



## General & Products Liability Policy

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# General & Products Liability Policy

## GENERAL & PRODUCTS LIABILITY POLICY

### LLOYD'S CERTIFICATE OF INSURANCE

effected through **AXIS UNDERWRITING SERVICES Pty Ltd (hereinafter called the Coverholder)**

**This Certificate of Insurance** confirms that in return for payment of the Premium shown in the Schedule, certain Underwriters at Lloyd's have agreed to Indemnify the Insured, in accordance with the wording attached to the Certificate.

You or Your representative 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 the Coverholder. In the event of loss, each Underwriter (and their executors and administrators) is only liable for their own share of the loss.

In accepting this insurance, the Underwriters have relied on the information and statements that you have provided on the Proposal Form the date of which is stated in the Schedule. You should read this Certificate, Schedule and policy wording carefully and if it is not correct contact Your Broker or Axis Underwriting Services Pty Ltd. It is an important document and You should keep it in a safe place with all other papers relating to this insurance.

The Underwriters accepting this insurance agree that;

- (i) if a dispute arises under this insurance it will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

#### **Lloyd's Underwriters General Representative in Australia**

Suite 2, Level 21 Angel Place  
123 Pitt Street  
Sydney NSW 2000

- (iii) who has authority to accept service and to appear on the Underwriters' behalf;
- (iii) if a suit is instituted against any of the Underwriters all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this insurance **IMMEDIATE NOTICE** should be given to **AXIS UNDERWRITING SERVICES Pty Ltd**.

The Certificate is issued by the Coverholder in accordance with the authority granted to them by certain Underwriters at Lloyd's under the Agreement referred to in the Certificate.

## INSURING AGREEMENTS

### 1. COVERAGE

Subject to the terms, definitions, conditions, limitations and exclusions of this Policy the Insurers will indemnify the Insured for all sums which the Insured shall be legally liable to pay as Compensation in respect of Personal Injury or Property Damage occurring during the Policy Period as a result of an Occurrence happening in connection with the Business of the Insured described in the Schedule.

### 2. LIMITS OF LIABILITY

The Insurers liability in respect of any one Occurrence shall not exceed the limit stated in the Schedule. All Personal Injury and Property Damage arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence. The total aggregate liability of the Insurers during any one period of insurance for all claims arising out of the Insured's Products shall not exceed the limit of liability stated in the Schedule. The total aggregate liability of the Insurers during any one period of insurance for all claims arising out of Pollution shall not exceed the limit of liability stated in the Schedule.

### 3. POLICY PERIOD

The period stipulated in the Schedule or such further period for which the Policy has been renewed as shown in a renewal Schedule.

### 4. SUPPLEMENTARY PAYMENTS

In addition to the Limits of Liability stipulated in the Schedule, the Insurers will pay:

- a) all reasonable charges, expenses and legal costs incurred by either the Insurers or the Insured with the written consent of the Insurers in the settlement or defence of any claim for Compensation in respect of which the Insured is entitled to indemnity under this Policy; and
- b) all charges, expenses and legal costs recoverable from the Insured by claimants in connection with the Compensation.

PROVIDED that:

- (i) the Insurers liability to pay either or both of these types of charges, expenses or legal costs shall cease upon the Limits of Liability as stipulated in the Schedule having been exhausted by payment of judgements or settlements;
- (ii) if a payment exceeding the Insurer's Limit of Liability has to be made to dispose of a claim, the Insurer's liability to pay any Supplementary Payments in connection therewith shall be limited to such proportion of the said supplementary payments as the Limits of Liability bear to the amount to dispose of the claim.

## DEFINITIONS

Whenever appearing in the Policy or any annexes forming part hereof, the following terms shall, unless the context specifically provides to the contrary, be interpreted in the manner described below:

### 1. PERSONAL INJURY

- a) bodily injury, death, illness, disability, shock, fright, mental anguish or mental injury;
- b) false arrest, detention, false imprisonment, malicious prosecution or humiliation;
- c) the publication or utterance of libel or slander or any other violation of an individual's right of privacy except:
  - (i) prior to the commencement of this policy;
  - (ii) in the course of publication for sale or reward of newspapers, journals, books, periodicals or light publications by or on behalf of the Insured;
  - (iii) by or with the authority of the Insured when the Insured knew the publication or utterance to be false.
- d) wrongful entry or eviction or other invasion of the right to private occupancy;
- e) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

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2. **PROPERTY DAMAGE**
  - a) physical damage to or destruction of or loss of tangible property, including the loss of use following such physical damage or destruction;
  - b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an Occurrence.
3. **OCCURRENCE**

An event including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury or Property Damage, neither expected nor intended from the standpoint of a reasonable person in the position of the Insured. All events of a series consequent on or attributed to one source or original cause will be deemed one Occurrence.
4. **COMPENSATION**

Monies paid or agreed to be paid by judgement or settlement for:

  - a) Personal Injury
  - b) Property Damage.

