



TM
ASR
underwriting
AGENCIES



Policy Wording
Not For Profit
Public & Products Liability Insurance

ASR Underwriting Agencies ABN 84 113 542 233 AFSL 291522

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A copy of these notices should be given to the proposer prior to conclusion of the contract.

1. **Non-Renewable Contract**

Any insurance Policy issued will expire after 12 months without tacit renewal. If the Insured wishes the Policy to be renewed then the Insured must advise the Underwriters of all necessary information in good time.

2. **Policy Subject to Survey**

The Policy is subject to a risk survey to be carried out by or on behalf of the Underwriters. In the event that the survey results in Underwriters wishing not to accept the risk then the Underwriters may cancel the insurance by giving 30 days' notice in writing of their intention to cancel the Policy. Underwriters shall then return a pro-rata proportion of the premium for the period not insured, after deduction of an administration fee of \$5,000. Neither this condition to make a survey nor the carrying out of the same nor any report, requirement or recommendation arising from it shall constitute any undertaking on the part of the Underwriters to determine or warrant that the subject matter of such survey is safe, fit or compliant with any law, rule or regulation.

3. **Insured's Duty of Disclosure**

The Insured has a duty to disclose to the Underwriters, before the contract of insurance is entered into, every matter that is known to the Insured, being a matter that:

- (a) the Insured knows to be a matter relevant to the decision of the Underwriters whether to accept the risk and, if so, on what terms; or
- (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant.

This duty of disclosure also applies to any renewal, extension, variation or reinstatement of the Policy.

The Underwriters are entitled to refuse to cover the additional exposure or charge a reasonable additional premium or, if the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged, to avoid the contract.

If the person or entity who became the Insured under the Policy upon the contract being entered into:

- (c) failed to comply with the duty of disclosure; or
- (d) made a misrepresentation to the Underwriters before the contract was entered into; (but not where the Underwriters would have entered into the contract, for the same premium and on the same terms and conditions, even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into) then
- (e) if the failure was fraudulent or the misrepresentation was made fraudulently, the Underwriters may avoid the contract;
- (f) if the Underwriters are not entitled to avoid the contract or, being entitled to avoid the contract have not done so, the liability of the Underwriters in respect of a claim is reduced to the amount that would place the Underwriters in a position in which the Underwriters would have been if the failure had not occurred or the misrepresentation had not been made.

The Insured shall throughout the Period of Insurance give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the Proposal. In the event of Underwriters being at any time entitled to void the Policy by reason of the Insured failing to give notice in accordance with this Condition, the Underwriters may at their election, instead of voiding the Policy, give notice in writing to the Insured that there shall be excluded from the indemnity any claim which has arisen or may arise which is related to such facts, activities or circumstances.

4. **Claims Made Policy**

The Policy or certain sections of it may be on a claims made basis. (See Policy Schedule.) Where this is so, the Policy will not respond to any events which occurred prior to the Retroactive Date (if any - see clause 4.2 or, in certain circumstances, the inception date of the Policy).

Claims made sections of the Policy will not apply to claims made after the expiry of the Period of Insurance, however, where the Insured gave notice in writing to the Underwriters 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 Underwriters are 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 the insurance cover provided by the contract.

5. **General Insurance Code of Practice**

We subscribe to 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:

- Constantly improve claims handling in an efficient, honest and fair manner;
- Build and maintain community faith and trust in the financial integrity of the insurance industry; and
- Provide helpful community information and education about general insurance.

6. Complaints and Dispute Resolution Process

If you have a complaint about an insurance product issued by us or a service you have received from us, including the settlement of a claim, please contact your intermediary to initiate the complaint with us. If you are unable to contact your intermediary, call us on (07) 3442 3333.

We will ask you to complete a Complaint Report Form and your complaint will be reviewed by our Internal Review Panel free of charge.

We will keep you informed of the progress of our review at least every 10 working days and give you our response in writing within 15 working days provided we have all necessary information and have completed any investigation required.

In the unlikely event that this does not resolve the matter or you are not satisfied with the way your complaint has been dealt with, you should contact the Compliance Manager at:

Lloyd's Australia Limited
Level 21
123 Pitt Street
Sydney NSW 2000
Telephone: (02) 9223 1433

You will be advised whether your dispute will be handled by either Lloyd's Australia or the Complaints Department at Lloyd's in London.

- Where you are a retail client and your dispute is eligible for referral to the Financial Ombudsman Service (FOS), your dispute will be reviewed by a person at Lloyd's Australia with appropriate authority to deal with your dispute.

FOS will review our decision in accordance with their terms of reference. You are not bound by their decision. However, we are bound to act immediately on FOS's decision. This is a free service provided by an independent body. Brochures outlining the operations of FOS are available from us or the Insurance Council of Australia in your State or Territory. You can phone the FOS from anywhere in Australia on 1300 780 808 or write to them at:

Financial Ombudsman Services Limited
Level 12
717 Bourke St
Docklands
Melbourne Vic 3008
Email: info@fos.org.au

- Where you are a retail client and your dispute is not eligible for referral to the FOS, or where you are a wholesale client, Lloyd's Australia will refer your dispute to the Complaints Department at Lloyd's, who will then liaise directly with you.

In this case, you may be eligible for referral to the Financial Ombudsman Service (UK). Such referral must occur within 6 months of the final decision by the Complaints Department at Lloyd's. Further details will be provided by the Complaints Department with their final decision to you.

Your dispute will be acknowledged in writing within 5 business days of receipt, and you will be kept informed of the progress of our review of your dispute at least every 10 business days. The length of time required to resolve a particular dispute will depend on the individual issues raised, however in most cases you will receive a full written response to your dispute within 15 business days of receipt, provided we have received all necessary information and have completed any investigation required.

This service is free of charge to policyholders

7. Service Of Suit Clause (Australia)

The Underwriters hereon agree that:-

- (i) In the event of a dispute arising under this Policy, Underwriters at the request of the insured (or reinsured) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (ii) Any summons notice or process to be served upon the Underwriters may be served upon who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the insured (or reinsured) to give a written undertaking to the insured (or reinsured) that he will enter an appearance on Underwriters' behalf.
- (iii) If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

NMA1854

1. Operative Clause

Whereas the Insured stated in Item 1 of the Schedule has made to the Underwriters a Proposal, whose particulars and statements, including any ancillary information provided therewith, are hereby agreed to be the basis of this Certificate.

