

# Lloyd's Civil Liability Professional Indemnity Policy Wording

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# Lloyd's Civil Liability Professional Indemnity Policy Wording

## PROCOVER CIVIL LIABILITY PROFESSIONAL INDEMNITY WORDING

### Preamble

Where the Insured has made to Us a written Proposal which We have relied upon, and which it is hereby agreed now forms the basis of this Policy and is considered to be incorporated herein, and subject to the payment of the premium specified in the Schedule, We agree to provide indemnity to the Insured subject to the terms and conditions of this Policy.

## SECTION 1 - INSURING CLAUSES

- 1.1 We agree to indemnify the Insured against all sums which the Insured becomes legally liable to pay as a result of a Claim first made against the Insured and notified to Us in writing during the Period of Cover for any civil liability incurred or alleged to have been incurred in the conduct of the Insured's Business.
- 1.2 We agree to pay, in addition to the Limit of Indemnity but only up to an amount equal to the Limit of Indemnity, the Costs and Expenses incurred by the Insured, with Our written consent, in defence or settlement of any Claim covered by this Policy.

### Policy Coverage Clarifications

For the purposes of clarifying indemnity provided under Insuring Clause 1.1, it is deemed that Insuring Clause 1.1 includes indemnity for civil liability for Claims arising from the conduct of the Insured's Business in respect to any the following sections:

- 1.3 **Trade Practices Act**  
Any Claim made under the Trade Practices Act 1974 (Cth), Fair Trading Act 1987 (NSW), Fair Trading Act 1985 (Vic) or similar legislation enacted by other states or territories of the Commonwealth of Australia or Dominion of New Zealand PROVIDED ALWAYS THAT such indemnity shall not include any liability established by final adjudication under a criminal or penal provision of such legislation .
- 1.4 **Intellectual Property**  
Any Claim for any actual or alleged infringement or violation of copyrights, trademarks, service marks, registered designs or patents, plagiarism or breach of any confidentiality or breach of any other intellectual property right.
- 1.5 **Consultants and Sub-contractors**  
Any Claim arising from any act, error or omission committed or alleged to have been committed by any consultant, sub-contractor or agent for whose acts, error or omissions the Insured is liable PROVIDED ALWAYS THAT no indemnity shall extend to any such consultant, sub-contractor or agent.
- 1.6 **Libel and Slander**  
Any Claim for libel or slander by reason of words written or spoken by the Insured.
- 1.7 **Fraud and Dishonesty**  
Any Claim arising out of any dishonest, fraudulent, criminal or malicious acts or omissions of an Employee of the Insured PROVIDED ALWAYS THAT:
  - a) no indemnity shall be provided to any person committing or condoning any act or omission; and
  - b) the Insured shall take all reasonable steps requested by Us to recover the loss; and
  - c) the Insured shall permit Us to take such recovery action in the name of the Insured and the Insured shall assist and co-operate with Us and shall provide Us with such information (including signed statements) as We may reasonably require; and

## SECTION 1 - INSURING CLAUSES (CONT')

- d) this cover shall not apply to any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes.

### 1.8 Loss of Documents

Any Claim arising from the loss of any Documents which have been destroyed, damaged, lost or mislaid and after diligent search cannot be found PROVIDED ALWAYS THAT:

- a) such indemnity shall be limited to the costs, charges and expenses of whatsoever nature incurred by the Insured in replacing and/or restoring (whichever is the lesser) such Documents and any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by some competent person to be nominated by Us with the approval of the Insured; and
- b) such indemnity shall be limited to the loss of any Documents which were in the physical care, custody or control of the Insured or any other person to or with whom the Insured entrusted, lodged or deposited such Documents in the ordinary course of business; and
- c) no indemnity shall be provided for any loss arising from the normal wear and tear and other gradually operating causes; and
- d) any cover provided under this section shall not exceed \$100,000 (one hundred thousand dollars) in the aggregate including all costs and expenses OTHER THAN consequential loss arising in connection with such loss of Documents.

### 1.9 Professional or Fiduciary Duties

Any Claim for a breach of duty owed by the Insured to a client or customer of the Insured whether a fiduciary duty or a professional duty of care including warranties of authority.

## SECTION 2 - AUTOMATIC EXTENSIONS

The following extensions are included automatically in this Policy for nil additional premiums PROVIDED ALWAYS THAT this extension is subject to the terms and conditions, excess and Limit of Indemnity of this Policy. The inclusion of these extensions does not increase the Limit of Indemnity of the Policy.

