

# **Management Liability Insurance Policy**

**BUML11.11**

<b>INTRODUCTION</b> .....	<b>4</b>
<b>Section 1 - Preamble</b> .....	<b>6</b>
<b>Section 2 - Insuring Clauses</b> .....	<b>6</b>
2.1.1 <i>Management Liability</i> .....	6
2.1.2 <i>Company Reimbursement</i> .....	6
2.1.3 <i>Company Liability</i> .....	6
2.1.4 <i>Employment Practices Liability</i> .....	6
2.1.5 <i>Superannuation Trustees Liability</i> .....	6
2.1.6 <i>Fines and Penalties</i> .....	6
2.1.7 <i>Crisis Management</i> .....	7
<b>Section 3 - Limit of Indemnity and Defence Costs</b> .....	<b>7</b>
3.1 <i>Limit of Indemnity</i> .....	7
3.2 <i>Defence Costs</i> .....	7
<b>Section 4 - Automatic Extensions</b> .....	<b>7</b>
4.2 <i>Continuous Cover</i> .....	8
4.3 <i>Estates</i> .....	8
4.4 <i>Extended Reporting Period</i> .....	8
4.5 <i>Inquiry Representation Expenses</i> .....	8
4.6 <i>Joint Ventures</i> .....	9
4.7 <i>Libel, Slander and Defamation</i> .....	9
4.8 <i>New Subsidiaries</i> .....	9
4.9 <i>Not for Profit Organisation Outside Directorships</i> .....	9
4.10 <i>Work Health and Safety</i> .....	9
4.11 <i>Reinstatement of Limit of Indemnity</i> .....	9
4.12 <i>Retirement Cover</i> .....	10
4.13 <i>Run off for Outside Directorship</i> .....	10
4.14 <i>Severability</i> .....	10
4.15 <i>Spousal Cover</i> .....	10
4.16 <i>Subsidiary Run Off Cover</i> .....	10
<b>Section 5 - Optional Extensions</b> .....	<b>11</b>
5.1 <i>Fidelity Cover</i> .....	11
5.2 <i>Current Outside Directorships</i> .....	11
5.3 <i>Pollution Defence Costs</i> .....	12
<b>Section 6 – Exclusions</b> .....	<b>12</b>
6.1 <i>Anti-competitive Practices</i> .....	12
6.2 <i>Asbestos &amp; Pollution</i> .....	12
6.3 <i>Bodily Injury and Property Damage</i> .....	12
6.4 <i>Breach of Professional Duty</i> .....	12
6.5 <i>Capital Raising and Prospectus Liability</i> .....	12
6.6 <i>Computers and Technology</i> .....	12
6.7 <i>Contractual Liability</i> .....	13
6.8 <i>Dishonesty and Improper Advantage</i> .....	13
6.9 <i>Employment Practices Liability</i> .....	13
6.10 <i>Fines Penalties and Taxes</i> .....	13
6.11 <i>Geographical Limits and Jurisdiction</i> .....	14
6.12 <i>Insolvency and Financial Impairment</i> .....	14
6.13 <i>Insured v Insured</i> .....	14
6.14 <i>Intellectual Property Rights</i> .....	14
6.15 <i>Major Shareholder Actions</i> .....	14
6.16 <i>Nuclear Risks, War and Terrorism</i> .....	14
6.17 <i>Prior Circumstances and Claims</i> .....	15
<b>Section 7 - Definitions</b> .....	<b>15</b>
7.1 <i>Claim</i> .....	15
7.2 <i>Company</i> .....	15
7.3 <i>Crisis Event</i> .....	15

7.4	<i>Defence Costs</i> .....	16
7.5	<i>Electronic Data</i> .....	16
7.6	<i>Employee</i> .....	16
7.7	<i>Employment Practices Liability</i> .....	16
7.8	<i>Excess</i> .....	16
7.9	<i>Inquiry Representation Expenses</i> .....	16
7.10	<i>Insolvent/Insolvency</i> .....	17
7.11	<i>Insured</i> .....	17
7.13	<i>Insurer</i> .....	17
7.14	<i>Joint Venture</i> .....	17
7.15	<i>Limit of Indemnity</i> .....	17
7.16	<i>Loss</i> .....	17
7.17	<i>Not for Profit Organisation</i> .....	17
7.18	<i>Outside Directorship</i> .....	18
7.19	<i>Outside Entity</i> .....	18
7.20	<i>Fines and Penalties</i> .....	18
7.21	<i>Period of Insurance</i> .....	18
7.22	<i>Policy</i> .....	18
7.23	<i>Pollutant</i> .....	18
7.24	<i>Proposal</i> .....	18
7.25	<i>Regulatory Authority</i> .....	19
7.26	<i>Retroactive Date</i> .....	19
7.27	<i>Schedule</i> .....	19
7.28	<i>Senior Counsel</i> .....	19
7.29	<i>Subsidiary</i> .....	19
7.30	<i>Superannuation Trustees Liability</i> .....	19
7.31	<i>Wrongful Act</i> .....	19
	<b>Section 8 - Claims Conditions</b> .....	<b>19</b>
8.1	<i>Claims Reporting</i> .....	19
8.2	<i>Claims Co-operation and Mitigation</i> .....	20
8.3	<i>Conduct of Defence</i> .....	20
8.4	<i>Discharge of Liability</i> .....	20
8.5	<i>Senior Counsel</i> .....	20
8.6	<i>Representation Issues</i> .....	21
8.7	<i>Loss Allocation</i> .....	21
8.8	<i>Other Insurance</i> .....	21
	<b>Section 9 - General Conditions</b> .....	<b>21</b>
9.1	<i>Excess</i> .....	21
9.2	<i>Cancellation</i> .....	22
9.3	<i>Governing Law</i> .....	22
9.4	<i>Validity</i> .....	22
9.5	<i>GST Basis of Settlement</i> .....	22
9.6	<i>Interpretation</i> .....	22

## Introduction

The **Insured** and the **Insurer** agree that the **Insurer** will, in consideration of the paid premium, provide insurance to the **Insured** under the terms and conditions of this **Policy**. This **Policy** consists of your proposal, this document, the **Policy Schedule** and any certificates and endorsements affixed hereto. All of these should be read as if they were the one document.