We, the Underwriters, in consideration of payment of the Premium stated in Item 5 of the Schedule, agree, subject to all the terms and provisions of this Certificate, to indemnify the Insured as is set out in each insured Coverage Section of this Certificate in respect of the Insured's Business as stated in Item 3 of the Schedule but not in respect of any liability of the Insured where the action is brought in a court of law in or any judgment, award, payment, settlement or proceedings are made within territories which operate under the laws of the United States of America or where any order or proceedings are made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part.

2. Definitions

For the purpose of determining the indemnity granted, the following terms shall be deemed to have the same meaning as defined wherever used in this Certificate.

2.1 Proposal

"Proposal" shall mean a written proposal or proposals made by or on behalf of the Insured to the Underwriters for the insurance evidenced by this Certificate or any Coverage Section thereof, including any statements, declarations, warranties or information upon which the Underwriters have relied and, where a special form or presentation has been used for the purpose, bearing the date stated in Item 6 of the Schedule. The Proposal shall be construed as incorporated into and forming part of the Certificate or relevant Coverage Section or Sections.

2.2 Defence Costs

"Defence Costs" shall mean reasonable costs and expenses incurred by the Insured with Underwriters' prior consent in the investigation, defence or settlement of any claim made or which might be made against the Insured, including

1. the investigation of any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to a claim being made against the Insured or
2. representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to such claim,

providing such claims are indemnifiable under this Certificate.

2.3 Injury

"Injury" shall mean death, bodily injury, illness or disease of or to any person;

2.4 Damage

"Damage" shall mean loss of possession or control of or actual damage to tangible property;

2.5 Pollution

"Pollution" shall mean any pollution or contamination of the atmosphere or of any water, land or other tangible property;

2.6. Product

"Product" shall mean any physical property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured, but shall not include food or drink supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit.

3. Application to the Period of Insurance

This Certificate shall only apply where the Claim Trigger for each Coverage Section as stated in Item 6 of the Schedule falls within the Period of Insurance stated in Item 4 of the said Schedule.

4. Limit of Liability

4.1 The Underwriters' liability to indemnify the Insured in respect of any damages, claimants' costs, fees and expenses or other expenses for each claim under this Certificate or series of such claims arising out of one originating cause or occurrence shall not exceed the amount stated in Item 6 of the Schedule as the Occurrence/Claim Limit in respect of each Coverage Section. This limit shall apply regardless of the number of Insureds, additional Insureds or entities comprising the Insured or the number of claims or claimants or any other reason whatsoever.

4.2 Where an amount has been inserted in Item 6 of the Schedule as the Aggregate Limit, this amount represents Underwriters' total liability in respect of all such claims in respect of the relevant Coverage Section.

4.3 Where a combined Occurrence/Claim Limit is stated in the Schedule to apply to certain Coverage Sections, each such Coverage Section shall be subject to its own Limit of Liability, provided always that should the same originating cause or occurrence give rise to indemnity by more than one such Coverage Section, the total amount of Underwriters' liability for all claims arising out of one originating cause or occurrence under all such Coverage Sections combined shall not exceed the single greatest Limit of Liability available under the Coverage Sections providing indemnity.

4.4 Where a combined Aggregate Limit is stated in the Schedule to apply to certain Coverage Sections, each such Coverage Section shall be subject to its own Aggregate Limit provided always that Underwriters' total liability for all claims under all such Coverage Sections combined shall not exceed the single greatest Aggregate Limit available under the Coverage Sections providing indemnity.

5. Defence Costs

5.1 Defence Costs will be paid by the Underwriters as stated in Item 6 of the Schedule in respect of each Coverage Section.

5.2 Where Defence Costs are stated as being payable in addition to the Limit of Liability, the Underwriters will pay associated Defence Costs in addition to the Limit of Liability provided that if the total amount required to dispose of any claim or series of claims arising out of one event exceeds the Limit of Liability then the Underwriters will at the maximum pay such proportion of the total associated Defence Costs as the amount of the indemnity available under this Certificate bears to the total amount required to dispose of the claim.

5.3 Where Defence Costs are stated as being inclusive within the Limit of Liability, the Underwriters will pay associated Defence Costs provided always that their total liability under this Certificate, including Defence Costs, shall not exceed the Limit of Liability applicable to any claim or series of claims arising out of one originating cause or occurrence.

6. GENERAL EXCLUSIONS APPLICABLE TO SECTIONS A, B, C and D OF THE CERTIFICATE

This Certificate does not cover

6.1 Fines, Penalties and Punitive Damages

liability for awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever;

6.2 War

loss, damage, liability or expense arising directly or indirectly out of war, terrorist act, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power;

6.3 Radioactive Contamination and Explosive Nuclear Assemblies

loss, damage, liability or expense arising directly or indirectly out of ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

6.4 Contractual Liability

liability assumed by the Insured under any liquidated damage, penalty or forfeiture clause, express warranty, contract, agreement or guarantee other than to the extent that such liability would have attached to the Insured in the absence of such clause, warranty, contract, agreement or guarantee;

6.5 Other Insurance

any loss, damage, liability or expense covered under or indemnified by any other certificate of insurance, however, this exclusion shall not apply to any expense or liability in excess of the limit of indemnity in such other certificate of insurance; however, this Exclusion shall not apply to circumstances where the Insurance Contracts Act 1984 prohibits contribution to operate.

6.6 Recourse Rights

any claim or claims where and to the extent the Underwriters have or would have rights of recourse in respect of such claim but the Insured has granted without Underwriters' prior consent a waiver of such recourse rights to others whether by express term or by reason of an assumption of liability under contract.

6.7 Asbestos

loss, damage, liability or expenses caused by or arising directly or indirectly out of or in connection with:

- (a) any mining, handling, processing, manufacturing, sale, transportation, distribution, storage or use of asbestos, asbestos products or asbestos contained in any products,
- (b) any process of decontamination, treatment, handling, sale, installation, removal, disposal or control of asbestos or materials containing asbestos;

6.8 Terrorism

loss, damage, liability or expenses arising directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose 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), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes claims in respect of Personal Injury or Property Damage directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any claim is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

6.9 Sexual Harassment

Any claim, loss, costs and expenses arising directly or indirectly out of sexual assault, sexual harassment, sexual molestation, rape or the consequences thereof.

