

COMBINED LIABILITY INSURANCE

Policy Wording 01.01.18



www.brooklynunderwriting.com.au

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BROOKLYN 
UNDERWRITING

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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 the **Insured** enters into an insurance contract, the **Insured** has a duty to tell the **Insurers** anything that the **Insured** knows, or could reasonably be expected to know, may affect the **Insurers** decision to insure the **Insured** and on what terms.

The **Insured** has this duty until the **Insurers** agree to insure the **Insured**.

The **Insured** has the same duty before the **Insured** renews, extends, vary or reinstates an insurance contract.

The **Insured** does not need to tell the **Insurers** anything that:

- reduces the risk the **Insurers** insure you for; or
- is common knowledge; or
- The **Insurers** know or should know as an **Insurer**;
or
- The **Insurers** waive your duty to tell us about.

If you do not tell us something

If the **Insured** does not tell the **Insurers** anything the **Insured** are required to, the **Insurers** may cancel the **Insureds** contract or reduce the amount the **Insurers** will pay the **Insured** if the **Insured** makes a claim, or both.

If the **Insureds** failure to tell the **Insurers** is fraudulent, the **Insurers** may refuse to pay a claim and treat the contract as if it never existed.

PRIVACY

Catlin Australia Pty Ltd, trading as Brooklyn Underwriting (Brooklyn) 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 requests from you is not provided, Brooklyn or any involved third party may not be able to provide the appropriate services.

Brooklyn 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 may provide information (including sensitive information such as health information) to

Insurers, reinsurers, other insurance intermediaries, it's advisors such as loss adjustors, 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 and these parties collecting, using and disclosing personal and sensitive information about you.

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

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

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

The Privacy Officer

Catlin Australia Pty Limited
trading as **Brooklyn Underwriting**
Level 28, 123 Pitt Street
Sydney NSW 2000
t: +61 2 8270 1790
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GENERAL INSURANCE CODE OF PRACTICE

This **Policy** does not comply with the General Insurance Code of Practice, however, Brooklyn 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

COMBINED LIABILITY INSURANCE POLICY

1. INSURING CLAUSE

Subject to the terms and conditions of the **Policy**, the **Insurer** will indemnify the **Insured** against their legal liability to pay damages (including claimants' costs, fees and expenses) in respect of:

- a) **Injury**
- b) **Damage**
- c) **Advertising Liability**

happening during the **Period of Insurance** as a result of an **Occurrence** in relation to the **Insured's Business**.

2. DEFINITIONS

For the purpose of this **Policy**:

- 2.1 **Additional Expenses** means costs, fees and expenses incurred by the **Insured** with the written consent of the **Insurer** in connection with:
 - 2.1.1 The protection of damaged or undamaged property of any person(s) including temporary repairs as may be required;
 - 2.1.2 The erection or installation of any temporary protection to property of any person(s) which the **Insured** must provide in compliance with any government or statutory requirement;
 - 2.1.3 Reasonable expenses incurred by the **Insured** following an **Occurrence** for which indemnity is provided by this **Policy** for the rendering of immediate first aid and/or medical and surgical relief to others as may be required at the time of any **Occurrence** of Injury;
 - 2.1.4 Up to \$25,000 for reasonable professional fees and expenses incurred by the **Insured** with the prior written consent of the **Insurer** in the preparation of a claim under this **Policy**;
 - 2.1.5 All charges, expenses and legal costs recoverable from or awarded against the **Insured** in any such claim or suit and all interest accruing on the **Insurer's** portion of any judgment until the **Insurer** has paid, tendered or deposited in court that part of such judgment which does not exceed the **Limit of Indemnity** provided by this **Policy**;
- 2.2 **Advertising Liability** means:
 - 2.2.1 Liability arising out of libel, slander or defamation of character;
 - 2.2.2 Liability arising out of infringement of copyright;
 - 2.2.3 Liability arising out of unfair competition, piracy or idea misuse;
 - 2.2.4 Liability arising out of invasion of privacy; committed or alleged to have been committed during the **Period of Insurance** in any advertisement, publicity article, broadcast or telecast arising out of any advertising activities conducted by the **Insured** in the course of advertising in connection with the **Insured's Business** or **Insured's Products**.
- 2.3 **Aircraft** means any craft or vessel intended to travel through air or space (except model Aircrafts).
- 2.4 **Damage** means:
 - 2.4.1 Physical loss, destruction or material damage to tangible property (aside from the **Insured's Products**) including the resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical loss, destruction or damage that caused it;
 - 2.4.2 Loss of use of tangible property (aside from the **Insured's Products**) that is not physically lost, damaged or wrecked provided that such loss of use originates from the physical loss, destruction of or damage to other tangible property which happened during the **Period of Insurance**. All such loss of use shall be deemed to happen at the time of the physical loss, destruction or damage that caused it;
 - 2.4.3 Refusal of access to property, premises, services or facilities, or interference with any right of way, light, air, water or quiet enjoyment;
 - 2.4.4 Obstruction of or impediments caused to pedestrian, vehicular, airborne, rail or waterborne traffic.
- 2.5 **Deductible** means the amount payable by the **Insured** (at such time required by the **Insurer**) in respect of each **Occurrence** and includes all **Additional Expenses** and **Defence Costs**.
- 2.6 **Defence Costs** means costs, fees and expenses incurred by the **Insured** with the written consent of the **Insurer** in the defence or settlement of any claim, suit or proceedings which are or would, if successful, be covered under this **Policy**, including legal expenses arising out of representation at any inquest or inquiry or arising out of the defence of any proceedings in respect of matters which may form the subject of indemnity by this **Policy**.
- 2.7 **Employee** means any person engaged in the **Insured's Business** under a contract of service or apprenticeship with the **Insured**.
- 2.8 **Employment Practices** means any unjust or unfair dismissal, refutation of natural justice, defamation, deceptive representation, harassment