### 2.1 Reinstatement of Limit

We agree to increase the Limit of Indemnity under this Policy by an amount equal to the Limit of Indemnity PROVIDED ALWAYS THAT:

- a) indemnity under this Policy shall not exceed the Limit of Indemnity as stated in the Schedule for any one Claim or series of Claims arising from the same acts, errors or omissions; and
- b) in the aggregate, indemnity shall not exceed an amount equal to twice the Limit of Indemnity as stated in the Schedule; and
- c) where there is additional insurance in place in excess of the Limit of Indemnity of this Policy, any indemnity under this Extension is limited to the sums which are not covered by the additional insurance.

### 2.2 Disciplinary Proceedings and Enquiries Costs

We agree to provide indemnity to the Insured for any Costs and Expenses incurred with our prior written consent for the representation of the Insured at any disciplinary proceeding, enquiry, coronial enquiry, Royal Commission or government enquiry held by a court, tribunal, judicial body or legally constituted industry or professional body PROVIDED ALWAYS THAT:

- a) the Insured first became aware of such proceeding or enquiry during the Period of Cover and We are notified in writing as soon as reasonably possible during the Period of Cover; and
- b) for the purposes of this Extension the Limit of Indemnity is amended to \$100,000 (one hundred thousand dollars).

**2.3 Joint Venture Cover**

We agree to indemnify the Insured for their joint & several liability, including vicarious liabilities arising from the operation or activities of any Joint Venture PROVIDED ALWAYS THAT this cover shall only apply to any Claim or Claims arising from the Joint Ventures as named in the Schedule. If no Joint Ventures are named in the Schedule all liability under this Extension is limited to the Insured's proportion of liability as determined by final adjudication or ruling

For the purposes of this clause a Joint Venture shall be defined as an undertaking (by whatever name called) which the Insured carries on together with another person or entity not otherwise deemed an Insured under this Policy.

**2.4 Newly Acquired or Created New Subsidiaries**

We agree to provide indemnity to the Insured in respect of any subsidiary or entity, which is created or acquired by the Insured as named in the Schedule PROVIDED ALWAYS THAT:

- a) such indemnity shall only apply in respect to any act, error or omission actually or allegedly occurring subsequent to the date of creation or acquisition by the Insured;
- b) indemnity under this Extension is only valid for 30 days;
- c) notification shall be given in writing to Us within 30 days after such creation or acquisition;
- d) We may at Our absolute discretion provide cover for such subsidiary or entity created or acquired subject to additional premiums and/or conditions;
- e) Indemnity shall only be provided in respect to any Claim or Claims arising from the conduct of the Insured's Business as described in the Schedule.

**2.5 Continuity of Cover**

We agree to provide indemnity where the Insured

- a) first became aware of facts or circumstances that might give rise to a Claim prior to the Period of Cover but had not notified Us of such facts or circumstances prior to the Period of Cover; and
- b) We were the Insured's professional indemnity insurer at the time the Insured first became aware of the facts or circumstances;

in which case exclusion clause 7.6 'Prior or Pending Claims' will not apply to any notification during the Period of Cover of any Claim resulting from such facts or circumstances,

PROVIDED ALWAYS THAT:

- i. but for the failure of the Insured to notify the prior facts or circumstances when the Insured first became aware of them, the Insured would have been entitled to indemnity under the Policy in force at the time; and
- ii. We have continuously been the Insured's professional indemnity insurer from the date when the Insured first became aware of the facts or circumstances in respect of which notification should have been given and the date when such notification was given; and
- iii. the Limit of Indemnity provided by this Automatic Extension shall be the lesser of the available Limit of Indemnity under the Policy during the Period of Cover and the Limit of Indemnity under the earlier Policy in force when the Insured first became aware of facts or circumstances in respect of which notification should have been given; and
- iv. We may reduce our liability under the Policy to the extent of any prejudice We may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Cover.