6.10 Loss of Documents – Magnetic or Electrical Media

the physical loss of or damage to Documents which are stored on magnetic or electrical media unless such Documents are duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the Documents to their original status,

6.11 Motor Vehicles

liability arising directly or indirectly out of the ownership, possession or use of any motor vehicle or trailer by or on behalf of the Insured, other than

6.11.1 vehicles within Australia which are not required to be registered under Australian Law, but not vehicles which are actually registered or in respect of which liability insurance is in force and other than liability

6.11.2 caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;

6.11.3 arising beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;

6.11.4 for Damage to any bridge, weighbridge, road or anything beneath caused by the weight of any motor vehicle or trailer or the load thereon;

6.11.5 arising out of any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking; provided always that no indemnity is granted against liability compulsorily insurable by legislation or for which the government or other authority has accepted responsibility;

6.12 Aircraft & Watercraft

liability arising directly or indirectly out of the ownership, possession or use by or on behalf of the Insured of any aircraft, spacecraft, watercraft or hovercraft (other than watercraft not exceeding five metres in length and then only whilst on inland waterways);

6.13 Care, Custody & Control

liability for Damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than

6.13.1 premises or the contents thereof temporarily occupied by the Insured for work therein or thereon but no indemnity is granted for Damage to that part of the property on which the Insured is working and which arises out of such work;

6.13.2 clothing and personal effects belonging to employees and visitors of the Insured;

6.13.3 premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement;

6.14 Deliberate Acts

liability arising directly or indirectly out of the deliberate, conscious or intentional disregard by the Insured's technical or administrative management of the need to take all reasonable precautions to prevent Injury or Damage;

6.15 Employers' Liability

liability for Injury to any person under a contract of employment, service or apprenticeship with or for the provision of labour only services to the Insured where such Injury arises out of the execution of such contract.

7. GENERAL CONDITIONS APPLICABLE TO SECTIONS A, B, C and D OF THE CERTIFICATE

Conditions 7.2, 7.3, and are precedent to Underwriters' liability to provide indemnity under this Certificate. If any breach of such conditions should occur, there shall be excluded from the indemnity hereunder any claim which has arisen or may arise in connection with such breach.

7.1 Self-Insured Excess

Underwriters shall only be liable for that part of each claim or series of such claims arising out of any one originating cause under this Certificate which exceeds the amount of the Self-Insured Excess stated in Item 6 of the Schedule. The Insured shall retain the Self-Insured Excess for its own account and shall not insure it elsewhere. The amount of the Self-Insured Excess shall include Defence Costs unless otherwise specifically stated in the said Schedule.

7.2 Claims Notification

The Insured shall give to Underwriters immediate notice in writing during the Period of Insurance of

7.2.1 any claim made against any Insured which may fall within the scope of this Certificate,

7.2.2 the receipt of notice, whether written or oral, from any person or entity of their intention to make such a claim against the Insured,

7.2.3 any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to such a claim being made against the Insured, giving reasons for the anticipation of such claim,

7.2.4 any other circumstances which might give rise to a claim under this Certificate.

7.3 Claims Handling

No admission, offer, promise or payment shall be made or given by or on behalf of the Insured nor shall any costs be incurred by the Insured without the written consent of the Underwriters; and the Underwriters shall be entitled to take over and conduct, in the name of the Insured, the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings in the defence or settlement of any claim.

The Insured shall at all times give Underwriters such information and co-operation as Underwriters may reasonably require.

7.4 Subrogation

Underwriters shall become subrogated to all rights of recourse and remedies of the Insured, before as well as after any payment by Underwriters to the extent of such payment and the Insured shall take all reasonable steps to preserve such rights and remedies.

Notwithstanding the above, if any payment is made or may be made under this Certificate and Underwriters are thereupon subrogated to the Insured's rights of recovery in relation thereto, Underwriters agree not to exercise any such rights against any director or employee of the Insured unless the claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director or employee.

The Insured shall give all such assistance in the exercise of rights of recovery as Underwriters may reasonably require.

7.5 Material Information

The Insured has a duty to disclose to the Underwriters, before this contract of insurance is entered into, every matter that is known to the Insured, being a matter that:

(a) the Insured knows to be a matter relevant to the decision of the Underwriters whether to accept the risk and, if so, on what terms; or

(b) a reasonable person in the circumstances could be expected to know to be a matter so relevant.

This duty of disclosure also applies to any renewal, extension, variation or reinstatement of this Certificate.

The Underwriters are entitled to refuse to cover the additional exposure or charge a reasonable additional premium or, if the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged, to avoid the contract.

If the person or entity who became the Insured under this Certificate upon the contract being entered into:

(c) failed to comply with the duty of disclosure; or

(d) made a misrepresentation to the Underwriters before the contract was entered into;

(but not where the Underwriters would have entered into the contract, for the same premium and on the same terms and conditions, even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into) then

(e) if the failure was fraudulent or the misrepresentation was made fraudulently, the Underwriters may avoid the contract.

(f) if the Underwriters are not entitled to avoid the contract or, being entitled to avoid the contract have not done so, the liability of the Underwriters in respect of a claim is reduced to the amount that would place the Underwriters in a position in which the Underwriters would have been if the failure had not occurred or the misrepresentation had not been made.

The Insured shall throughout the Period of Insurance give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the Proposal. In the event of Underwriters being at any time entitled to void this Certificate by reason of the Insured failing to give notice in accordance with this Condition, the Underwriters may at their election, instead of voiding this Certificate, give notice in writing to the Insured that there shall be excluded from the indemnity afforded hereunder any claim which has arisen or may arise which is related to such facts, activities or circumstances.

7.6 Adjustment of Premiums

If the Premium for this Certificate has been calculated on any estimates furnished by the Insured, the Insured shall keep an accurate record containing all relevant particulars and shall at all times allow Underwriters or their duly appointed representative to inspect such records. The Insured shall within one month from expiry of the Period of Insurance furnish such particulars and information as Underwriters may require. The premium for such period shall then be adjusted and the difference paid by or returned to the Insured, provided that the premium for any Period of Insurance shall not be less than any Minimum Premium stated in the Schedule or pro rata thereof if the Certificate is cancelled before its normal expiry date.

7.7 Relinquishment

The Underwriters may at any time pay to the Insured in connection with any claim or series of claims under this Certificate the amount of the Limit of Liability remaining under this Certificate or any lesser amount for which such claim or claims can be settled less any sums already paid and, where Defence Costs are inclusive within the Limit of Liability, less any associated Defence Costs already paid. Upon such payment being made, the Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claims or associated Defence Costs incurred after the date of such relinquishment.

However if Underwriters exercise the above option and the total amount required to dispose of any claim or series of claims exceeds the Limit of Liability and Defence Costs are payable in addition to the Limit of Liability under this Certificate then the Underwriters will pay their proportion of Defence Costs incurred up to the date of relinquishment in such proportion as the amount of the indemnity available under this Certificate bears to the total amount which in the opinion of the Underwriters at the time of relinquishment will be necessary to dispose of the claim.