## Duty of Disclosure

Before you enter into a contract of general insurance with an Insurer, you have a duty, under the Insurance Contracts Act 1984, to disclose to the Insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the Insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with your duty is waived by the insurer.

## Non-Disclosure & Misrepresentations

If you fail to comply with your Duty of Disclosure, the **Insurer** may be entitled to reduce their liability under this **Policy** in respect of a claim or may cancel the Policy.

If your non-disclosure is fraudulent, the **Insurer** may also have the option of avoiding the contract from its beginning.

## Privacy

Brooklyn Underwriting Pty Ltd collects personal information in order to provide its various services which include insurance broking, claims management, risk management consultancy, underwriting management, and reinsurance.

If the personal information Brooklyn Underwriting Pty Ltd requests from you is not provided, Brooklyn Underwriting Pty Ltd or any involved third party may not be able to provide the appropriate services.

Brooklyn Underwriting Pty Ltd discloses personal information to third parties who are involved in the provision of our services. For example, in arranging and managing your insurance needs Brooklyn Underwriting Pty Ltd may provide information (including sensitive information such as health information) to insurers, reinsurers, other insurance intermediaries, its advisors such as loss adjusters, lawyers and accountants, and other parties involved in the claims handling process. By submitting your proposal and continuing to deal with us, you confirm on your behalf and/or on behalf of those you represent consent to Brooklyn Underwriting Pty Ltd and these parties collecting, using and disclosing personal and sensitive information about you.

Brooklyn Underwriting Pty Ltd has a duty to maintain the confidentiality of its client's affairs which includes their personal information. Our duty of confidentiality applies except where disclosure of your personal information is with your consent or required by law.

Brooklyn Underwriting Pty Ltd may make use of your personal information to provide you with information about its products and services.

Simply contact the Brooklyn Underwriting Pty Ltd Privacy Officer on the details below if you would like to:

- Access the personal information Brooklyn Underwriting Pty Ltd holds about you
- Update or correct the information Brooklyn Underwriting Pty Ltd holds about you
- Discuss your privacy concerns
- Be removed from the mailing list to receive information about Brooklyn Underwriting Pty Ltd products and services

**Privacy Officer - Brooklyn Underwriting - PO Box 101 Grosvenor Place - SYDNEY NSW 1220**

**Telephone: -02 8274 8177 , Fax: 02 9252 2538**

## **General Insurance Code of Practice**

We are a signatory to the General Insurance Code of Practice. The Code aims to raise standards of practice and service in the insurance industry.

It:

- promotes better communication between insurers and customers which will lead to better public understanding of insurance to allow customers to make informed choices, and

outlines good standards of practice and service to be met by insurers to enhance their regulation for responding efficiently to their customers' needs

## Section 1 - Preamble

In consideration of the payment of the premium or agreement to pay the premium, the Insurer agrees to indemnify the Insured in accordance with the terms and conditions of this Policy.

The Insurer agrees to pay the Insured for any Loss covered by this Policy which arises out of a Claim first made against the Insured during the Period of Insurance and reported to the Insurer during the Period of Insurance.

If a Retroactive Date is specified in the Schedule, indemnity is only available in respect of Wrongful Acts committed after the Retroactive Date.

## Section 2 - Insuring Clauses

### 2.1.1 Management Liability

The Insurer agrees to pay the Loss of each Insured Person resulting from any Claim in respect of a Wrongful Act for which the Company is not permitted or required to indemnify the Insured Person(s).

### 2.1.2 Company Reimbursement

The Insurer agrees to pay the Loss of the Company that the Company is legally permitted to pay and has paid by reason of any Wrongful Act committed by an Insured Person in their capacity as an Insured Person.

### 2.1.3 Company Liability

The Insurer agrees to pay the Company for a Loss due to a Claim made against the Company for a Wrongful Act.

### 2.1.4 Employment Practices Liability

The Insurer agrees to pay on behalf of an Insured any Loss which the Company must pay by reason of a Claim for Employment Practices Liability.

The aggregate liability of the Insurer under this Insuring Clause will not exceed \$500,000 in excess of the Deductible. This Sub-Limit is part of and not in addition to the Limit of Indemnity.

### 2.1.5 Superannuation Trustees Liability

The Insurer agrees to pay on behalf of an Insured any Loss which the Company must pay by reason of any Claim for Superannuation Trustees Liability.

### 2.1.6 Fines and Penalties

The Insurer will indemnify an Insured Person for Fines and Penalties arising out of any Claim or Loss indemnified by the Insurer under Insuring Clauses:-

2.1.1 Management Liability and/or

2.1.2 Company Reimbursement.

The aggregate liability of the Insurer under this Insuring Clause will not exceed \$250,000 in excess of the Deductible. This Sub-Limit is part of and not in addition to the Limit of Indemnity.

The Exclusion 6.10 - Fines Penalties and Taxes will not apply to this cover.

### **2.1.7 Crisis Management**

The Insurer agrees to pay on behalf of the Company, the reasonable fees, costs and expenses of an independent public relations consultancy which the Company engages with the Insurer's prior written consent to assist in managing a Crisis Event which first occurs during the Policy Period.

The aggregate liability of the Insurer under this Insuring Clause will not exceed \$50,000 in excess of the Deductible. This Sub-Limit is part of and not in addition to the Limit of Indemnity.

## **Section 3 - Limit of Indemnity and Defence Costs**

### **3.1 Limit of Indemnity**

The total liability of the Insurer under this Policy in respect of any one Claim, and in the aggregate for all Claims, (including any amounts paid or which have been agreed will be paid in accordance with Claims Condition - Discharge of Liability) will not exceed the Limit of Indemnity.

If a limit is shown in the Schedule for a particular Cover or Extension then the total liability of the Insurer under that Cover or Extension is as stated inclusive of Defence Costs and the limit is part of and not in addition to the Limit of Indemnity.