## SECTION 2 - AUTOMATIC EXTENSIONS (CONT)

### 2.6 Pollution Buy-Back Clause

We agree to provide indemnity to the Insured for any Claim first made against them during the Period of Cover arising out of seepage, pollution or contamination, provided such Claim was the result of a negligent act, error or omission in the course of the Insured's professional business as specified in the Schedule PROVIDED ALWAYS THAT the following conditions shall apply to any cover provided under this extension:

This Policy shall not provide indemnity to the Insured for any Claim or Claims arising directly or indirectly from or in connection with:

- 1) any liability arising as a result of any land or property being registered under the Environmental Management Register (EMR) or under the provisions of the Contaminated Land Management Amendment Bill 2008 (NSW) or similar legislation enacted by other states or territories of the Commonwealth of Australia or Dominion of New Zealand or any other statutory re-enactment or amendment thereto or within any other register or public record.
- 2) any liability arising as a result of any other statute in connection with seepage, pollution or contamination.
- 3) fines, penalties, punitive, multiple or exemplary damages.
- 4) any claims arising directly or indirectly from any dishonest, fraudulent, criminal, malicious or illegal act or omission of the Insured, any employee or director of the Insured or any other person, persons, partnership firm or company acting for or on behalf of the Insured.
- 5) any Claim for property damage other than for which the Insured is or has been working on in connection with the professional business as stated in the Policy.

PROVIDED ALWAYS THAT Our liability in respect of this extension:

- i) shall not include the Excess as specified in the Schedule, and
- ii) shall not exceed in the aggregate for the Period of Cover inclusive of all costs and expenses incurred in the investigation, defence or settlement of any Claim the Limit of Indemnity as stated in the Schedule and it is hereby declared and agreed that Automatic Extension 2.1 - Reinstatement of Limit of Indemnity is deleted.

## SECTION 3 - OPTIONAL EXTENSIONS

The following extensions are not included in this Policy unless shown on the Schedule. Cover under this extension is subject to the terms and conditions, excess and Limit of Indemnity of this Policy. The inclusion of this extension does not increase the Limit of Indemnity of the Policy.

### 3.1 Fidelity Guarantee

We agree to Indemnify the Insured for any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or current notes belonging to the Insured or for which the Insured is legally responsible where such loss:

- a) is sustained in consequence of any dishonest, fraudulent, malicious or illegal act or omission of any Insured or Employee; and
- b) is first discovered by the Insured during the Period of Cover; and
- c) We are notified in writing during the Period of Cover;

PROVIDED ALWAYS THAT:

- i) The Insured shall at their own costs and expenses do all things necessary to establish and prove any such loss under this Extension and We shall be under no obligation to provide any indemnity until We are satisfied such loss has in fact occurred;

## SECTION 3 - OPTIONAL EXTENSIONS (CONT)

- ii) The Insured has notified the police of all losses sustained for which recovery is sort under this Extension; and
- iii) Any monies which, but for the act or dishonesty or fraud, would've been payable to such person by the Insured shall be deducted from any amount otherwise payable under this Extension; and
- iv) Any cover under this Extension is subject to the Fidelity Sub-Limit as stated in the Schedule; and
- v) Cover under this extension is subject to the Fidelity excess as stated in the Schedule.

### 3.2 Principal's Previous Business

We agree to provide indemnity to a person named as a Principal in the Schedule in respect of Claims otherwise within the scope of the Policy arising from that Principal's Prior Professional Practice PROVIDED ALWAYS THAT:

- a) the Principal was a qualified principal of a Prior Professional Practice noted in the Proposal; and
- b) this Automatic Extension is subject to the terms and conditions and Limit of Indemnity under the Policy for the Period of Cover; and
- c) for the purposes of this clause, no indemnity shall be provided for a Claim arising from facts or circumstances known to the Principal named in the Schedule prior to the Period of Cover, but not notified to Us until after the Period of Cover commenced.

## SECTION 4 - DEFINITIONS

### 4.1 Business

"Business" shall mean the business (or businesses) or profession (or professions) shown in the Schedule.

### 4.2 Claim

"Claim" shall mean:

- a) any writ or summons or other legal form of legal or arbitral process, including cross claims or counter claims, served upon an Insured; or
- b) any written or oral demand for compensation received by the Insured which a reasonable person may believe might result in a claim for compensation, damages or other relief against an Insured.

### 4.3 Costs and Expenses

"Costs and Expenses" shall mean the expenses incurred by or on behalf of the Insured or Us in the investigation or defence of a Claim, including any related appeal or similar process, and shall include legal costs and disbursements.

### 4.4 Documents

"Documents" shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronically stored data but shall not include money, bearer bonds or coupons, stamps, bank or currency notes or any other negotiable instrument.