Provided that Compensation is payable only in respect of an Occurrence to which this insurance applies.
5. **INSURED**

The Insured named in the Schedule, and:

  - (a) any subsidiary company (including subsidiaries thereof) of the named Insured and any other organisation under the control of the named Insured and over which it is exercising active management;
  - (b) any corporation acquired by the named Insured during the Policy Period which place of incorporation is in Australia, provided such acquisition is reported to the Insurers within ninety (90) days after the date of acquisition and provided further notice of such acquisition is endorsed on the Policy.

The coverage provided by this Policy extends to the following:

  - (i) any director, officer, employee, partner or shareholder of the Insured, but only whilst acting within the scope of their duties in such capacity;
  - (ii) any principal in respect of the liability of such principal, arising out of the performance by the named Insured or by a company designated in paragraph (a) above of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement;
  - (iii) any social and/or sporting club formed with the consent of the Insured including an office bearer or member thereof in respect of claims arising from their duties connected with those activities.
6. **INSURED'S PRODUCTS**

Any commodity, article or thing (after they have ceased to be in the possession or under control of the Insured) which was, or is deemed by law to have been manufactured, grown, extracted, produced, processed, assembled, constructed, erected, installed, altered, repaired, serviced, treated, sold, supplied, distributed, imported or exported by the Insured (including any container thereof other than a Vehicle).
7. **VEHICLE**

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 attachments made or intended to be drawn by any such machine.
8. **WATERCRAFT**

Any vessel, craft or thing made or intended to float on or in or travel on or through water.
9. **HOVERCRAFT**

Any vehicle or vessel supported by a cushion of air.
10. **AIRCRAFT**

Any vehicle designed to transport persons or property in the air or space.
11. **AUSTRALIA**

All States and Territories comprising Australia.
12. **INDEMNITEE**

Indemnatee is a party entitled to indemnity pursuant to a contract entered into between that party and the Insured.
13. **POLLUTION**

The discharge, dispersal, release or escape of smoke, vapour, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials which includes materials to be recycled, reconditioned or reclaimed, other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.
14. **TOOL OF TRADE**

Tool of trade means the intended use of a vehicle whilst engaged on a work site.  
Tool of Trade does not include:

  - (a) Vehicles whilst in transit to or from or within any work site;
  - (b) Vehicles used for transport or haulage.
15. **POLICY PERIOD**

The period stipulated in the Schedule and further defined in the Insuring Agreements.

16. LIMITS OF LIABILITY

The Insurer's liability stipulated in the Schedule and further defined in the Insuring Agreements.

17. SCHEDULE

The Schedule attaching to and forming part of the Policy Wording including any Schedule substituted for the original Schedule.