### **3.2 Defence Costs**

The Insurer will pay Defence Costs incurred with the written consent of the Insurer in the investigation, defence and/or settlement of any Claim for which the Insured is entitled to indemnity.

## **Section 4 - Automatic Extensions**

The Insurer agrees to provide cover under these Extensions for no additional premium provided that:

- a. all terms and conditions of this Policy apply; and
- b. the inclusion of any Extension does not increase the Limit of Indemnity.

### **4.1 Advance of Payment of Defence Costs**

The Insurer agrees to advance Defence Costs within a reasonable time frame after receiving invoices specifying Defence Costs but prior to determining indemnity under the Policy provided that:

- a) the Insurer has not denied indemnity for the Claim; and
- b) the Insurer has provided written consent to the Defence Costs prior to them being incurred; and
- c) the Insurer reserves the right to cease paying or recover any Defence Costs paid under this Extension separately from each Insured Person or Company involved in a Claim if and to the extent that each Insured is found not to be entitled to indemnity.

If an allegation is made of a Wrongful Act as is described in the Exclusion 6.8 - Dishonesty and Improper Advantage and it is subsequently established by admission, final judgment or final adjudication that the Insured Person did commit that Wrongful Act then any Defence Costs or Inquiry Representation Costs advanced must be repaid to the Insurer.

Any repayment of Defence Costs or Inquiry Costs must be made by the Insured Person or Company within 30 days of receiving a request for return payment from the Insurer.

## 4.2 Continuous Cover

If the Insured:

- a. first became aware of facts or circumstances that might give rise to a Claim, prior to the Period of Insurance; and
- b. had not notified the Insurer of these facts or circumstances prior to the Period of Insurance, then the Exclusion – 6.17 Prior Circumstances and Claims will not apply to any notification during the Period of Insurance of any Claim later resulting from such facts or circumstances, provided that:
  - (i) there has been no fraudulent non-compliance with the Insured's duty of disclosure and no fraudulent misrepresentation by the Insured in respect of these facts or circumstances; and
  - (ii) the Insured has been continuously insured, without interruption at the time of the notification of the Claim to the Insurer, under a Directors and Officers or Management Liability insurance policy issued by the Insurer and was insured by the Insurer at the time when the Insured first became aware of the facts or circumstances giving rise to the Claim; and
  - (iii) the Insurer can reduce its liability under the Policy to the extent of any prejudice it may suffer as a result of the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Period of Insurance; and
  - (iv) this extension does not apply to any indemnity provided by the Optional Extension - Fidelity Cover or the Extension – Reinstatement of the Limit of Indemnity.

## 4.3 Estates

The Insurer agrees to provide cover for the estate, heirs, legal representatives or assigns of any deceased, incompetent or insolvent Insured Person with respect to Loss arising from a Wrongful Act of such Insured Person.

## 4.4 Extended Reporting Period

If the Insurer refuses to offer renewal terms at the end of the Period of Insurance for any reason other than failure to pay the premium, the Company together with any Insured Person can pay 50% of the expiring annual premium and then be entitled to one extension of the Policy for a further 12 months starting upon expiry of the Period of Insurance.

This Extension only provides cover for Wrongful Acts actually or allegedly attempted or committed prior to expiry of the Period of Insurance. The Insured must give notice to the Insurer that it requires this Extended Reporting Period prior to expiry of the Period of Insurance.

## 4.5 Inquiry Representation Expenses

The Insurer will pay on behalf of the Insured, Inquiry Representation Expenses incurred in representing any Insured Person(s) at any official inquiry or other proceedings ordered by an official body or institution which:

- a. the Insured Person(s) are legally compelled to attend; and
- b. is in relation to the affairs of the Company and the performance of the Insured Person(s) duties in the business and/or conduct of the Company.

Any notice requiring an Insured Person to attend the inquiry must be first received by the Insured Person during the Period of Insurance.



The total liability of the Insurer under this Extension is the amount noted in the Schedule.

#### **4.6 Joint Ventures**

The Insurer agrees to provide cover for liability arising from any Claim in respect of any Joint Venture but not for any claim brought by or on behalf of any partners in the Joint Venture or any entity established to manage or conduct the Joint Venture.

#### **4.7 Libel, Slander and Defamation**

The Insurer agrees to provide cover for libel, slander and defamation provided that the act, error or omission by the Insured is unintentional and is committed in the course of the conduct of the Company business.

#### **4.8 New Subsidiaries**

If the Company creates or acquires a Subsidiary during the Period of Insurance, the Insurer will provide indemnity to the Subsidiary for Wrongful Acts committed after the time that the entity became a Subsidiary.

If the Subsidiary has a consolidated asset value at the time of creation or acquisition of 20% or more of the total consolidated asset value of the Company, the cover provided by this Extension will cease at 4 pm 60 days after the creation or acquisition of the Subsidiary unless:

- a. the Insurer is given notice of the Subsidiary within 60 days of its creation or acquisition; and
- b. the Insurer agrees to indemnify the Subsidiary; and
- c. the Insured agrees to any additional terms or payment of premium that the Insurer may request.

#### **4.9 Not for Profit Organisation Outside Directorships**

The Insurer will provide cover under Insuring Clause 2.1.1 Management Liability for Outside Directorships in Not for Profit Organisations held by an Insured Person at the start of or during the Period of Insurance. This cover will only extend to directors and officers of the Not for Profit Organisation who are also Insured Persons. This cover will only apply in excess of any insurance indemnifying the Insured Person available to the Not for Profit Organisation

#### **4.10 Work Health and Safety**

The Insurer will pay on behalf of any Insured Person(s) the Defence Costs incurred in defending Claims against any Insured Person(s) first made and notified to the Insured during the Period of Insurance in connection with any work health and safety laws of the Commonwealth of Australia. The Claims must be brought within the jurisdiction of the laws of the Commonwealth of Australia. The Exclusion 6.3 - Bodily Injury and Property Damage does not apply to this Extension.

