Exclusion does not apply to the calculation of Loss of Securities.

## Claims Conduct

We are entitled to take over and conduct in Your name the defence or settlement of any Claim and will have full discretion in the conduct of any proceedings and in the settlement of any Claim.

We reserve entirely Our rights under this Policy, including Our right to agree or deny cover while We assess a Claim or conduct the defence. Our rights under this Policy are not affected if We do not conduct the defence.

Neither You nor Us will be required to contest or litigate any Claim if, in the opinion of Senior Counsel, reasonable attempts should be made to settle the Claim. The Senior Counsel shall be mutually agreed upon, or in the absence of such agreement, as nominated by the President of the NSW Bar Association. The cost to obtain the opinion will be advanced by Us and treated as Defence Costs.

Senior Counsel shall provide the opinion in writing. In formulating the opinion Senior Counsel shall consider commercial matters including the amount of the Claim, the actual and potential Loss (including Defence Costs) that may reasonably be incurred in contesting the Claim, the liability prospects and the prospect of recovering costs against the claimant in the event that the defence is successful. Senior Counsel shall also provide a settlement range within which reasonable attempts should be made to settle the Claim.

If it is the opinion of Senior Counsel that reasonable attempts should be made to settle the Claim, You shall not object to Our attempt to do so.

## Co-Operation

In the event of a Claim, Policy Claim, Business Crisis Event or Loss, You will at all times and at Your own cost provide Us with all information, evidence, documentation, assistance and co-operation and will execute such documents, including signed statements and affidavits, which We reasonably request.

You will at all times and at its own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to avoid or diminish Loss and to assist with the defence, investigation or settlement of any Claim, Policy Claim or Business Crisis Event.

We may make any investigation We deem necessary.

## Notification

You must give to Us notification of any Claim made against any Insured, Discovery of any Fidelity Loss, any Business Crisis Event or any Loss, as soon as reasonably practicable within the Period of Insurance or within any applicable Extended Reporting Period at the Claims Notification address or facsimile number specified in the Schedule.

Each notification of a Claim must include so far as practicable:

- a) the identity of the claimant or potential claimant; and
- b) the nature of the Claim; and
- c) the likely quantum of the Claim.

Each notification of a Policy Claim must include affirmative proof duly sworn, with full particulars of the Money, Securities or Covered Property involved.

You must provide Us with such further information and documentation as We may reasonably require.

## Settlement

You must not settle or offer to settle any Claim, incur any Defence Costs or Representation Expenses or otherwise assume any contractual obligation or admit any liability in respect of any Claim without Our prior written consent.

If You object to a proposal by Us to settle or compromise any Claim payable under this Policy and wish to contest or litigate the matter, then You may so elect, but Our liability in respect of any such Claim so contested or litigated will not exceed the amount for which, but for such election, it could have been settled or compromised by Us, together with Defence Costs payable in accordance with the terms of this Policy and incurred up to the time of such election.

## Subrogation and Recoveries

### All Recoveries

All recoveries obtained by You from other parties will be allocated, after the settlement of any Claim or Policy Claim under this Policy as follows:

- a) firstly, to Your benefit to reduce or extinguish the amount of Your Loss to the extent that it would have been paid under this Policy but for the fact that such Loss exceeds the sum of the Limit of Liability or the Fidelity Sub limit, and the Excess where applicable; and
- b) secondly, to Our benefit for all sums paid in settlement of Loss arising under this Policy; and
- c) thirdly, to Your benefit for the Excess under this Policy.

All recoveries will be applied as herein only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement of any Claim or Policy Claim under this Policy will be held for Our benefit and applied as stated herein after settlement if any is made.

Recoveries do not include any amount recovered from insurance, suretyship, reinsurance, security or indemnity taken for Our benefit.

### Fidelity Recoveries

In the event of any payment in respect of a Policy Claim:

- a) the Company must, if requested by Us, take all reasonable steps to make recovery from any person committing or condoning the dishonest or fraudulent act or from the legal representatives of such person ; and

- b) to the extent allowed by law, the Insurer will deduct the following from any amount payable in respect of Fidelity Loss caused by or resulting from a dishonest or fraudulent act:
  - i) any monies which but for such dishonest or fraudulent act would be due from the Company to the person committing or condoning such act; and
  - ii) any monies held by the Company and belonging to such person; and
  - iii) any monies recovered under a. above; and

all such monies will be applied towards reducing the amount of the Loss.