### EXCLUSIONS

**This Policy does not cover:**

1. Any:
  - (a) Personal Injury to any of the Insured's workers arising out of or in the course of their employment in the Insured's Business;
  - (b) Personal Injury to any person who is, pursuant to any legislation relating to Workers' Compensation, deemed to be a worker of the Insured;
  - (c) liability for which the Insured is entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to Workers' Compensation, whether or not the Insured is a party to such contract of insurance;
  - (d) liability imposed by the provisions of any Workers' Compensation legislation or any industrial award or agreement or determination.
2. Property Damage to:
  - (a) property owned by or leased or rented or hired to the Insured;
  - (b) property which is in the Insured's physical or legal control;Providing this Exclusion 2. shall not apply to liability for Property Damage to:
  - (i) premises which are leased, or rented or hired to the Insured where such Property Damage is caused by fire, explosion, water discharging or leaking from any pipe or water system or by impact caused by any Vehicle;
  - (ii) Vehicles (other than Vehicles owned or used by or on behalf of the Insured) in the physical or legal control of the Insured whilst such Vehicles are in a car park owned or operated by the Insured other than for income or reward as a car park operator;
  - (iii) workers' property;
  - (iv) property which is the Insured's physical or legal control, to a Limit of Liability designated in the Schedule, and this Limit of Liability designated is the total aggregate liability Insurers during any one period of insurance will pay as Compensation for all claims arising out of Property Damage to property which is in the Insured's physical or legal control.
3. Property Damage to the Insured's Products if such damage is attributed to any defect therein or the harmful nature or unsuitability thereof, including claims in respect of the cost of performing, completing, repairing, correcting or improving any work undertaken by or on behalf of the Insured.
4. Liabilities assumed by the Insured under any contract or agreement as regards:
  - (a) the Insured's Products;
  - (b) contracts or leases of real or personal property where such liabilities arise from the Insured's obligations to effect insurances over such property;
  - (c) liquidated damages or penalties imposed under any contract or agreement;
  - (d) liability in respect of Personal Injury or Property Damage arising from the sole negligence of the Indemnatee;Providing that this Exclusion 4. Does not apply to:
  - (i) liabilities which would have been implied by law in the absence of such contract or agreement;
  - (ii) liability assumed by the Insured under a warranty of fitness or quality as regards the Insured's Products;
  - (iii) those written contracts as are specifically designated in the Schedule.
5. Property Damage to work performed by or on behalf of the Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.
6. Loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (a) a delay in or lack of performance by or on behalf of the Insured in respect of any contract or agreement;
  - (b) the failure of the Insured's Products or work performed by or on behalf of the Insured to meet the level of performance, quality, fitness or durability warranted or represented by the Insured; but this Exclusion 6. (b) shall not apply to loss of use of other tangible property resulting from an immediate or instantaneous Occurrence causing physical damage to or destruction of the Insured's Products or work that has been put to its intended use by any person or organisation other than The Insured.
7. Compensation claimed in respect of the recall, inspection, repair, removal, replacement or loss of use of the Insured's Products or work performed by or on behalf of the Insured to any property of which such products or work form a part if such products work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
8. Any liability arising from any product guarantee given by or on behalf of the Insured.

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9. Any liability arising out of the ownership, maintenance, operation, loading, unloading or use of:
  - (a) any Aircraft, aircraft landing area or airport; or Hovercraft, hovercraft docking area or bay;
  - (b) any Watercraft whilst afloat exceeding 8 metres in length; but this exclusion 9. (b) shall not apply in respect of Watercraft owned and operated by persons other than the Insured and used by the Insured for social purposes or business entertainment.
10.
  - (a) Personal Injury arising out of the ownership, maintenance, operation or use by the Insured of any Vehicle in respect of which compulsory insurance is or should be available for such Personal Injury;
  - (b) Property Damage arising out of the ownership, maintenance, operation or use by the Insured of any Vehicle in respect of which there is required to be in force a policy of compulsory liability insurance;Provided that this Exclusion 10 (b). shall not apply to Vehicles whilst being operated or used by or on behalf of the Insured as a Tool of Trade.
11. Any Liability arising out of:
  - (a) the selling, leasing, hiring or manufacturing of any Aircraft or aerial device;
  - (b) the manufacture supply of parts and/or products that are installed with the Insured's knowledge in any Aircraft or aerial device.
12. Fines and penalties imposed by law.
13. Any liability arising out of Pollution, including any cost or expenses removing, nullifying or cleaning-up such contamination or Pollution. Provided this Exclusion 13. shall not apply to Pollution caused by an immediate or instantaneous and identifiable Occurrence, but in no event shall this insurance apply to Personal Injury or Property Damage arising out of continuous repeated exposure to substantially the same general conditions if such conditions are known to the Insured prior to the immediate or instantaneous and identifiable Occurrence. It is further agreed that expenses for the prevention of Pollution shall also form part of this Exclusion 13. and shall not be recoverable under this insurance.
14. Any liability directly or indirectly occasioned by, happening through, or in consequence of war, invasion, acts of foreign enemies, hostilities (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 local authority.
15. Any liability directly or indirectly caused by or contributed to by or arising from:
  - (a) ionising radiations or contaminations by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this Exclusion 15.(a) only, combustion shall include any self-sustaining process of nuclear fission;
  - (b) Nuclear weapons material.
16. Any liability in respect of Personal Injury or Property Damage (including loss of use of property) which is actually or allegedly, in whole or in part, directly or indirectly arising out of, resulting from, connected to, aggravated by, based upon or attributable to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos. This exclusion shall apply notwithstanding there are other perils which actually or allegedly, directly or indirectly contributed concurrently, consecutively or in any sequence to a loss.

Further this Policy shall not indemnify the Insured for any Claim arising out of, resulting from, connected to, aggravated by, based upon or attributable to the recall of any Products due in whole or in part to an asbestos health hazard.

The Insurers shall have no duty to indemnify the insured for any Claim that in fact, whether in whole or in part, directly or indirectly, arises out of, results from, is connected to, is aggravated by, is based upon or is attributable to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos notwithstanding the Claim is not alleged or pleaded so as to include any allegation of manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos.