### 4.5 Employee

"Employee" shall mean:

- a) any person employed by the Insured as named in the Schedule under a contract of service or apprenticeship; or
- b) any consultant, sub-contractor or agent PROVIDED ALWAYS THAT:

## SECTION 4 - DEFINITIONS (CONT')

- 4.5 (Cont'd)
- i) this cover shall only apply to services provided for and on behalf of the Insured as named in the Schedule; and
  - ii) this cover shall only extend to those consultants, sub-contractors or agents who are deemed employees or who perform more than 90% of their services for and/or on behalf of the Insured named in the Schedule.
- 4.6 **Excess**  
"Excess" shall mean the amount of the Excess as stated in the Schedule.
- 4.7 **Insured**  
"Insured" shall mean:
- a) the firm, partnership, company or individual named in the Schedule;
  - b) any individual who is, has been, or may become during the Period of Cover a Principal, Partner, Director or Employee of the firm named in the Schedule but only in respect of Claims arising out of work performed for and/or on behalf of the firm, partnership or company named in the Schedule;
  - c) any predecessor in business of the firm named in the Schedule, but only to the extent of the liability attaching to the firm, partnership or company named in the Schedule;
  - d) the estate, heirs, legal representatives or assigns of any Insured under parts a), b) or c) in the event of the death, bankruptcy or legal incapacity of such Insured.
- 4.8 **Limit of Indemnity**  
"Limit of Indemnity" shall mean the limit of liability under this Policy as stated in the Schedule.
- 4.9 **Period of Cover**  
"Period of Cover" shall mean the period stated in the Schedule.
- 4.10 **Policy**  
"Policy" shall mean:
- a) the Schedule, Insuring Clauses, Extensions, Conditions, Definitions, Exclusions and other terms and conditions herein; and
  - b) any endorsement attaching to and forming part of this Policy either at inception or during the Period of Cover; and
  - c) the Proposal.
- 4.11 **Proposal**  
"Proposal" shall mean the written Proposal form submitted to Us containing particulars and statements (together with any other written information which may have been supplied in conjunction therewith) bearing the date as stated in the Schedule.
- 4.12 **Prior Professional Practice**  
"Prior Professional Practice" shall mean a previous business carrying out the functions normally associated with the conduct of a professional practice in the Insured's profession conducted prior to the Period of Cover.
- 4.13 **Schedule**  
"Schedule" shall mean the signed and stamped schedule to this Policy.
- 4.14 **Security**  
"Security" shall mean Certain Underwriters at Lloyd's, each of whom (including their executors and administrators) is only liable for their share of any Claim, loss, liability or expense payable under this Policy.
- 4.15 **We, Us, Our**  
"Us", "We" and "Our" means Procover Underwriting Agency Pty Ltd on behalf of the Security.

## SECTION 5 - GENERAL CONDITIONS

### 5.1 Policy Construction

- a) The construction, interpretation and meaning of the terms and conditions of this Policy shall be construed in accordance with the laws of the state, territory or country in which the Policy is issued and as stated in the Schedule. Any and all disputes relating to the interpretation of this Policy will be subject to the jurisdiction of the courts of such state, territory or country.
- b) The paragraph titles in this Policy are included for descriptive purposes only and do not form part of this Policy for the purpose of its construction or interpretation.
- c) For the purposes of this Policy all references to the masculine include the feminine, the singular includes the plural and vice versa.

### 5.2 Alteration of Risk

The Insured shall as soon as reasonably practicable notify Us of any material alteration to the risk during the Period of Cover including but not limited to:

- a) any merger with or acquisition of another business or the commencement of a branch office or joint venture;
- b) the Insured going into voluntary bankruptcy, receivership or liquidation or the Insured failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- c) any material change in the Insureds Business;
- d) cancellation, suspension or termination of any statutory registration relevant to the Insureds Business.

### 5.3 Cancellation

- a) The Insured may cancel this Policy at any time during the Period of Cover by giving written notice to Us. We will allow a pro-rata refund for the unexpired Period of Cover less any non-refundable duties or charges and a 15% cancellation fee subject to a maximum refund of 75% of the annual premium. We will not refund any premium if any Claim has been notified during the Period of Cover.
- b) We may cancel this Policy in accordance with the provisions of the Insurance Contract Act 1984 or any other applicable laws by giving written notice to the Insured (at either the Insured's brokers address or the last address of the Insured given to Us). We will allow a pro-rata refund for the unexpired Period of Cover less any non-refundable duties or charges.