### Preservation of rights of recovery

You will take all necessary steps to preserve Your rights of recovery. You will not, without Our prior consent in writing:

- a) release, agree not to sue on, waive or prejudice, any such rights; or
- b) enter into any arrangement or compromise or do any act whereby any rights or remedies to which We would be subrogated are or may be prejudiced.

### Provision of information and assistance

You agree to provide Us with all information, evidence, documentation, assistance and co-operation and to execute such documents, including signed statements and affidavits, which We reasonably request in the exercise of Our rights of recovery.

You will at all times and at Your own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to assist in the exercise of Your rights of recovery.

## SECTION THREE HOST EMPLOYER LIABILITY

---

### GENERAL DEFINITIONS APPLICABLE TO SECTION THREE

**Business** means the business shown in the Schedule.

**Control** means the definition of control in the Corporations Act 2001.

**Damage to Property** means:

- a) physical damage to or loss or destruction of tangible property including resultant loss of use; and
- b) loss of use of tangible property which has not been physically damaged or destroyed.

**Deductible** means the amount and type shown in the Schedule that you are to bear in relation to each claim resulting from an Occurrence and is inclusive of costs.

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

**Employee** means any person engaged in the Business under a contract of service or apprenticeship with You (other than with a principal of the Insured).

**Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury neither expected nor intended by You.

All Personal Injury attributable to one original source, or one original cause, or one original prepared or acquired batch, shall be deemed to be one Occurrence.

**Period of Insurance** means the period shown in the Schedule.

**Personal Injury** means bodily injury, death, sickness, disease, disability, shock, fright, mental injury, mental anguish or loss of consortium resulting from any of them.

**Property** means any tangible, material or physical property, including Electronic Data.

**Territorial Limits** means anywhere within Australia, including its external territories.

**Third Party Worker** means a person employed under a contract of service or apprenticeship with an entity other than the Insured who, pursuant to an agreement between You and that other entity, is supplied by that entity to provide work or services in Your Business.

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

**You, Your, Insured** means the person(s) or entities shown in the Schedule as 'the Insured', who has/have entered into an agreement with an entity for such entity to supply Third Party Workers to provide work or services for Your Business.

## WHAT YOU ARE INSURED AGAINST

In return for payment of the premium by the Insured, We will indemnify You in respect of compensation which You shall become legally liable to pay for Personal Injury to a Third Party Worker, where indemnity is not available to You for the legal liability pursuant to any workers' compensation Policy, and where:

- a) the Third Party Worker has sustained Personal Injury in the course of providing services as defined within the meaning of the workers' compensation legislation in force in the State or Territory of Australia in which the Third Party Worker was working; and
- b) the Third Party Worker is entitled to make a workers' compensation claim with respect to the Personal Injury; and
- c) either a workers' compensation authority has brought a recovery action against You pursuant to the relevant workers' compensation legislation, or the Third Party Worker has claimed directly against You; and
- d) the Personal Injury happened during the Period of Insurance within the Territorial Limits as a result of an Occurrence and in connection with the Business.

We will indemnify You in respect of the amount of such compensation, less the Deductible shown in the Schedule, which is to be borne by You.

The amount payable by us shall not exceed the Limit of Liability specified in the Schedule for any one Occurrence.

### Additional Cover

1. We will also pay, in addition to the Limit of Liability:
  - a) all reasonable legal costs and expenses, incurred with Our prior written consent, in the defence or settlement of any claim made against You and covered under this Policy; and
  - b) all legal costs and expenses recoverable from You; and
  - c) all expenses incurred by You for first aid to others at the time of Personal Injury (other than the payment of any medical expenses by Us which is prohibited by law);
  - d) provided that these legal costs and expenses arise out of claims for compensation for Personal Injury which are covered by this Policy.

2. We will also pay:

- a) all reasonable legal costs and expenses, incurred with Our prior written consent, for Your representation at any Coroner's inquest involving an accident during the Period of Insurance resulting in the death of a Third Party Worker; and
- b) all reasonable legal costs and expenses, incurred with Our prior written consent, in the defence of any action in which You are prosecuted under any Act or Regulations in relation to Personal Injury sustained by a Third Party Worker during the Period of Insurance;

provided that any claim for such costs and expenses is agreed by Us prior to any defence being entered in Your behalf. With respect to a claim under clause 2a) or 2b) above, We will either:

- i) arrange, with Your agreement, such legal representation as We deem necessary to defend any matter the subject of any such claim; or
- ii) allow You to appoint legal representatives of Your choice, subject to Our approval of the conduct of, and fees associated with, the defence of the matter, which We will not unreasonably withhold.