7.8 Dispute

This Certificate shall be governed by Australian Law unless stated to the contrary. If any dispute arises in connection with the formulation, validity or interpretation of this Certificate, then such dispute shall be submitted to the jurisdiction of any court of competent jurisdiction within Australia. Both parties agree to comply with all requirements necessary to give such court jurisdiction.

7.9 Cancellation

This Certificate or any Coverage Section thereof may be cancelled by or on behalf of Underwriters by thirty days' notice given in writing to the Insured. The Premium shall then be adjusted in accordance with Condition, if applicable, and calculated on the basis of Underwriters receiving or retaining pro rata premium.

Notice shall be deemed to be duly received if sent by pre-paid letter post properly addressed to the Insured's or the Insured's broker's last known address.

7.10 Fraud

If any claim under this Certificate or any Coverage Section thereof is in any respect fraudulent, the Underwriters shall be under no liability in respect of such claim.

(Occurrence basis: Injury and/or Damage occurring during the Period of Insurance.)

8. COVERAGE SECTION - INDEMNITY

The Insured is indemnified by this Coverage Section in accordance with the Operative Clause against the Insured's liability to pay damages, including claimants' costs, fees and expenses, in accordance with the law of any country for and/or arising out of Injury and/or Damage but not against liability arising directly or indirectly out of

8.1 Pollution or

8.2 in connection with any Product.

(See also provisions applicable to Coverage Sections , and further on.)

(Occurrence basis: Injury and/or Damage occurring during the Period of Insurance.)

9. COVERAGE SECTION - INDEMNITY

The Insured is indemnified by this Coverage Section in accordance with the Operative Clause against the Insured's liability to pay damages, including claimants' costs, fees and expenses, in accordance with the law of any country for and/or arising out of Injury and/or Damage occurring in its entirety during the Period of Insurance and arising out of Pollution, but only to the extent that the Insured can demonstrate that

9.1 such Pollution was the direct result of a sudden, specific and identifiable event occurring during the Period of Insurance;

9.2 the Insured had taken all reasonable precautions to prevent loss by Pollution.

10. COVERAGE SECTION - EXCLUSIONS

This Coverage Section does not cover

10.1 Damage to Products

liability for Damage to any Product or part thereof;

10.2 Product Guarantee

liability for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement;

10.3 Recall

liability arising directly or indirectly out of the recall of any Product or part thereof;

10.4 Aviation Products

liability arising directly or indirectly out of any Product or part thereof which the Insured knows or ought to know is intended to be incorporated into the structure, machinery, electrics, electronics or controls of any aircraft or spacecraft;

10.5 Premises Owned

liability for Damage to premises presently or at any time previously owned or tenanted by the Insured;

10.6 Land Occupied

liability for Damage to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by the Insured or otherwise in the Insured's care, custody or control.

(See also provisions applicable to Coverage Sections, and further on.)

(Occurrence basis: Injury and/or Damage occurring during the Period of Insurance.)

11. COVERAGE SECTION - INDEMNITY

The Insured is indemnified by this Coverage Section in accordance with the Operative Clause against the Insured's liability to pay damages, including claimants' costs, fees and expenses, in accordance with the law of any country for and/or arising out of Injury and/or Damage but only against liability arising out of or in connection with any Product and not against liability arising directly or indirectly out of Pollution.

12. COVERAGE SECTION - EXCLUSIONS

This Coverage Section does not cover

12.1 Damage to Products

liability for Damage to any Product or part thereof;

12.2 Product Guarantee

liability for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement;

12.3 Recall

liability arising directly or indirectly out of the recall of any Product or part thereof;

12.4 Aviation Products

liability arising directly or indirectly out of any Product or part thereof which the Insured knows or ought to know is intended to be incorporated into the structure, machinery electrics, electronics or controls of any aircraft or spacecraft;

(See also provisions applicable to Coverage Sections A, B and C further on.)

13. INDEMNITY TO OTHERS - applicable to COVERAGE SECTIONS A, B and C

The indemnity granted extends to:

13.1 at the request of the Insured, any party who enters into an agreement with the Insured for any purpose of the Business, but only to the extent required by such agreement to grant indemnity and subject always to Clauses 17.3 and 7.4;

13.2 officials of the Insured in their business capacity for their liability arising out of the performance of the Business and/or in their private capacity arising out of their temporary engagement of the Insured's employees;

13.3 at the request of the Insured, any person or firm for their liability arising out of the performance of a contract to provide labour only services to the Insured;

13.4 the officers, committee and members of the Insured's canteen, social, sports, medical, fire fighting and welfare organisations in their respective capacity as such;

13.5 the personal representatives of the estate of any person indemnified by reason of this Clause 15, in respect of liability incurred by such person; provided always that all such persons or parties shall observe, fulfil and be subject to the terms, conditions and exclusions of this Certificate as though they were the Insured.

14. CROSS LIABILITIES - applicable to COVERAGE SECTIONS A, B and C

Each person or party specified as the Insured in the Schedule is separately indemnified in respect of claims made against any of them by any other such person or party, subject to Underwriters' total liability not exceeding the stated Limit of Liability.

15. CONDITIONS - applicable to COVERAGE SECTIONS A, B and C

15.1 Timing of Injury and Damage

Where it is not otherwise possible to ascertain the timing of Injury or Damage, then for the purpose of determining the indemnity granted by this Certificate

15.1.1 Injury will be deemed to have occurred when the claimant first consulted a qualified medical practitioner regarding such Injury, whether or not it was correctly diagnosed at that time. If no such consultation took place, then the Injury will be deemed to have occurred when the Insured first received written notice of the Injury;

15.1.2 Damage will be deemed to have occurred when the claimant first became aware of such Damage, even if the cause was unknown.

(Claims made basis: claims first made against the Insured and notified to underwriters during the Period of Insurance.)

16. COVERAGE SECTION - INDEMNITY

The Insured is indemnified by this Coverage Section in accordance with the Operative Clause against all sums which the Insured shall become legally liable to pay as damages and claimants' costs, fees and expenses and notified to Underwriters during the Period of Insurance stated in Item 4 of the Schedule arising out of any negligent act, negligent error or negligent omission by the Insured or any negligent act, negligent error or negligent omission by others for whom the Insured is legally liable, in or about the conduct of the Named Insured's professional business as stated in the Proposal and no other activities for the purpose of this Coverage Section.

17. COVERAGE SECTION - DEFINITIONS

For the purpose of determining the indemnity granted, the following terms shall be deemed to have the same meaning as defined wherever used in reference to this Coverage Section.