The total liability of the Insurer under this Extension is the amount noted in the Schedule. If the Insured is entitled to payment under this Extension there is no entitlement to cover under the Extension 4.5 Inquiry Representation Costs.

#### **4.11 Reinstatement of Limit of Indemnity**

If the Limit of Indemnity set out in the Schedule is exhausted or partially exhausted due the payment by the Insurer of any Loss under Insuring Clauses 2.1.1 Management Liability cover and/or 2.2.1 Company Reimbursement cover, the Insurer agrees to reinstate the Limit of Indemnity by the amount by which it is exhausted provided that:

- a. the reinstatement will not apply to Claims made prior to the effective date of the reinstatement; and

- b. the aggregate of the amounts reinstated during the Period of Insurance will be limited to an amount equal to the Limit of Indemnity applicable at the start of the Period of Insurance; and
- c. the Limit of Indemnity reinstated will represent the total liability of the Insurer for all Claims made during the time from the effective date of the reinstatement until the expiry of the Period of Insurance;
- d. if an Insured Person has insurance that operates in excess of this Policy, a reinstatement will not apply until the amounts payable under that insurance are exhausted.

#### **4.12 Retirement Cover**

Any Insured Person(s) who has retired from all employment and holding any office prior to the expiry of the Period of Insurance will be entitled to cover under this Policy until expiry of the Period of Insurance but only in respect of Wrongful Acts actually or allegedly attempted or committed prior to retirement.

#### **4.13 Run off for Outside Directorship**

The Insurer agrees to provide indemnity for Outside Directorships which an Insured Person held in an Outside Entity or Not for Directorships Profit Organisation if the Insured Person:

- a. ceased to hold the Outside Directorship during the Period of Insurance; and
- b. the Wrongful Act giving rise to the Claim occurred before the Insured Person ceased to hold the Outside Directorship; and
- c. the Outside Directorship had been or is covered by the Insurer under this Policy or previous policies.

The provisions of Extension 4.9 Not for Profit Organisation Outside Directorships apply to this Extension.

#### **4.14 Severability**

The Insurer agrees that any conduct of an Insured Person, where the Insured Person breached the duty of disclosure or made a misrepresentation to the Insurer before this contract was entered into, will not prejudice the right of any other party who is an Insured to indemnity under the Policy. Provided that the other Insured:

- a. is innocent of and has no prior knowledge of this conduct; and
- b. immediately upon becoming aware of this conduct advises the Insurer in writing of all known facts in relation to this conduct.

This Extension does not relieve any Insured from the duty of disclosure owed to the Insurer.

#### **4.15 Spousal Cover**

The Insurer will pay on behalf of the legal spouse of an Insured Person, Loss in respect of any Wrongful Act by the Insured Person as if the Claim was made against the Insured Person if the claim is made against the spouse only due to:

- a. the spouse's legal status as spouse of the Insured Person; or
- b. the spouse's interest in property which the claimant seeks as recovery for a Wrongful Act.

#### **4.16 Subsidiary Run Off Cover**

If an entity ceases to be a Subsidiary prior to or during the Period Off Cover of Insurance, the Insurer will provide indemnity for an Insured Person of that Subsidiary for Wrongful Acts committed prior to the time that the entity ceased to be a Subsidiary.

## Section 5 - Optional Extensions

The Insurer agrees to provide cover under these Optional Extensions, provided that:

- a. it is shown on the Schedule that indemnity is provided under an Extension; and
- b. all terms and conditions of this Policy apply; and
- c. the inclusion of any Extension does not increase the Limit of Indemnity; and
- d. if a limit for an Extension is shown in the Schedule then this amount represents the total liability of the Insurer for that Extension.

### 5.1 Fidelity Cover

The Insurer will reimburse the Company for any loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Company or for which the Company is legally liable due to any dishonest or fraudulent act or omission of an Insured Person which is first discovered by the Company during the Period of Insurance and notified to the Insurer during the Period of Insurance.

The aggregate liability of the Insurer under this Optional Extension will not exceed the amount shown in the Schedule and this Sub-Limit is part of and not in addition to the Limit of Indemnity.

The Company will be responsible for the costs of proving loss has occurred under this extension.

The Insurer will not cover any loss:

- a. discovered before the start of the Period of Insurance;
- b. arising outside of Australia or arising out of, based upon or attributable to or in any way connected with a loss occurring outside of Australia;
- c. if the loss can only be proven by profit and loss accounts or inventory calculations or stock takes;
- d. of income direct, indirect or consequential regardless of whether it is realised or not realised by the Company;
- e. in relation to the costs of rewriting or reinstalling computer programs or systems;
- f. caused by or contributed to by an Insured Person who did not hold that office or was not employed by the Company at the time the loss occurred;
- g. incurred by or on behalf of any Insured Person who committed or condoned any dishonest, fraudulent, criminal or malicious acts or omissions;
- h. any consequential loss arising from any dishonest, fraudulent, criminal or malicious acts or omissions of any Insured Person;
- i. any dishonest, fraudulent, criminal or malicious acts or omissions which an Insured Person had knowledge of and then failed to take action to stop or prevent these or any loss arising from these acts or omissions;
- j. arising from default of a loan or credit offered by or to the Company;
- k. arising from or as a result of the voluntary giving of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes unless as a result of a dishonest, fraudulent, criminal or malicious acts or omission of an Insured Person;
- l. arising from or as a result of any kidnap, ransom or extortion;
- m. arising from or as a result of the distribution or accessing of any confidential information including but not limited to customer information, trade secrets, computer information, patents or trade marks.

### 5.2 Current Outside Directorships

The Insurer will provide cover under Insuring Clause Directors and Officers Liability Cover for Outside Directorships held by an Insured Person at the commencement of the Period of Insurance in any Outside Entity specified in the Schedule. This cover will only extend to directors and officers of the Outside Entity who are also Insured Persons and will apply in excess of any insurance indemnifying the Insured Person available to the specified Outside Entity.