### 5.4 Limit of Indemnity

Our liability under this Policy shall not exceed for any one Claim or in the aggregate for all Claims during the Period of Cover the Limit of Indemnity as stated in the Schedule, such Limit of Indemnity to include all costs and expenses payable to any claimant as part of any judgement or agreed settlement of any Claim or Claims.

If a payment greater than the Limit of Indemnity is made to dispose of a Claim, Our liability for Costs and Expenses under Insuring Clause 1.2 shall be such proportion thereof as the amount of indemnity available under this Policy bears to the amount paid to dispose of the Claim.

### 5.5 Excess

The Insured shall bear the amount of the Excess stated in the Schedule in respect of each and every Claim made against the Insured and We shall only be liable to indemnify the Insured, up to an amount equal to the Limit of Indemnity, in excess of that amount including amounts paid under Insuring Clause 1.2.

All expenses incurred by Us pursuant to the appointment or engagement of professional advisers considered necessary by Us to determine the liability of the Insured and to resolve the Claim shall be borne by the Insured except for any costs and expenses incurred by Us to determine whether We have a liability to indemnify the Insured under the Policy which shall be borne by Us.

### 5.6 Multiple Claims

Where one act, error or omission results in more than one Claim against the Insured all such claims shall jointly constitute one Claim under this Policy.

Where causally connected or interrelated acts, errors or omissions result in a Claim or Claims under this Policy, all such Claims shall be regarded as one Claim.



**5.7 Territory and Jurisdiction**

This Policy shall indemnify the Insured for any Claim first brought in a court of law anywhere in the world and arising from an act, error or omission committed anywhere in the world except for:

- a) any Claim first brought within the United States of America or the Dominion of Canada or their territories or protectorates; or
- b) any Claim arising from the enforcement of any judgement, order or award obtained within, or pursuant to the laws of the United States of American or the Dominion of Canada or their territories or protectorates; or
- c) arising from any act, error or omission committed or alleged to have been committed within the territorial limits of the United States of America or the Dominion of Canada or their territories or protectorates.

**5.8 Interested Parties**

This Policy only provides indemnity to those persons or entities noted as Insureds in the Schedule or otherwise included under the terms and conditions of this Policy. No interest in this Policy may be changed, modified, assigned or transferred to any other party without Our prior written consent.

**5.9 Insurers Several Liability**

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

**5.10 Complaints Handling & General Insurance Code of Practice**

This Certificate is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any claims adjusted outside Australia. Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry. Any enquiry or complaint relating to this Insurance should be referred to the Coverholder shown above in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia

Suite 2, Level 21

Angel Place

123 Pitt Street

Sydney NSW 2000

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

Who will refer your dispute to the Complaints Department at Lloyd's.

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

The Underwriters hereon agree that:

- i) In the event of a dispute arising under this Insurance, the Underwriters at the request of the Assured 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 the Lloyd's Underwriters' General Representative in Australia as referenced above who has authority to accept service and to enter an appearance on the Underwriters' behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on the 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.

## SECTION 5 - GENERAL CONDITIONS (CONT)

### 5.11 Severability and Non-Imputation

We agree that where this Policy insures more than one party, the conduct of any party that is an Insured where such party:

- a) fails to comply with the duty of disclosure under the Insurance Contracts Act 1984; or
- b) made a misrepresentation to Us before this contract of insurance was entered into; or
- c) fails to comply with the conditions of this contract of insurance,

shall not prejudice the right of any other Insured party to indemnity under this Policy PROVIDED ALWAYS THAT this Condition will only apply when such remaining Insured parties:

- i. are entirely innocent of and have no prior knowledge of any such conduct; and
- ii. notify Us in writing of all known facts in relation to any such conduct as soon as reasonably practicable upon becoming aware of such conduct.

### 5.12 GST

Where under this Policy We are obliged to indemnify the Insured against any Claim or Claims or Costs and Expenses for which the Insured is entitled to an input tax credit for the GST, the amount of any such input tax credit will be deducted from the amount payable by Us.

### 5.13 Other Insurances

If at the time any Claim arises under this Policy there is any other insurance in force covering the same liability, in part or in full, the Insured shall promptly notify the Insurer of full details of such other insurance, including the identity of the insurer and the policy number, and such further information as the Insurer may reasonably require.