The Insurers shall have the right to adduce evidence extrinsic to the pleadings in any action, application or Petition for coverage brought by an Insured where that extrinsic evidence is relevant to prove the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos in fact.

17. Claims arising out of or incurred as a result of the rendering or a failure to render:
  - (a) professional advice or service (other than medical first aid);
  - (b) advice (other than advice in respect of the use of the Insured's Products), designs or specifications for a fee;

18. Claims made and actions:
  - (a) instituted within the United States of America or the Dominion of Canada or any other territory coming within jurisdiction of the courts of the United States of America or the Dominion of Canada;
  - (b) to which the laws of the United States of America or the Dominion of Canada apply;
  - (c) instituted in any country outside Australia where the law of that country requires that liability in respect of products sold or supplied shall be insured or secured with an insurer or organisation which is licensed in that country to grant such insurance or security.
19. Any award for punitive, exemplary, multiple or aggravated damages.
20. Any liability in respect of Personal Injury or Property Damage (including loss of use of property) which is actually or allegedly, in whole or in part, directly or indirectly, arising out of, resulting from, connected to, aggravated by, based upon or attributable to the presence, growth, proliferation, spread or activity of a biological agent, including but not limited to, mould, fungus, spores, mildew, mushrooms, yeast, or biocontaminants or any by-product therefrom. This exclusion shall apply notwithstanding there are perils other than biological agents which may have actually or allegedly, in whole or in part, directly or indirectly, contributed concurrently or consecutively or in any sequence to a loss.

The Insurers shall have no duty to indemnify the Insured for any Claim that in fact, whether in whole or in part, directly or indirectly, arises out of, results from, is connected to, is aggravated by, is based upon or is attributable to the presence, growth, proliferation, spread or activity of a biological agent notwithstanding the Claim is not alleged or pleaded so as to include any allegation of a biological agent or agents.

The Insurers shall have the right to adduce evidence extrinsic to the pleadings in any action, application or Petition for coverage brought by an Insured where that extrinsic evidence is relevant to prove the presence, growth, proliferation, spread or activity of a biological agent in fact.

## CONDITIONS

1. **CHANGE OF RISK**
  - (a) Every change materially affecting the facts or circumstances existing at the commencement of this insurance or any subsequent renewal date shall be notified to the Insurers immediately such change comes to the notice of the Insured or any officer or representative of the Insured.
  - (b) Notification to any agent or broker, or knowledge possessed by any agent or broker, or by any other person shall not constitute notice to the Insurers and shall not effect a waiver or change in any part of this Policy or prevent the Insurers from asserting any right under the terms of this Policy. No part of this Policy shall be waived or changed except by endorsement issued to form part of this Policy.
2. **PREMIUM**
  - (a) Unless otherwise provided for the premium for this Policy is an adjustable premium. In the event of an additional Insured being added to the coverage under this Policy during the currency of this Policy prompt notice shall be given to the Insurers which shall be entitled to charge an appropriate additional premium.
  - (b) If the first or renewal premium for this policy or any part thereof shall have been calculated on estimates furnished by the Insured then the Insured shall keep an accurate record containing all particulars relative thereto and shall at all times allow the Insurers to inspect such record. The Insured shall within thirty days after the expiry of each Policy Period furnish to the Insurers such particulars and information as the Insurers may require. The premium for such Policy Period shall thereupon be adjusted and any difference paid by or allowed to the Insured as the case may be subject to receipt and retention of the minimum premium charged by the Insurers.
3. **INSPECTION AND AUDIT**

The Insurers shall be permitted but not obligated to inspect the Insured's property and operation at any reasonable time. Neither the Insurer's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others to determine or warrant that such property or operations are safe or healthy, or are in compliance with any law, rule or regulation. The Insurers may examine and audit the Insured's books and records at any time during the Policy Period and within three (3) years after the final termination of the Policy, as far as they relate to the subject matter of this insurance.

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## 4. INSURED'S DUTIES IN THE EVENT OF AN OCCURRENCE, CLAIM OR SUIT

- (a) The Insured shall give notice in writing to the Insurers as soon as practicable of every Occurrence, claim, proceeding, impending prosecution or inquest and shall immediately forward to the Insurers all information and documents received or held by them or their representatives relating thereto.
- (b) In the event of an Occurrence or the likelihood of an Occurrence the Insured shall take at his own expense all reasonable steps to prevent Personal Injury or Property Damage arising or continuing out of the same or similar conditions.
- (c) The Insured shall co-operate with the Insurers and upon the Insurers request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organisation who may be liable to the Insured because of an Occurrence and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (d) The Insured shall use his best endeavours to preserve all property that may assist in the investigation of an Occurrence or the defence of a claim or in the exercising of the Insurer's rights of Subrogation and so far as may be reasonably practical no alteration or repair shall be made to any property without the consent of the Insurers until the Insurer has had the opportunity of inspection.
- (e) The Insured shall not without the written consent of the Insurers make any admission, offer, promise or payment in connection with any Occurrence or claim, and the Insurers if they so desire shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim.