- or discrimination (sexual or otherwise) in respect of employment by the **Insured**.
- 2.9 **Hovercraft** means any vehicle or craft capable of travelling over land, water, mud or ice and other surfaces.
- 2.10 **Injury** means death, bodily injury, illness or disease of or to any person, including:
- 2.10.1 Death, bodily injury, disease, illness, disorder, disability, shock, fright, mental anguish or mental injury to any person, including loss of consortium or services resulting therefrom;
- 2.10.2 The effects of false arrest/ imprisonment, unfair detention, malicious prosecution or humiliation;
- 2.10.3 The effects of wrongful entry, eviction or other invasion of privacy;
- 2.10.4 The effects of assault and battery not committed by the **Insured** or at the **Insured's** direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property;
- 2.10.5 The effects of libel, slander, defamation of character or invasion of privacy.
- In the event of **Injury** claims arising from latent injury, sickness, disease, illness, disorder or disability, each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness, disorder or disability was first medically diagnosed.
- 2.11 **Insured** means:
- 2.11.1 The person, persons or corporate body named in the **Policy Schedule**;
- 2.11.2 Any subsidiary company of the **Insured**;
- 2.11.3 Any entity operated by the **Insured** or over which the **Insured** undertakes active control during the **Period of Insurance**.
- 2.11.4 Any entity operated by the **Insured** which is separated during the **Period of Insurance**, but only in respect of claims made against this entity caused by or as a result of Occurrences **Insured** under this **Policy** that took place prior to the separation of the entity.
- 2.11.5 Any principal in respect of the liability of such principal to third parties arising out of the performance by the **Insured** of any contract or agreement for the performance of work for such principal but this **Policy** shall only indemnify the principal to the extent required by such contract or agreement but subject always to the terms of this **Policy**.
- 2.12 **Insurer** means Brooklyn for and on behalf of Certain Underwriters at Lloyd's.
- 2.13 **Insured's Business** means the business stated in the **Policy Schedule** conducted at or from premises of the **Insured** and shall include:
- 2.13.1 The ownership, repair and maintenance of the **Insured's** own property;
- 2.13.2 Private work undertaken by any **Employee** for any director, partner, proprietor, officer or executive of the **Insured**; and
- 2.13.3 The provision of its own canteen, sports, social and child-care facilities or welfare organisations, and its own fire, first aid, medical, ambulance and security services.
- 2.14 **Insured's Products** means any commodity or article (after it is no longer in possession or control of the **Insured**) which is deemed (whether by law or otherwise) to have been formulated, manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, modified, serviced, repaired, sold, handled, supplied or distributed by the **Insured** or those trading under the name of the **Insured**.
- 2.15 **Limit of Indemnity** means the amount specified in this **Policy Schedule** pursuant to Clause 5 of this **Policy** Wording. **The Limit of Indemnity** applies in excess of the Deductible.
- 2.16 **Occurrence** means an event, including continuous or repeated exposure to substantially the same general conditions, which result in **Injury, Damage** and/or **Advertising Liability** neither expected nor intended by the **Insured**. All events of a series derived from one cause shall be deemed one **Occurrence**.
- 2.17 **Period of Insurance** means the period shown in the **Policy Schedule** or the period shown within any renewal documentation issued thereafter.
- 2.18 **Policy** means this **Policy** Wording, the **Policy Schedule**, Certificate of Insurance and any other documents such as endorsements that the **Insurer** may issue and advise will form part of the **Policy**.
- 2.19 **Policy Schedule** means the **Policy Schedule** issued by the **Insurer** and forming part of this **Policy**.
- 2.20 **Pollution** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritation or contamination, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste into or upon any property, land, the atmosphere or any watercourse or body of water (including groundwater). Waste includes materials to be recycled, reconditioned or recovered.
- 2.21 **Premium** means the amount (in Australian dollars) the **Insurer** shall charge for insurance under this **Policy** for a particular **Period of Insurance**
- 2.22 **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.