## SECTION 6 - CLAIMS CONDITIONS

### 6.1 Claims Management

- a) The Insured shall not disclose to any person without Our written consent the nature of or terms and conditions of this Policy
- b) The Insured shall not admit liability, or incur any Costs or Expenses, or make any admission, arrangement, offer, promise or payment without Our written consent, such consent not to be unreasonably withheld.
- c) We shall at any time be entitled to take control of or conduct in the name of the Insured the defence or settlement of any Claim. If We believe the Claim will not exceed the Excess We may instruct the Insured to conduct the defence of the Claim. In such circumstance the Insured shall be required to provide Us with regular progress reports and We reserve the right to take control of the defence of such Claim at any time.

### 6.2 Claims Co-operation

- a) The Insured shall as a condition precedent to their right to indemnity under this Policy give to Us such information and co-operation as We may reasonably require to enable Us to investigate and to defend any Claim under this Policy and to make any cross claim for contribution, indemnity or damages and/or to enable Us to determine any liability under this Policy including but not limited to the identification of any parties against whom the Insured may have rights.
- b) The Insured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.

### 6.3 Notification of Claim

The Insured shall as a condition precedent to their right to indemnity under this Policy give to Us as soon as reasonably practicable notice in writing during the Period of Cover of any Claim whether that Claim be oral or in writing made against the Insured.

## SECTION 6 - CLAIMS CONDITIONS (CONT')

### 6.3 Notification of Claim (cont')

Notice of any Claim shall be given in writing to Us and delivered to:

Procover Underwriting Agency Pty Ltd

PO Box A2016

Sydney South NSW 1235

Notwithstanding the Excess contained in this Policy all claims, complaints or threats of action must be notified to Us and handled and controlled by Us or no indemnity shall be afforded by this Policy in respect of any such claims, complaints or threats of action.

### 6.4 Right to Contest

In the event that We recommend the settlement of a Claim and the Insured does not agree that such Claim should be settled then the Insured may elect to contest or continue any legal proceedings therewith PROVIDED ALWAYS THAT Our liability in connection with such Claim shall not exceed the amount for which the Claim could have been settled plus the Costs and Expenses incurred with Our written consent to the date of such election, less the Excess and subject always to the Limit of Indemnity under this Policy.

### 6.5 Right to Subrogation

Where We have made any payment of a Claim under this Policy We shall become entitled to any and all rights the Insured may have against any third party. The Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights including but not limited to the execution of documents necessary to enable Us to effectively bring suit in the name of the Insured and/or the provision of information including signed statements and the giving of evidence at any trial.

### 6.6 Senior Counsel Clause

We nor the Insured shall require the other to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and Us) shall advise that such Claim should be contested. In formulating such advice, Counsel will take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the plaintiff, the likely Costs and Expenses and the prospects of the Insured successfully defending the Claim.

The cost of such Counsel's opinion will be regarded as part of the Costs and Expenses.

## SECTION 7 - EXCLUSIONS

This Policy shall not provide indemnity to the Insured for any Claim or Claims arising directly or indirectly from:

### 7.1 War and Terrorism

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 public or local authority.

Furthermore, this Policy shall not provide indemnity to the Insured for any Claim or Claims arising directly or indirectly from any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Loss.

For the purposes of this exclusion "an act of terrorism" means an act, including but not limited to the use of force or violence, and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), 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 loss, damage, costs 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 We allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured.

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

## SECTION 7 - EXCLUSIONS (CONT)

### 7.2 Nuclear

ionising radiations or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material from the combustion of nuclear fuel, or by the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### 7.3 Vehicles

the ownership, operation or use of any aircraft, vessel, automobile or any other vehicle or mechanically propelled mobile machinery.

### 7.4 Year 2000

the fact that the performance or functionality of any Computer Equipment has been or may be affected because that Computer does not meet Year 2000 Conformity.

For the purposes of this Exclusion the following definitions shall apply:

- a) "Computer Equipment" includes but is not limited to any or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.
- b) "Year 2000 Conformity" means the standard which requires that neither performance nor functionality is affected by dates prior to, during or after the year 2000 and, in particular but without limitation, that:
  - i) no value for current date will cause any interruption in operation;
  - ii) date based functionality must behave consistently for dates prior to, during and after year 2000;
  - iii) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules;
  - iv) year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366;
  - v) 9 September 1999 must be recognised as that date.
  - vi) The above definition of "Year 2000 Conformity" is based on a definition contained

in a document published by Standards Australia and Standards New Zealand under reference no SAA/SNZ MP77:1998 and shall be interpreted in accordance with that document.