Named Insured

"Named Insured" shall mean the company, partnership or firm as stated in Item 4 of the Schedule.

Insured

"Insured" shall mean the Named Insured and any past, present or future employee or director of or partner in the Named Insured.

18. COVERAGE SECTION - EXCLUSIONS

This Coverage Section does not indemnify the Insured against any claim or claims arising directly or indirectly out of or in respect of

18.1 Products

the design, specification, formulation, manufacture, construction, installation, sale, supply, distribution, treatment, service, alteration or repair of any goods or products.

18.2 Employers' Liability

Injury of or to any person in the course of his or her employment by the Insured under any contract of service or apprenticeship or for any breach of any obligation owed by the Insured as an employer to any employee,

18.3 Property

the ownership, possession or use by or on behalf of the Insured of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle,

18.4 Insurances

the failure to ensure that insurances have been effected and maintained,

18.5 Defamation

any actual or alleged libel or slander,

18.6 Infringement of Copyright

any actual or alleged infringement of copyright, patent, registered design, trade mark or passing-off,

18.7 Cross Liability

or where the claim is made by one Insured or an entity financially associated with the Insured against another Insured, unless the claim originally emanates from an independent third party,

18.8 Dishonesty

any dishonest, fraudulent, criminal or malicious act or omission,

18.9 Insolvency or Bankruptcy of Insured

the administration, receivership, insolvency or bankruptcy of the Insured,

18.10 Directors and Officers

any person acting in their capacity as a director or officer of the Insured or of any firm or company,

18.11 USA Office

any professional business as stated in the Proposal undertaken from an office situated in the United States of America or in any territories which operate under the laws of the United States of America.

In consideration of the payment of the premium set forth in Item 5 of the Schedule and in reliance on the statements made and information contained within the Proposal Form and subject to the terms and conditions of this Certificate and after the exhaustion of all other indemnification available to the Directors or Officers or the Company from any other source including any other certificate of insurance the Underwriters will:

19. INSURING CLAUSE

a) Directors' and Officers' Liability

Pay on behalf of any Director or Officer Loss (other than Loss payable under 19. Insuring Clause b)) arising from any Claim first made against them during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Wrongful Act committed by them in the capacity as Director or Officer.

b) Company Reimbursement

(After the Company has indemnified the Director or Officer concerned) Pay on behalf of the Company Loss arising from any Claim first made against any Director or Officer during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Wrongful Act committed by them in the capacity as Director or Officer.

c) Employment Entity Liability

(If this insuring clause is stated in Item 7 of the Schedule as applicable to this Certificate) Pay on behalf of the Company Loss (other than Loss payable under any other Insuring Clause) arising from any Claim first made against the Company during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Employment Wrongful Act committed by the Company.

20 DEFINITIONS (applicable to Section E)

All definitions within this Coverage Section shall have the same meaning, whether expressed in the singular or the plural. The headings in this Coverage Section shall not affect its interpretation.

a) Claim means:

1. A demand for compensation received by a Director or Officer (or the Company in the case of 19. Insuring Clause c) or d) if applicable) in writing in respect of any actual or alleged Wrongful Act or Employment Wrongful Act ;
2. Legal or (if brought by a proper regulatory body or regulatory authority) administrative or investigative or regulatory proceedings instigated against a Director or Officer (or the Company in the case of 19. Insuring Clause c) or d) if applicable)).

b) Company means: the Parent Company and any Subsidiary.

c) Defence Costs means: costs and charges and expenses incurred in the investigation or defence of a Claim or circumstances notified with the prior and written consent of the Underwriters (such consent not to be unreasonably withheld).

d) Director or Officer means:

1. Any natural person who was, or is, or becomes a director or officer of the Company or a superannuation trustee of any employee benefit plan or pension plan or superannuation fund of the Company.
2. Any Employee while acting in a managerial capacity.
3. Any natural person who was, or is, or becomes a Non-Executive Director of the Company as defined according to applicable law.

4. Any natural person proven to be a shadow director of the Company as defined according to applicable law.
 5. In the event of the bankruptcy or death or incapacity of any natural person who falls within the ambit of 20. Definitions d) 1. or 2. or 3. their estate and heirs and legal representatives, but only in respect of any Claim against such natural person otherwise covered under this Certificate.
Director or Officer shall not mean any external auditor or liquidator or administrator or receiver or administrative receiver of the Company.
- e) Employee means: any natural person who was, or is, or may hereafter be acting under a contract of service or apprenticeship with the Company. Employee shall not mean any consultant or sub-contractor or independent professional adviser or agent or Director or Officer or any natural person providing services to any entity except the Company.
- f) Employment Wrongful Act means: any actual or alleged:
1. Discrimination or harassment of an Employee or of a prospective Employee; or
 2. Wrongful termination of the employment of an Employee, or the demotion or the refusal to promote an Employee, or the refusal to employ a natural person as an Employee; or
 3. Retaliatory action taken against an Employee proven to have arisen from that Employee exercising or attempting to exercise of his or her rights according to applicable law.
- g) Loss means: such sums which the Directors or Officers (or the Company in the case of 19. Insuring Clause c or d) are legally liable to pay as compensatory damages for any Wrongful Act (or any Employment Wrongful Act in the case of 19. Insuring Clause c)) and Defence Costs. Loss shall not include salaries, wages, benefits, remuneration, sums payable pursuant to a financial support direction or contribution notice issued by the Pensions Registrar, taxes, fines, penalties, punitive or exemplary damages (other than such damages awarded for libel and slander) or any damages constituting the multiplication of a lesser damages sum or any amount deemed uninsurable under the Laws of Australia or the expenses of the Directors or Officers or (in the case of 19. Insuring Clause c)) any compensation payable in respect of statutory or contractual notice periods or costs incurred in any employment-related education programme or any liability or costs incurred in the modification of any building with the objective of making it more accessible or more accommodating to any disabled person.
- h) Not For Profit Entity means: any registered charity or trade association which is incorporated on a not-for-profit basis and is not incorporated or domiciled or licenced or registered in the North America.
- i) Outside Entity means: and:
1. company which the Underwriters have specifically agreed in writing to include within this definition;
 2. Not For Profit Entity.
- j) Parent Company means: the company named in Item 1 of the Schedule.
- k) Period of Insurance means: the period in Item 4 of the Schedule and, if applicable, the periods referred to 22. Extensions c) and d).
- l) Certificate means: this wording and the Schedule and all endorsements appended hereto. The Certificate cannot be assigned without the written consent of the Underwriters.