In the event of a dispute with respect to the conduct and cost of any defence under clause 2a) or 2b) herein, the dispute must be referred for arbitration to the President of the Law Society of the State or Territory where the Personal Injury occurred, and the resultant determination will be binding on the parties.

The separate sub-limit applicable to each of the claims under clause 2a) and 2b) above is fifty thousand Australian dollars (AUD50,000) for any one representation and in the aggregate in any one Period of Insurance.

## CONDITIONS APPLICABLE TO SECTION THREE

### Reasonable Care

You, at Your own expense, shall take or cause to be taken all reasonable care to:

- a) maintain premises, plant, equipment and everything used in the Business in proper repair;
- b) employ only competent Employees;
- c) comply with all statutory obligations and regulations imposed by any authority;
- d) remedy any defects or eliminate any dangers which may give rise to Personal Injury or Damage to Property; and
- e) exercise reasonable care with respect to the hiring of all Third Party Workers.

### Subrogation and Recoveries

You will take all necessary steps to preserve Your rights of recovery. You will not, without Our prior consent in writing:

- a) release, agree not to sue on, waive or prejudice, any such rights; or
- b) enter into any arrangement or compromise or do any act whereby any rights or remedies to which We would be subrogated are or may be prejudiced.

You agree to provide Us with all information, evidence, documentation, assistance and co-operation and to execute such documents, including signed statements and affidavits, which We reasonably request in the exercise of Your rights of recovery.

You will at all times and at Your own cost use reasonable endeavours to do and concur in doing everything reasonably practicable to assist in the exercise of Your rights of recovery.

All recoveries obtained by You from other parties will be allocated, after the settlement of any claim under this Policy as follows:

- i) firstly, to Your benefit to reduce or extinguish the amount of Your loss to the extent that it would have been paid under this Policy but for the fact that such loss exceeds the sum of the Limit of Liability and the Deductible; and
- ii) secondly, to Our benefit for all sums paid in settlement of loss arising under this Policy; and

- iii) thirdly, to Your benefit for the Deductible under this Policy.

All recoveries will be applied as herein only after deduction of the reasonable cost of obtaining such recovery. All recoveries made prior to settlement of any claim under this Policy will be held for Our benefit and applied as stated herein after settlement if any is made.

Recoveries do not include any amount recovered from insurance, suretyship, reinsurance, security or indemnity taken for Our benefit.

We will not exercise any subrogated rights of recovery against any full time Employee unless the claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Employee.

## EXCLUSIONS APPLICABLE TO SECTION THREE

This Policy does not cover, and We shall not be liable for:

### Aircraft and Watercraft

Personal Injury directly or indirectly caused or contributed to, or arising from or in connection with, the working or navigation by You or on Your behalf of any vessel or craft made or intended to be water borne other than a watercraft or water vessel not exceeding eight (8) metres in length.

### Asbestos

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.

### Assault and Battery

Personal Injury directly or indirectly caused or contributed to by, or arising from or in connection with, assault and battery committed by You or at Your direction.

### Defamation

Personal Injury directly or indirectly caused or contributed to by, or arising from or in connection with, the publication or utterance of a libel or slander or defamation of character or invasion of right of privacy:

- a) made prior to the commencement of the Period of Insurance; or
- b) made at Your direction with knowledge of the falsity thereof.
- c) related to advertising, broadcasting or telecasting activities.

### Dishonesty

Personal Injury directly or indirectly caused or contributed to by, or arising from or in connection with, any actual or alleged dishonest, fraudulent, malicious, criminal act or omission by You or on Your behalf, or of or on behalf of any Third Party Worker.

### Employment Liability

- a) statutory benefits liable to be paid by You pursuant to, or any other liability imposed by the provisions of, any workers' compensation legislation or accident compensation legislation;

- b) liability imposed by any industrial award or agreement or determination, or any contract of employment or workplace agreement; and
- c) Personal Injury to any Employee arising out of or in the course of his/her employment.

### Fines, Penalties and Liquidated Damages

any amount by way of aggravated, exemplary or punitive damages, or any additional damages resulting from the multiplication of compensatory damages, or in respect of fines or liquidated damages.

### Insolvency

any claim arising from or out of or as a result of Your insolvency, bankruptcy, placement in the hands of a receiver, provisional liquidator or liquidation.