### 7.5 Asbestos/Legionnaires/Medical Waste

any act, error or omission which results in the discharge, dispersal, seepage, release or escape of any infection or medical waste, asbestos, asbestos products or legionnaires disease or any other air-borne disease or virus into or onto any land, soil, vegetation, crop, foodstuff, stockfeed, building, structure, watercourse, underground water supply, aquifer, body of water or into the atmosphere.

### 7.6 Prior or Pending Claims

Any Claim:

- a) first made, threatened or intimated against or to the Insured prior to the Period of Cover; or
- b) relating to any matter disclosed or notified to Us or any other insurer prior to the Period of Cover as being a Claim or a circumstance that may give rise to a Claim; or
- c) relating to any litigation that was in progress or pending prior to the Period of Cover; or
- d) relating to any fact or circumstance of which the Insured became aware prior to the Period of Cover and which the Insured knew or ought reasonably to have known may give rise to a Claim.

**7.7 Intentional Acts**

any act or omission of any Insured or their consultants, sub-contractors or agents committed or alleged to have been committed with a reckless disregard for the consequences thereof, or any wilful breach of any statute, contract or duty by any Insured or their consultants, subcontractors or agents PROVIDED ALWAYS THAT:

- a) this Exclusion shall not apply unless such conduct is established by final adjudication or judgment;
- b) this Exclusion shall not apply to any Insured not committing such acts.

**7.8 Associated Entities**

any Claim brought by or on behalf of:

- a) any person, firm or corporation within the definition of the Insured; or
- b) any member of the family of an Insured UNLESS such Claim or Claims are bought without any solicitation, co-operation and/or influence by or from an Insured; or
- c) any person or entity which owns, operates, manages or controls an Insured entity; or
- d) any entity which is owned by, operated by, managed by or controlled by any Insured party.

**7.9 Employers' Obligations**

any breach of any obligation owed by the Insured as an employer to an Employee including but not limited to:

- a) any personal or bodily injury, mental injury, mental anguish, sickness, disease or death of any Employee; and
- b) damage to or destruction of any property of an Employee; and
- c) any allegation of sexual harassment, sexual discrimination or racial discrimination or any other matter relating to employment practices or any industrial award, determination or legislation.

**7.10 Contractual Liabilities**

any liability relating to a duty or obligation assumed by the Insured by way of warranty, guarantee, contract, indemnity or hold harmless agreement unless such liability would have attached to the Insured notwithstanding such assumed duty or obligation.

**7.11 Directors and Officers Liability**

any activities as a trustee, director, secretary or officer of any trust or body corporate unless that liability would have arisen if the Insured had not held that position as a trustee, director, secretary or officer.

**7.12 Occupiers Liability**

the ownership, use, occupation or leasing of property (real or otherwise) by, to or on behalf of the Insured.

**7.13 Fines and Penalties**

any claim for punitive, aggravated, multiple or exemplary or other non-compensatory damages; taxes, duties, or fines or penalties imposed by law PROVIDED ALWAYS THAT this Exclusion shall not apply to compensatory civil penalties arising in connection with a breach of the Insured's professional duties.

**7.14 Professional Fees**

any matter relating to your entitlement or otherwise to fees or charges for work performed.

**7.15 Insolvency**

the insolvency, bankruptcy or liquidation of the Insured.

## SECTION 7 - EXCLUSIONS (CONT')

**7.16 Retroactive Date**

any act, error or omission committed or alleged to have been committed prior to the retroactive date stated in the Schedule.

**7.17 Other Insurances**

any liability for which the Insured is or would be insured under any policy of insurance required to be effected by or under any law.

**7.18 Sale and Supply of Goods**

the sale, storage, supply or distribution of any good, or any actual or alleged provision of advice associated with the sale, storage, supply or distribution of any good except where a Claim arises directly from the cost incurred in correcting an act, error or omission in design or specification by the Insured, but shall not include any cost associated with the disposal, repair, recall, manufacture or replacement of any good or goods PROVIDED ALWAYS THAT this Exclusion shall not apply to any advice or specification in respect to the manufacturers recommendations or guidelines.

**7.19 Toxic Mould**

any Claim involving in any way the actual or potential presence of mould, mildew or fungi of any kind whatsoever, whether or not directly or indirectly caused by or resulting from the conduct of the Insured's Business.