- m) Pollution means: any actual or alleged or threatened discharge or release or escape or dispersal or disposal of pollutants or contamination of whatever kind or any direction or request that a Director or Officer or the Company test for or monitor or clean up or remove or contain or treat or detoxify or neutralise any pollutants.
- n) Proposal Form means: the written proposal for this Certificate and any certificate of which this Certificate is a renewal as submitted to and accepted by the Underwriters and any written information submitted to and accepted by the Underwriters in connection with this Certificate all of which shall be deemed to form part of this Certificate. It is also noted and agreed that the Proposal Form shall be the basis of this contract of insurance and (with regard to the answers and declarations and statements and content thereof) shall be construed as a separate application for insurance by each Director or Officer.
- o) Schedule means: the document so-entitled which is appended to this Certificate.
- p) Subsidiary means: any company in which the Company either directly or indirectly:
1. Holds the majority of the voting rights; or
 2. Holds more than half of the issued share capital; or
 3. Has the right to remove or to appoint a majority of the board of directors.
- Subsidiary also means: any company which the Company or any Subsidiary acquires or creates during the Period of Insurance, other than (unless specifically accepted by the Underwriters in writing) any company that:
- 1) Has total assets that exceed the sum stated in Item 10 of the Schedule, or
 - 2) Has its securities listed on any exchange in North America, or
 - 3) (Once acquired or created) does not fall within one or more of 20. Definitions p) 1. to 3. inclusive.
- q) Underwriters means: certain Underwriters at Lloyd's and any other participating insurance companies.

Several Liability (applicable to Section E)

The obligations of each insurance company and Lloyd's syndicate (including the underwriters thereof) shall be several and not joint and shall be solely to the extent of that company's or syndicate's individual subscription. No such company or syndicate shall be responsible for the subscription of any other such company or syndicate who for any reason does not satisfy all or part of its obligations hereunder.

- r) Wrongful Act means: any actual or alleged error, misstatement, misleading statement, omission, neglect, breach of duty, breach of trust or breach of warranty of authority by the Directors or Officers in the discharge of their duties as Directors or Officers or any matter claimed against them solely by reason of their being Directors or Officers of the Company.
- In respect of any Subsidiary, Wrongful Act shall only mean Wrongful Acts committed or allegedly committed between the dates that any company falls within the 20. Definition p) 1. to 3. inclusive.
- If the Company is taken over or is merged with any other organisation or if any person or entity acquires more than fifty percent of the voting share capital of the Parent Company Wrongful Act shall only mean any Wrongful Act committed or allegedly committed prior to the date of such takeover, merger or acquisition.
- s) North America means: the United States of America, Canada and their states, localities, overseas territories and possessions.
- t) North American Claim means any:
- a) Claim brought in the courts of North America or under the laws of North America; or

- b) actual or attempted enforcement or upholding against the Directors or Officers or the Company by any court or arbitrator or tribunal outside North America of any damages or compensatory or monetary awards or judgments or orders or settlements or costs or expenses made within North America; or
- c) Claim brought as a consequence of the operations of the Company or any Outside Entity in North America.

21. LIMITS AND RETENTIONS (applicable to Section E)

- a) The Underwriters' aggregate limit of liability for all Loss in respect of all Claims shall be the amount specified in Item 6 of the Schedule.
- b) If stated in Item 7 of the Schedule to be applicable an aggregate sub-limit of AUD \$500,000 or 25 percent of the amount specified in Item 6 of the Schedule (whichever is the smaller) shall apply to Claims under 4. Extensions (b). This sub-limit shall be part of and not in addition to the aggregate limit of liability specified in Item 6 of the Schedule.
- c) An aggregate sub-limit of liability of AUD \$ 50,000 shall apply to Claims under 19. Insuring Clause c) (if applicable). This sub-limit shall be part of and not in addition to the aggregate limit of liability specified in Item 6 of the Schedule.
- d) The Underwriters shall only be liable for the amount of Loss in respect of each Claim which is in excess of the applicable retention amount specified Item 6 of the Schedule or elsewhere in this Certificate.
- e) In the event that the Underwriters are liable for Loss under two or more Insuring Clauses then notwithstanding anything stated in this Certificate to the contrary, the largest of all retentions shall be applied in respect to all Insuring Clauses.
- f) All Claims or series of Claims arising from or attributable to or which are causally connected with a single Wrongful Act or a single Employment Wrongful Act or a series of related Wrongful Acts or a series of related Employment Wrongful Acts or which are causally connected shall be considered as a single Claim.
- g) For the purposes of determining the limit of liability this Certificate will be construed as a joint certificate with an aggregate limit available to all Directors and Officers and the Company collectively.

22. EXTENSIONS (applicable to Section E)

- a) **Outside Board Cover**

Underwriters will pay on behalf of any Directors or Officers Loss arising from any Claim first made against them during the Period of Insurance and notified to the Underwriters during the Period of Insurance arising from them serving at the request or the order or the direction of the Company in the capacity of a director or officer or a governor or a trustee of any Outside Entity in respect of any Wrongful Act committed in such capacity provided that:

 1. such request or order or direction has been given by the Company in writing;
 2. any cover under this extension shall only apply in excess of any other insurance or indemnification available to the Directors or Officers;
 3. Underwriters shall not be liable to make any payment for Loss in connection with any Claim made against a Director or Officer by or on behalf of the Outside Entity;
 4. (in the case of any Outside Entity which falls within the ambit of 20. Definitions i) 1) the Underwriters agreement to any Outside Board Cover must be specifically obtained in writing;

5. if any other insurance is provided by the Underwriters under any other contract of insurance, then the total aggregate limit of liability for all Loss covered by virtue of this extension shall be reduced by the limit of liability specified in the schedule of such other contract of insurance;
6. this Extension is deleted and of no effect for Loss arising from a Claim based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with the insolvency or bankruptcy or liquidation or receivership or administration of any Outside Entity.

b) Pollution Defence Costs

Underwriters will pay Defence Costs on behalf of the Directors and Officers subject to the aggregate sub-limit specified in Item 6 of the Schedule (such limit being part of and not in addition to the aggregate limit of indemnity under this Certificate specified in Item 6 of the Schedule) incurred in defending themselves against criminal or regulatory proceedings in respect of Pollution, where the incident giving rise to the Claim occurs outside of North America and is not a North American Claim and which results from any Wrongful Act giving rise to a Claim.

c) Discovery Period

The Directors and Officers shall have the right to an extension of the coverage granted by this Certificate with respect to any Claim which shall be made against them during the Effective Period of this extension. Any Claim made during the Effective Period of this extension shall be considered made during the Period of Insurance.

d) Retired Directors and Officers Cover

If a natural person retires from the position of Director or Officer during the Period of Insurance, they shall be entitled to an extension of the coverage granted by this Certificate with respect to any Claim which shall be made against them during the Effective Period of this extension which arises out of their position as Director or Officer. Any Claim made during the Effective Period of this extension shall be considered made during the Period of Insurance.