### Jurisdiction

any legal actions made or undertaken against You in any Court outside the Commonwealth of Australia.

### Liability under Agreement

liability assumed solely under any contract or any other agreement unless and to the extent that such liability:

- a) would have attached in the absence of such contract or other agreement;
- b) is specifically allowed by our written endorsement; or
- c) would have been implied by law;

### Pollution

- a) Personal Injury 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 groundwater), unless such discharge, dispersal, release or escape:
  - i) is neither reasonably expected nor intended by You; 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) costs or expenses incurred in preventing, removing, nullifying or cleaning-up any discharge, dispersal, release or escape as described in a) above;

Provided that Our total aggregate liability during any one Period of Insurance, in respect of:

- a) all claims arising from Personal Injury; and
- b) all other claims indemnifiable under this Policy as a result of that same Occurrence

shall not exceed the Limit of Liability stated in the Schedule in respect of pollution liability.

### Professional Duty

Personal Injury caused or contributed to by, or arising from or in connection with, any breach of a duty owed in a professional capacity by You, but this exclusion does not apply to:

- a) the rendering of or failure to render any first aid, medical, health or emergency services by You; and
- b) claims where such breach is in relation to advice or services given gratuitously.

### Property Damage

Damage to Property of whatsoever nature, except where and to the extent provided for under a State or Territory workers' compensation legislation.

### Proximity

any claim for Personal Injury made against You by:

- a) any Third Party Worker named as an Insured in the Schedule; or
- b) any Third Party Worker having direct or indirect Control or an interest of fifteen percent (15%) or more of any company or trust operated or controlled by You, or in which the Third Party Worker's spouse or child has a direct or indirect financial interest of fifteen percent (15%) or more

### Radioactive contamination

Personal Injury directly or indirectly caused or contributed to, by or arising from or in connection with:

- a) ionising radiation or contamination by radioactivity 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; or
- c) any action taken in controlling, preventing, suppressing or in any way relating to paragraphs a) and b) above.

### Tobacco

Personal Injury caused by or arising directly or indirectly out of or due to the inhalation or ingestion of or exposure to:

- a) tobacco or tobacco smoke; or
- b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

### Vehicles

Personal Injury directly or indirectly caused or contributed to or arising from or in connection with the operation, ownership, possession or use by You of any Vehicle which is 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 to Personal Injury which arises out of:

- a) the delivery or collection of goods to or from any Vehicle where such Personal Injury, Damage to Property, liability, loss or damage occurs beyond the limits of any carriageway or thoroughfare; or
- b) the loading or unloading of or the delivery or collection of goods to and from any Vehicle used in work undertaken by You or on Your behalf, but which is not in Your physical or legal control; or
- c) the use of any Vehicle as a tool of trade; or
- d) an injury which for which cover is not provided by the Statutory Insurance except this will not apply where cover is excluded under the Statutory Insurance by reason of any breach of Policy terms or conditions.

Provided that such liability did not arise in circumstances for which indemnity should be provided under any form of Statutory Insurance whether such insurance was effected or not.



SURA Labour Hire Pty Ltd  
ABN 67 604 373 088 (SURA Labour  
Hire) is an authorised representative  
of SURA Pty Ltd ABN 36 115 672  
350 AFSL 294 313 and acts as an  
agent for certain Underwriters at  
Lloyd's and is authorised to arrange,  
enter into / bind and administer this  
insurance for them.

Thank you for receiving this  
document electronically.

SURA Labour Hire Pty Ltd  
supports positive initiatives for  
our environment

**S U R A** LABOUR  
HIRE

---

**NEW SOUTH WALES**

1,04/29-31 LEXINGTON DRIVE  
BELLA VISTA NSW 2153  
PO BOX 7423  
BAULKHAM HILLS NSW 2153  
TELEPHONE. 02 9672 6088

LEVEL 14, 141 WALKER STREET  
NORTH SYDNEY NSW 2060  
TELEPHONE. 02 9930 9500

**TASMANIA**

LEVEL 1, SUITE 6  
175 COLLINS STREET  
HOBART TAS 7000  
TELEPHONE. 03 6231 7700

**WESTERN AUSTRALIA**

LEVEL 1, 35 HAVELOCK STREET  
WEST PERTH WA 6005  
TELEPHONE. 08 6380 6606

**VICTORIA**

LEVEL 9, 99 WILLIAM STREET  
MELBOURNE VIC 3000  
TELEPHONE. 03 8823 9400