### **5.3 Pollution Defence Costs**

The Insurer will pay Defence Costs or Inquiry Representation Costs for any Claim brought against an Insured Person for a Claim arising directly or indirectly from the actual or alleged dispersal, discharge, release or escape of Pollutants. The Exclusion 6.2 - Asbestos & Pollution does not apply to this Extension

## **Section 6 – Exclusions**

This Policy does not provide any indemnity or cover for any Loss, in respect of any Claim involving the following:

### **6.1 Anti-competitive Practices**

arising from, attributable to or in any way connected with any Claim against the Company for any actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to any of the following activities: competition, consumer, unfair trade practices or tortious interference in another's business or contractual relationships.

### **6.2 Asbestos & Pollution**

- a. directly or indirectly arising out of, resulting from or in consequence of or in any way involving asbestos, or any materials containing asbestos, in whatever form or quantity; or
- b. arising from, attributable to or in any way connected with the actual, alleged or threatened dispersal, release or escape of Pollutants into or upon real or personal property, the atmosphere, any water course or body of water, including but not limited to any enforcement action or proceeding in connection with the containment, clean up, removal, treatment or monitoring of such Pollutants, or seepage, pollution or contamination however it occurs.

### **6.3 Bodily Injury and Property Damage**

arising from, attributable to or in any way connected with bodily injury, sickness, disease or death of any person (but not emotional distress or mental anguish); or destruction of or damage to tangible property including loss of use of the tangible property.

### **6.4 Breach of Professional Duty**

arising from attributable to or in any way connected with:

- a. the rendering or failure to render professional services and/or professional advice; or
- b. a breach or alleged breach of any contract for the provision of professional services and/or professional advice.

### **6.5 Capital Raising and Prospectus Liability**

Arising from, attributable to or in any way connected with any offer for the raising of capital by debt or equity, including but not limited to the initial public offering of securities of the Company.

### **6.6 Computers and Technology**

- a. for property damage to Electronic Data or caused by or arising Technology directly or indirectly out of the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data or any error in creating, amending, entering, deleting or using Electronic Data or total or partial inability or failure to receive, send, access or use Electronic Data for any time at all or any consequential loss resulting from this;
- b. caused by or arising directly or indirectly out of or in connection with the use of an intranet or the Internet (including but not limited to the World Wide Web and electronic mail systems) by the Insured or on the Insured's behalf; or
- c. caused by or arising directly or indirectly out of or in connection with computer hardware or software that does not meet Year 2000 Conformity, within the meaning of that term in Miscellaneous Paper SAA/SNZ MP77:1998 "A Definition of Year 2000" published by Standards Australia and as amended or substituted from time to time.

### **6.7 Contractual Liability**

arising from, attributable to or in any way connected with any duty, obligation or liability assumed by the Insured by contract, warranty, guarantee or indemnity, unless the duty, obligation or liability would have existed if the Insured had not assumed it. This Exclusion does not apply to a Claim for Employment Practices Liability.

### **6.8 Dishonesty and Improper Advantage**

arising from, attributable to or in any way connected with:

- a. any dishonest, fraudulent, criminal or malicious act or omission of the Insured or other person or party employed by the Insured; or
- b. any Insured Person having received any personal gain or advantage or remuneration to which that Insured Person was not legally entitled; or
- c. any Insured Person benefiting from securities transactions as a result of information that was not generally available to other sellers or purchasers of those securities.

However this exclusion shall only apply to the extent that the subject conduct has been established by an express admission, court judgement or other final adjudication.

### **6.9 Employment Practices Liability**

The following additional exclusions apply to the cover under Insuring Clause 2.1.4.

The Insurer will not Liability indemnify the Insured for Loss in respect of any Employment Practices Liability Claim:

- a. arising directly or indirectly from failure or allegations of failure to comply with workers' compensation or occupational health and safety laws however this does not apply to the Extension Occupational Health and Safety; or
- b. relating to the costs of changing premises or equipment or work practices; or
- c. arising directly or indirectly out of any strike, lock out, picket, go slow, work to rule or any other industrial action.
- d. Arising out of matters involving insolvency, the appointment of a receiver, administrator, official manager or trustee appointed to manage a scheme of arrangement
- e. For bodily injury, sickness, disease or death of any person however this exclusion 6.8(e) will not apply to mental injury, mental anguish, nervous shock or emotional distress otherwise covered under this Policy

### **6.10 Fines Penalties and Taxes**

for any exemplary, aggravated, punitive or liquidated damages, fines, penalties, tax or duty.

### **6.11 Geographical Limits and Jurisdiction**

arising from, attributable to or in any way connected with any act, error or omission occurring in the United States of America or Canada or any of their territories or protectorates or brought in a court within the Commonwealth of Australia or of New Zealand to enforce a judgment handed down in a court outside the Commonwealth of Australia or of New Zealand.

### **6.12 Insolvency and Financial Impairment**

any Claim arising out of the Insolvency of the Insured or inability of the Insured to pay debts as and when they fall due, regardless of whether the Insured was Insolvent or not at the time of the acts giving rise to a Claim. For the purpose of this exclusion, 'debts' includes but is not limited to the payments of entitlements on behalf of and to Employees.

### **6.13 Insured v Insured**

made, brought or maintained by or on behalf of any other person or entity who is an Insured except for:

- a. a Claim resulting from Employment Practices Liability; or
- b. Defence Costs; or
- c. a shareholder derivative action brought or maintained on behalf of the Company without the solicitation, co-operation or assistance of any Insured Person and provided the shareholder was not an Insured Person at the time the Wrongful Act occurred; or
- d. any Claim brought or maintained by a liquidator, receiver or administrative receiver derivatively on behalf of the Company without the solicitation, co-operation or assistance of any Insured Person; or
- e. any Claim brought or maintained by an Insured for contribution or indemnity if the Claim is directly resulting from another Claim covered by this Policy; or
- f. a Claim by the Company pursuant to Section 50 of the Australian Securities and Investments Commission Act 2001 (Cth).

### **6.14 Intellectual Property Rights**

arising from, attributable to or in any way connected with any Claim against the Company for actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights.

### **6.15 Major Shareholder Actions**

brought by any shareholder having direct or indirect control of Actions fifteen per cent (15%) or more of the Company.