The Effective Period of any extension shall be determined as follows:

22. Extension c) shall terminate 12 months after the expiry of the Period of Insurance.
22. Extension d) shall terminate 72 months after the expiry of the Period of Insurance.
22. Extensions c) and d) shall be deleted and of no effect;

- i) if this Certificate is succeeded or replaced by any other certificate which provides directors' and officers' liability insurance,
 - ii) if at renewal the Underwriters offer terms or conditions or limits of liability or request premium even if any or all of them are different from those of the expiring Certificate,
 - iii) unless the Underwriters receive an additional premium equal to fifty percent (50%) of the Premium specified
- in Item 5 of the Schedule within 30 days after the expiry of the Period of Insurance,
- iv) unless a written request to invoke either extension is received by the Underwriters within 15 days after the expiry of the Period of Insurance,
 - v) if this Certificate is terminated by the Underwriters for non payment of premium,
 - vi) in respect of any Wrongful Act taking place after the expiry of the Period of Insurance.

- 22. Extensions c) shall be deleted and of no effect if 21. Extensions d) is or has been invoked.
- 22. Extensions d) shall be deleted and of no effect if 21. Extensions c) is or has been invoked.
- 22. Extensions a) and b) and c) and d) shall be deleted and of no effect in respect of all insuring clauses except 19. Insuring Clause a).
- 22. Extensions a) and b) and c) and d) shall not be construed to mean an increase or an extension or a reinstatement of the limit of liability specified in Item 6 of the Schedule.

23. EXCLUSIONS (applicable to Section E)

The Underwriters shall not be liable for Loss in connection with any Claim:

- a) based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with, any;
 - 1. legal or administrative or disciplinary or regulatory proceedings which existed or were pending at the date stated in Item 8 of the Schedule, or any fact or circumstance or event in anyway pertaining to such proceedings;
 - 2. a) Director or Officer gaining any personal profit or advantage or receiving any remuneration to which he or she was not or is not legally entitled;
b) Director or Officer committing any dishonest or fraudulent act or omission or any wilful violation of law; provided that this exclusion shall only apply if such profit or advantage or remuneration or act or omission is established by admission or by a court or a tribunal;
 - 3. circumstance notified or Claim made under any insurance which was in force prior to the Period of Insurance or which was known about by any of the Directors or Officers or the Company prior to the Period of Insurance;
 - 4. actual or alleged violation of the Securities Act 1933 or the Securities Exchange Act of 1934, including any amendment or re-enactment thereof or any similar provision in any State statutory law enacted in the United States of America;
 - 5. actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, including any amendment or re-enactment thereof or any similar provision in any State statutory law enacted in the United States of America;
 - 6. pensions or pension plans or pension trusts or pension programmes or employee benefit plan or superannuation fund;
 - 7. Pollution other than;
 - a) to the extent covered under 22. Extensions (b); or
 - b) any Claim brought by a shareholder of the Company (other than a Director or Officer) on the basis solely that Pollution has caused a loss in the value of the share capital of the Company due to a breach of duty owed by the Directors and Officers;
 - 8. offering of securities of the Company;
 - 9. failure to effect or to maintain, or any failure to collect or recover under, insurance;
 - 10. breach of professional duty or professional services provided by or on behalf of the Directors and/or Officers and/or the Company;
 - 11. (if stated in Item 7 of the Schedule as applicable to this Certificate) North American Claim;
 - 12. i) actual or alleged breach of legislation relating to collective redundancies;
ii) regulations relating to minimum wage regulations or disability benefits, unemployment benefits, retirement benefits, social security benefits, redundancy benefits, compensation or unemployment insurance;
iii) order or judgment to reinstate any Employee;
iv) actual or alleged liability under any express employment contract or agreement, other than any liability which the Company would face in the absence of such a contract or agreement. (Exclusion 15 i) to iv) inclusive to apply in respect of Insuring Clause 19 c) only);
v) liability assumed by way of warranty or contract or guarantee unless such liability would have attached in the absence of such warranty or contract or guarantee.

- b) for;
13. damage to or destruction of any tangible property or the loss of use thereof;
 14. bodily injury or sickness or disease or mental injury or mental anguish or death of any person provided that this exclusion shall not apply to any Claim for an Employment Wrongful Act or for emotional distress in connection with a wrongful termination of employment or a Claim for discrimination or harassment by any Employee;
- c) made;
15. by or on behalf of the Company or by or on behalf of any Director or Officer provided that this exclusion shall not apply in respect to 19. Insuring Clause a) and b) to:
 - a) a Claim by a Director or Officer in respect of Employment Wrongful Acts;
 - b) a claim for indemnity or contribution in respect of a Claim first brought against a Director or Officer or the Company which is otherwise covered under the terms of this Certificate;
 - c) a Claim in the form of a shareholder derivative action which has not been instigated by any Director or Officer or by the Company;
 - d) a Claim brought by a liquidator or administrator or receiver or administrative receiver on behalf of the Company which has not been instigated or assisted by any Director or Officer or by the Company;
 - e) a Claim against a former Director or Officer unless the Claim is made by or on behalf of a proprietary company as defined under Section 45A of the Corporations Act 2001 (Cth);
 - f) a Claim made by a former Director or Officer;
- d) made (if stated in Item 7 of the Schedule to be applicable to this Certificate);
16. (in the name of the Company or not) or instigated by or on behalf of, or for the benefit of, any person or entity holding beneficially or otherwise more than 25% of the issued share capital of the Company;
 17. in respect of 19. Insuring Clause c) and 19. Insuring Clause d) (if either or both are applicable) if the Company is not or ceases to be a co-defendant with a Director or Officer; The Wrongful Acts or knowledge of any Director or Officer shall not be imputed to any other Director or Officer for the purpose of applying the exclusions.