## 5. SUBROGATION

In the event of any payment under this Policy to or on behalf of the Insured, the Insurers shall be subrogated to all the Insured's rights of recovery against any person or organisation and the Insured shall execute and deliver any appropriate instruments and papers and do whatever else is necessary to secure such rights. Any amount so recovered shall be applied in the following order of priority:

- (a) FIRST to the uninsured proportion of the loss;
- (b) SECOND to reimburse the Insurers to the extent of its actual payment hereunder;
- (c) THIRD if any balance then remains unpaid it shall be applied to reimburse the Insured as their interest may appear.

The expense of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no such recovery in proceedings conducted solely by the Insurers, it shall bear the expenses thereof.

## 6. ASSIGNMENT

Assignment of interest under this Policy shall not bind the Insurers until its consent is endorsed hereon. If, however, the Insured shall die, or be adjudged bankrupt or insolvent, such insurance as is afforded by this Policy shall apply:

- (a) to the Insured's appropriate legal representative, as the Insured, but only while acting within the scope of his duties as such;
- (b) with respect to the property of the Insured, to the person or corporation having proper temporary custody thereof, as the Insured, but only until the appointment and qualification of the legal representative.

## 7. CROSS LIABILITY

Where more than one party comprises the Insured each of the parties shall be considered as a separate and distinct entity and the word Insured shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties provided that nothing in this clause shall result in an increase of the Insurers Limits of Liability in respect of any Occurrence or Period of Insurance.

## 8. OTHER INSURANCE

If in respect of any liability the Insured shall be entitled to indemnity under this Policy and any other policy of insurance, this policy does not cover such liability except in respect of any excess beyond the amount payable under such other policy of insurance.

## 9. REASONABLE PRECAUTIONS

The Insured shall take all reasonable precautions to prevent Personal Injury and Property Damage and to comply with all statutory obligations and regulations imposed by any authority.

## 10. CANCELLATION

- (a) This policy may be cancelled at any time at the request of the Insured. The Insurers may cancel the Policy only in accordance with the provisions in that regard contained in the Insurance Contracts Act 1984.
- (b) Adjustment of premium:
  - (i) After cancellation by the Insured the Insurers shall retain or be entitled to the premium for the period during which the Policy has been in force plus the Insurers cancellation charge or if applicable after adjustment in accordance with Condition 2.(b) of the Policy.
  - (ii) After cancellation by the Insurers the premium for the period prior to cancellation shall be adjusted in the manner provided by Condition 2. (b) of the Policy or if that Condition is not applicable the Insured shall be entitled to a pro-rata refund of the unexpired premium.
- (c) Notwithstanding the termination or cancellation of the Policy the Insured shall furnish such particulars as the Insurers may require for the adjustment of the premium as aforesaid.



### **TERRORISM EXCLUSION ENDORSEMENT**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature 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 endorsement 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 endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

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

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

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### **AUSTRALIA TERRORISM INSURANCE ACT 2003 NOTICE**

The Underwriters have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

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### **RADIOACTIVE CONTAMINATION AND EXPLOSIVE NUCLEAR ASSEMBLIES EXCLUSION CLAUSE**

*(Approved by Lloyd's Underwriters' Non-Marine Association)*

This Policy does not cover

- (a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- (b) any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

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# General & Products Liability Policy

## LLOYD'S AUSTRALIAN ALTERNATIVE DISPUTES RESOLUTION CLAUSE

In the event that a dispute arises between Underwriters and the Insured/Reinsured out of or otherwise in relation to this agreement, then:

- (a) Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "Dispute Notice") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
- (b) If a dispute is not resolved within 10 days of the Dispute Notice, either party can request the other party within a further 10 days to agree on either:
  1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (LEADR) (or other appropriate professional body as agreed by the parties); or
  2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
    - (a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
    - (b) will act as an expert and not as an arbitrator;
    - (c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
    - (d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
    - (e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the Dispute Notice (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- (c) Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21, Angel Place  
123 Pitt Street  
Sydney NSW 2000

who has authority to accept service and to appear on Underwriters' behalf.

If proceedings are instituted against any one of the Underwriters, all Underwriters participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- (d) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- (e) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- (f) Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

LSW 1145



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