### **6.16 Nuclear Risks, War and Terrorism**

directly or indirectly arising from, attributable to or in any way and Terrorism connected with:

- a. ionising radiation or contamination by radioactivity from any nuclear fuel, weapon, medical isotope, waste or other material whether occurring naturally or otherwise, or by the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- b. war, invasion, acts of foreign enemies or hostilities (whether war be declared or not), civil or military uprising, or usurped power, insurrection, revolution, rebellion, or confiscation or requisition or nationalisation or destruction of or damage to property by or under the order of any local government or public or local authority.
- c. any:
  - i. act of terrorism; or

- ii. action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism, regardless of any other cause or event contributing concurrently or in any other sequence.

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- i. involves violence against one or more persons; or
- ii. involves damage to property; or
- iii. endangers life other than that of the person committing the action; or
- iv. creates a risk to health or safety of the public or a section of the public; or
- v. is designed to interfere with or to disrupt an electronic system.

### **6.17 Prior Circumstances and Claims**

arising from, attributable to or in any way connected with any:

- a. facts, circumstances or occurrences noted on the Proposal for the current Period of Insurance or on any previous proposal to any insurer or of which notice had been given to any insurer under any previous policy, however expressed; or
- b. facts, circumstances or occurrences of which the Insured was aware prior to the commencement of the Period of Insurance and which the Insured knew (or ought reasonably to have realised) may give rise to a Claim; or
- c. Claim first made against the Insured prior to the start of the Period of Insurance.

## **Section 7 - Definitions**

The meaning of some of the important words used in this Policy are shown here.

### **7.1 Claim**

Means any:-

- a. written complaint containing a demand for compensation or damages alleging a Wrongful Act or Employment Practices Liability or Superannuation Trustees Liability; or
- b. a civil proceeding brought by a third party for recovery of compensation or damages in relation to a Wrongful Act or Superannuation Trustees Liability; or
- c. any criminal charge brought against an Insured Person alleging a Wrongful Act; or
- d. In relation to the Inquiry Expenses Extension, a notice commenced by the filing of a notice of charge, formal investigation order or notice requiring an Insured Person to attend an inquiry or other proceedings ordered by an official body or institution.

### **7.2 Company**

Means the organisation named as the Policyholder in the Schedule and any Subsidiary.

### **7.3 Crisis Event**

Means the occurrence of any of the following unforeseen events, which, in the reasonable opinion of the Chief Executive Officer or Managing Director of the Insured, has the potential to make a material and imminent impact on the Insured's Consolidated Annual Revenue of at least 25% reduction if left unmanaged:-

- a) the loss of a major customer or specific contract of the Insured
- b) the sudden and unexpected death or disability of a Director or Officer

- c) the loss of the Insured's intellectual property rights, including patents, trademarks and copyrights
- d) the recall of any product designed, manufactured, packaged or distributed by the Insured
- e) Employee workplace violence that causes death or injury to an Insured Person and/or causes emotional distress to an Insured Person and/or third parties from witnessing such as act

A Crisis Event does not include an events of any nature that generally effects the Insured's Industry rather than the Insured specifically.

#### **7.4 Defence Costs**

Reasonable legal costs and other expenses incurred by or on behalf of Costs the Insured (with the written consent of the Insurer) or by the Insurer in the investigation, defence and/or settlement of a Claim.

#### **7.5 Electronic Data**

Facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronics and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

#### **7.6 Employee**

Any person employed under a contract of service by the Insured but does not include a director, principal, partner, consultant, contractor, subcontractor, secondee or agent of the Insured or their respective employees (including the employees of labour hire agencies ).

#### **7.7 Employment Practices Liability**

Any liability arising from any act, error or omission in connection with the recruitment, employment or termination of an Employee or applicant for a position as Employee of the Company including but not limited to:

- a. sexual or workplace discrimination or harassment;
- b. wrongful dismissal or failure to promote;
- c. invasion of privacy or defamation; or
- d. misleading conduct or advertising in relation to the terms and conditions of employment.
- e. failure or allegations of failure to comply with procedural or notification requirements upon termination of employment because of redundancy; or
- f. failure or allegations of failure to comply with the express terms of any workplace agreement which is lodged with an industrial tribunal, terms of legislation or terms of an award; or
- g. relating to contracts alleged to be harsh, unfair, unconscionable or contrary to public interest; or
- h. from a breach of an implied or express term of a contract of employment requiring the Insured to treat an Employee in good faith, fairly, with trust and confidence; or

For the purpose of this definition Employee includes principals, partners, voluntary workers, contractors and temporary workers whilst employed or engaged by or under the control of the Company.

#### **7.8 Excess**

The amount(s) shown in the Schedule against 'Excess', which is inclusive of Defence Costs.

#### **7.9 Inquiry Representation Expenses**

Necessary and reasonable legal costs and expenses incurred Representation by the Insured with the Insurer's consent arising out of any notice requiring the Insured Person's attendance at an inquiry or



proceeding before an official body or institution. Inquiry Representation Expenses does not include regular or overtime wages, salaries, fees of Insured Persons or benefits from the Company.

#### **7.10 Insolvent/Insolvency**

the state of being a body corporate or entity:

- a. that is unable to pay its debts as and when they fall due; or
- b. in respect of which an application for winding up has been made; or
- c. in respect of which a Liquidator, Provisional Liquidator, Receiver, Receiver and Manager, or Official Manager has been appointed (whether or not by a Court); or
- d. in respect of which an administrator has been appointed or that is under administration; or
- e. that has executed a Deed of Company Arrangement that has not yet terminated; or
- f. that has entered into a compromise or arrangement with another person.

#### **7.11 Insured**

The Company and any Insured Person.

#### **7.12 Insured Person**

- a. Any natural person who is a past, present or future director, secretary, principal, partner, executive officer or Employee of the Company.
- b. Any natural person who is deemed by relevant legislation to be a director, secretary, principal, partner, executive officer or Employee of the Company.