24. CLAIMS CONDITIONS (applicable to Section E)

It is a condition precedent to the liability of the Underwriters that:

- a) notice of any Claim shall be given to the Underwriters as soon as is reasonably practicable and in any event within 14 days of the end of the Period of Insurance and that notice of a Claim shall be given in writing by post or by facsimile to the address specified in Item 11 of the Schedule.)
- b) at their own cost the Directors or Officers and the Company shall provide to the Underwriters in a timely fashion all information and assistance they reasonably require to allow them to investigate, defend, or resolve any Claim or circumstance notified and to exercise any subrogation rights.
- c) the Underwriters have the right but not the obligation to control the defence and settlement of any Claim and the appointment of lawyers to represent the Directors and Officers or the Company.
- d) the Directors or Officers and the Company shall furnish the Underwriters in a timely fashion with copies of all papers in connection with any Claim or circumstance notified.
- e) the Directors or Officers or the Company shall not make any admission or give any offer or settlement or promise or indemnity to any party without the prior and written consent of the Underwriters.
- f) no Director or Officer nor the Company shall be required to contest any Claim at trial unless a mutually agreed upon Queen's Counsel shall advise that the Claim should be contested.
- g) Defence Costs which are advanced on behalf of the Directors or Officers or the Company prior to the resolution of a Claim shall be repayable by the Directors or Officers or the Company to the Underwriters in the event that the Claim is not covered under this Certificate.

- h) if a Director or Officer or the Company refuses to consent to any settlement recommended by the Underwriters or their legal representatives and elects to contest or to continue defence of a Claim, then the liability of the Underwriters for such Claim shall not exceed the amount for which the Claim could have been settled up to the date of such refusal.
- i) in the event that any Claim under this Certificate gives rise both to Loss which is covered under this Certificate and losses which are not so covered, or includes a Claim against a Director or Officer and a Claim against the Company, the Underwriters and the Company and the Directors or Officers shall negotiate in good faith to agree a fair and proper basis for allocation taking into consideration the relative legal exposures of the various parties and that in the event that the Underwriters and the Company and/or the Directors or Officers cannot agree on allocation they shall submit the dispute to a mutually agreed upon Queen's Counsel to determine a fair and proper basis for allocation having regard to the relative legal exposures of the various parties.
- j) if the Directors and Officers are unable to satisfy a right to payment or indemnity against the Company for Loss arising out of a Claim solely by reason of the Company having insufficient funds then the Underwriters will provide such payment or indemnity against Loss to the extent that the Company could have granted it as legally permitted or required by law provided always that any such payment or indemnity will be subject to the largest deductible as stated to be applicable to the Company in this Certificate.
- k) all rights of recovery of the Directors or Officers or the Company shall be subrogated to the Underwriters if the Underwriters make any payment under this Certificate.
- l) where payment is made under this Certificate for the acquisition of goods or services or other supply, the Underwriters will reduce the amount of such payment by an amount of any input tax credit to which the Company is or would or will be entitled by virtue of the Goods and Services Tax Act 1999, whether or not that acquisition is actually made.
- m) where payment is made under this Certificate instead of payment for the acquisition of goods or services or other supply, the Underwriters will reduce the amount of such payment by the amount of any input tax credit to which the Company is or would or will be entitled by virtue of the Goods and Services Tax Act 1999, had the payment been applied to acquire such goods or services or other supply.

25. GENERAL CONDITIONS (applicable to Section E)

- a) **The Parties Insured** hereby agree that;
 - i) The Proposer as referred to in the Proposal Form or the Company shall act on behalf of all Directors or Officers and the Company with respect to the giving and receiving of notice of Claim or termination of this Certificate and the receipt and acceptance of any endorsements issued to form part of this Certificate and the exercising of any extensions to this Certificate including either or both of 21. Extensions (c) and (d);
 - ii) No person who is not a party to this Certificate may enforce any of its terms under the Contracts (Rights of Third Parties Act) 1999;
 - iii) Information provided to the Underwriters regarding the Directors and Officers and the Company will be processed by the Underwriters in compliance with the provisions of the prevailing data protection legislation for the purpose of providing insurance and handling Claims and it is noted and agreed that such processing may necessitate providing such information to third parties;
 - iv) At the request of any person who falls within the ambit of 22. Definitions d) 1. or 2. or 3. , the Underwriters will indemnify the spouse of any such person, but only in respect of an action to enforce a judgment obtained against such person against the property of that spouse arising from a Claim insured under this Certificate.
- b) **Certificate Construction**

This Certificate shall be construed in accordance with the laws of Australia. In the event of any dispute arising out of or in connection with this Certificate, each party agrees to submit to the jurisdiction of any Court of competent jurisdiction within Australia and to comply with all requirements necessary to enable such Court to properly hear the dispute and determine it.

Endorsements (applicable to Section E)

OCCUPATIONAL HEALTH & SAFETY DEFENCE COSTS (AUST)

It is hereby noted and agreed that notwithstanding anything contained in 23.EXCLUSIONS 13. and 14. and 15. to the contrary the Underwriters will pay Defence Costs on behalf of the Directors and Officers subject to the aggregate sub-limit of AUD \$500,000 or an aggregate amount equal to 50 percent of the amount specified in Item 6 of the Schedule (whichever is the smaller) (such limit being part of and not in addition to the aggregate limit of indemnity under this Certificate specified in Item 6 of the Schedule) incurred in defending themselves against criminal or regulatory proceedings in respect of any actual or alleged breach of any occupational health and safety laws or regulations which result from any Wrongful Act giving rise to a Claim other than any,

- a) incurred in North America, or
- b) North American Claim, or
- c) civil claim for compensation, or
- d) proceeding or civil claim for damages or compensation arising from that breach or any other Claim otherwise excluded under this Certificate.

All other terms, conditions, definitions, limitations, exclusions and provisions of this Certificate remain unamended.

CONTINUOUS COVER ENDORSEMENT (AUST)

Notwithstanding anything contained in this Coverage Section to the contrary it is hereby noted and agreed that if, prior to the commencement of the Period of Insurance but after the Continuity Date stated in Item 9 of the Schedule, the Directors and Officers and the Company were aware of circumstances which might give rise to a Claim and which were not notified to the Underwriters in compliance with the claims notification procedures stated in the contract of insurance in force at the time, the Underwriters will indemnify the Directors and Officers and the Company in respect of a Claim arising from such prior known circumstances, provided that;

- a) the failure to notify such circumstances was not as a result of any fraudulent misrepresentation or fraudulent non-disclosure; and
- b) the Limit of Liability and any sub-limits thereto and any retentions to the certificate which were in force at the time when the Directors and Officers and the Company first became aware of such Claim or circumstances shall apply (unless those which apply to the Period of Insurance are more restrictive, in which case they shall apply); and
- c) at their absolute discretion the Underwriters will reduce their liability to the extent of any prejudice suffered as a result of the failure to notify such circumstances prior to the commencement of the Period of Insurance; and
- d) Such Claim or circumstance had not been previously notified to the Underwriters.