Insured Person does not include a liquidator, external auditor, receiver, receiver and manager, official manager, administrator, trustee or person administering a compromise or scheme of arrangement of the Company or any employee of such person; or any company, entity or other body corporate or trustee, directors, officers, or employees of superannuation or pension organisations.

#### **7.13 Insurer**

Catlin Australia Pty Ltd on behalf of Syndicate 2003 at Lloyd's.

#### **7.14 Joint Venture**

An unincorporated enterprise that the Company carries on jointly with some other party or parties.

#### **7.15 Limit of Indemnity**

The amount shown in the Schedule against 'Limit of Indemnity' which is the total liability of the Insurer for all Claims in the Period of Insurance.

#### **7.16 Loss**

Amounts payable in respect of a Claim including damages, Defence Costs, settlements and interest. Loss does not include penalties, fines or exemplary, punitive or aggravated damages.

#### **7.17 Not for Profit Organisation**

Any entity, body, company, club, association, committee or other Organisation enterprise that is exempt from payment of income tax under State or Federal law but does not include a subsidiary.

**7.18 Outside Directorship**

The position of director, officer, trustee or secretary held by an Insured Person in a Not for Profit Organisation or Outside Entity with the consent and at the request of the Company.

**7.19 Outside Entity**

Any entity, body, company, club, association, committee or other enterprise that is not a Subsidiary.

**7.20 Fines and Penalties**

Monetary sums an Insured Person is ordered by a court or tribunal to pay to any Regulatory Authority but not:

- a. any amounts payable as compensation; or
- b. any tax, rates, duty, fees, levies, charges or other revenue; or
- c. any damages, including any exemplary or punitive damages; or
- d. any consequential economic loss; or
- e. any Defence Costs and associated expenses; or
- f. any penalty arising from any offence under Sections 182, 183, 601FD, 601FE or 601JD of the Corporations Law or as they may be re-enacted or amended; or
- g. any compliance, remedial, reparation or restitution costs; or
- h. any penalty arising from gross negligence or recklessness; or
- i. any penalty resulting from any wilful, intentional, dishonest or deliberate breach or failure to comply with any legal demand, direction, proceeding or notice issued under any act or regulation enacted by the federal or a state parliament within the Commonwealth of Australia; or
- j. any penalty arising from circumstances where the Insured Person knew or ought reasonably have known prior to the Period of Insurance that the behaviour leading to the order of the penalty was wrong; or
- k. any penalty attributable to the period after which the Insured Person knew or ought reasonably to have known that the behaviour was wrong; or
- l. any penalty for breach of consumer protection legislation.

**7.21 Period of Insurance**

The period shown in the Schedule against 'Period of Insurance' unless the Policy is cancelled earlier.

**7.22 Policy**

This Policy document, its Schedule and the endorsements, if any, noted in the Schedule or granted by the Insurer after the start of the Policy, and the information given to the Insurer on behalf of the Insured in the Proposal.

**7.23 Pollutant**

Any:

- a. solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapour, soot, fumes, acids, alkalis and chemicals; and
- b. waste materials, including materials to be recycled, reconditioned or reclaimed; and
- c. other air emission, odour, waste water, oil, oil products, infectious or medical waste or any noise emissions.

**7.24 Proposal**

The written proposal form and all supplementary information and material provided by or on behalf of the Insured.

**7.25 Regulatory Authority**

A person or entity appointed, constituted or acting under a delegated authority pursuant to any Act or regulation enacted by the federal or a state parliament within the Commonwealth of Australia and relating to events taking place within the Commonwealth of Australia.

**7.26 Retroactive Date**

The date shown in the Schedule against 'Retroactive Date'.

**7.27 Schedule**

The Schedule which attaches to and forms part of this Policy.

**7.28 Senior Counsel**

A barrister in active practice who is entitled to use the post nominals QC or SC in any superior court in the Commonwealth of Australia

**7.29 Subsidiary**

Any entity:

- a. which is deemed to be a subsidiary of the Company at the start of the Period of Insurance by Australian law provided the accounts of any Subsidiary are incorporated into the accounts of the Company in accordance with the relevant accounting standard; or
- b. in which the Company controls more than 50% of the issued share capital or has more than one half of the maximum voting rights for any vote at a general meeting of the body corporate or entity.

**7.30 Superannuation Trustees Liability**

Any liability from a Claim in relation to any act, error or omission Trustees Liability in connection with an Insured acting as a trustee for the superannuation or pension fund provided for the benefit of Employees which is specified in the Schedule.

**7.31 Wrongful Act**

Any actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement or misleading statement committed by:

- a. an Insured Person in his or her capacity as an Insured Person in the course of his or her duties to the Company; or
- b. the Company

**Section 8 - Claims Conditions****8.1 Claims Reporting**

The Insured must give the Insurer immediate notice in writing of any Claim within the Period of Insurance to The Claims Manager, Brooklyn Underwriting Pty Ltd, Lower Ground, 156 Gloucester Street, Sydney NSW 2000.

## **8.2 Claims Co-operation and Mitigation**

The Insured must not make any offer or payment or admit liability for and Mitigation or settle any Claim or incur any costs or expenses or assume any liability in connection with a Claim without the written consent of the Insurer. The Insured must not forego, waive, exclude or limit any rights of recovery. The Insured must at its own cost, take all reasonably practicable steps to avoid or minimise any liability.

The Insurer will not be liable for any settlement or other liability assumed, or costs and expenses incurred by the Insured without the written consent of the Insurer.

The Insured at its own expense, will immediately provide to the Insurer any assistance and information the Insurer reasonably requires to allow the Insurer to determine whether or not the Insured is entitled to indemnity under this Policy, and to enable the Insurer to investigate and defend any Claim.

## **8.3 Conduct of Defence**

The Insurer will be entitled at any time to take over and conduct the investigation, defence and/or settlement of any Claim in the name of the Insured.

Any amounts incurred by the Insurer or the Insured with the written consent of the Insurer in the conduct of the defence of the Claim will be part of Defence Costs.

If the conduct of the defence of a Claim is assumed by the Insurer, or the Insured is permitted by the Insurer to expend costs and expenses in the defence of the Claim, without prejudice to the question of indemnity until sufficient facts and information are available to make a decision on the question of indemnity, this does not indicate an Insured is entitled to indemnity under the Policy or waive or prejudice the Insurer's rights under the Policy.

## **8.4 Discharge of Liability**

If the Insurer is of the opinion that the amount required to resolve any Claim may exceed the available Limit of Indemnity, the Insurer is entitled to discharge its liability by electing to pay (or agreeing to pay upon settlement of the Claim) the available Limit of Indemnity to the Insured or on the Insured's behalf (including the Defence Costs incurred up to the time it makes this election). If the Insurer is conducting the defence of the Claim at the time it makes this election, the Insurer will stop conducting the defence. The Insurer will have no further liability for Defence Costs after written notice of the election has been given to the Insured. If the Insured disagrees with a Claim settlement recommended by the Insurer, the Insured may elect to contest a Claim. However, the liability of the Insurer in respect of the Claim will not exceed the amount for which the Claim could have been settled including the Defence Costs incurred up to the date of this election, less the Excess.

## **8.5 Senior Counsel**

If a dispute arises between the Insurer and Insured as to whether or not to contest any legal proceedings, the Insurer and the Insured will not be required to contest these legal proceedings unless a Senior Counsel advises that these proceedings should be contested. The Senior Counsel appointed to advise will be agreed upon by the Insurer and the Insured but if they can not agree, will be appointed by the President of the Law Society or equivalent body in the State where the Claim is being heard or defended. Senior Counsel will advise having regard to the economics of the matter, the damages and costs which are likely to be recovered against the Insured and the likely Defence Costs that will be incurred in defending the Claim. The costs of Senior Counsel giving this advice will be part of Defence Costs.

## 8.6 Representation Issues

The lawyers instructed by the Insurer to act on the Insured's behalf can disclose to the Insurer any information they receive in that capacity. By claiming under this Policy the Insured authorises these lawyers to disclose this information to the Insurer and waives any claims for legal professional or client privilege against the Insurer.

If there is a dispute between the Insured and the Insurer, the lawyers appointed by the Insurer to conduct the defence of the Claim will also continue to advise the Insurer on all issues, including but not limited to the right of the Insured to indemnity under the Policy. It is agreed that this will not prevent those lawyers from acting on the defence of the Claim on the instructions of the Insurer.

If any actual or potential conflict arises between the interests of the Insured and the Insurer, the lawyers appointed by the Insurer to investigate and defend the Claim may stop acting on behalf of the Insured and continue to advise the Insurer in any dispute about the entitlement of the Insured to indemnity under the Policy.

All communications between the Insurer and the lawyers appointed by the Insurer to investigate, defend or settle a Claim are privileged as between the Insurer and the lawyers and that the Insured is not entitled to demand, access or obtain these communications or information about their contents.

## 8.7 Loss Allocation

If a Claim:

- a. includes matters covered and matters not covered by this Policy; or
- b. is made against a person or organisation other than an Insured; the Insurer will determine a fair and proper allocation of the proportion of the Loss covered by the Policy having regard to the comparative legal and financial responsibility for the Loss.

If the allocation of the Loss can not be agreed then a Senior Counsel will make a final and binding determination as to the allocation of the Loss. The Senior Counsel appointed to advise will be mutually agreed upon by the Insurer and the Insured but if they can not agree will be appointed by the President of the Law Society or equivalent body in the State where the Claim is being heard or defended. The costs of Senior Counsel making this determination will be Defence Costs.

## 8.8 Other Insurance

If for any Claim or Defence Costs there is any other insurance or indemnity which may provide indemnity to the Insured or a right of contribution by the Insurer, the Insured will notify the Insurer and provide full details of that other insurance or indemnity and any further information the Insurer may reasonably require.

# Section 9 - General Conditions

## 9.1 Excess

The Insurer's liability under this Policy will apply only to that part of the amount, up to the available Limit of Indemnity, required to dispose of a Claim, which exceeds the Excess. The Excess will be paid by the Insured and will be uninsured. The Excess is inclusive of Defence Costs.

The Excess applies to each Claim covered by this Policy. However, where more than one Claim arises from or is attributable to the same act, error or omission or a series of related acts, errors or omissions, only one Excess is payable under the Policy.

## **9.2 Cancellation**

The Insured can cancel this Policy by giving written notice to the Insurer at any time. This Policy may be cancelled by the Insurer in accordance with the Insurance Contracts Act 1984 (Cth).

If the Insured cancels the Policy, a pro-rata refund of premium for the unexpired portion of the Period of Insurance will be allowed, less 15% and any non-refundable taxes.

## **9.3 Governing Law**

This Policy is governed by the laws of Australia and the State or Territory where the Policy was issued. The courts of the place where the Policy was issued will have jurisdiction in any dispute in relation to this Policy.

## **9.4 Validity**

This Policy is not valid unless its Schedule is attached and has been signed by an authorised officer or agent of the Insurer.

## **9.5 GST Basis of Settlement**

The amount that the Insurer is liable to pay under this Policy will be reduced by the amount of any input tax credit that the Insured is or may be entitled to claim for the supply of goods or services covered by that payment.

If the Insured is entitled to an input tax credit for the premium, the Insured must inform the Insurer of the extent of that entitlement when the Insured makes a Claim under this Policy. The Insurer will not indemnify the Insured for any GST liability, fines or penalties arising from or due to the Insured's failure to notify the Insurer of the Insured's entitlement (or correct entitlement) to an input tax credit on the premium.

If the Insured is liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that the Insured is or may be entitled to claim on payment of the excess.

## **9.6 Interpretation**

The paragraph headings are for convenience and do not form part of this Policy for the purposes of interpretation of this Policy except where they are used for identifying the insuring clauses, exclusions or conditions being referred to.

Words and expressions in the singular include the plural and vice versa. Words (except headings) in bold lettering have a special meaning and are defined in the Policy. Words that are not specifically defined in this Policy have their normal meaning.