- 2.23 **Vehicle** means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual power and any trailer made or intended to be drawn by any such machine whilst attached thereto.
- 2.24 **Watercraft** means any vessel or craft created or intended to travel via water (other than model boats).
- 2.25 **Workers Compensation Law** means any law relating to compensation for injury to workers or **Employees**.

3. INDEMNITY TO OTHERS

The indemnity granted extends to:

- 3.1 Managerial or supervisory **Employees** in their business capacity for legal liabilities arising out of the performance of the **Insured's Business** and any director, partner, proprietor, officer or executive of the **Insured** in respect of private work undertaken by any **Employee** for any director, partner, proprietor, officer or executive with the prior consent of the **Insured**;
- 3.2 The officers, committees and members of the **Insured's** canteen, social, sports, child-care medical, ambulance, firefighting, security services and welfare organisations for legal liabilities incurred in their respective capacity as such;
- 3.3 Any person or firm for legal liabilities arising out of the performance of a contract with the **Insured** constituting the provision of labour only;
- 3.4 Any principal for legal liabilities arising out of work carried out by the **Insured** under a contract or agreement in respect of which the **Insured** would have been entitled to indemnity under this **Policy** if the claim had been made against the **Insured**;
- 3.5 The personal representatives of any person or party indemnified by reason of this Clause 3 in respect of legal liability incurred by such person or party;

Provided always that all such persons or parties shall observe, fulfil and be subject to the terms, conditions and exclusions of this **Policy** as though they were the **Insured**.

4. CROSS LIABILITIES

Each person or party specified as the **Insured** in the **Schedule** is separately indemnified in respect of claims made against any of them by any other such person or party subject to the **Insurers** total liability not exceeding the stated **Limits of Indemnity**.

5. Limits of Indemnity

SECTIONS A, B and C

The **Insurers** total liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the **Limit of Indemnity** stated in the Schedule in respect of any one **Occurrence** or series of **Occurrences** arising from one originating cause.

Each Section shall be subject to its own **Limit of Indemnity**, provided always that should the same originating cause or **Occurrence** give rise to indemnity under more than one Section, the total amount of the **Insurers** liability for all claims arising out of one originating cause or **Occurrence** under all such Sections combined shall not exceed the single greatest **Limit of Indemnity** available under the Sections providing indemnity.

SECTION B

The **Insurers** total liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the Schedule in respect of all **Occurrences** combined during the **Period of Insurance**.

SECTION C

The **Insurers** total liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the **Schedule** in respect of all **Occurrences** combined during the **Period of Insurance**.

6. Defence Costs AND Additional Expenses

The **Insurer** will also pay **Defence Costs** and **Additional Expenses** provided that the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of any claim, suit or proceedings.

Defence Costs and **Additional Expenses** will be payable in addition to **Limits of Indemnity** as stated in the **Schedule** unless otherwise shown.

SECTION A – PUBLIC LIABILITY

7. SECTION A – INDEMNITY

The **Insured** is indemnified by this Section in accordance with the Insuring Clause.

8. SECTION A – EXCLUSIONS

This Section does not apply to or include legal liability:

- 8.1 Arising out of **Pollution**.
- 8.2 Arising out of any **Product**.
- 8.3 Arising out of the ownership, possession or use by or on behalf of the **Insured** or any person or party entitled to indemnity of any **Vehicle** or trailer which is either registered or is required to be

registered under law other than legal liability:

- 8.3.1 Caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- 8.3.2 Arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any motor vehicle or trailer;
- 8.3.3 Arising out of any motor vehicle or trailer temporarily in the **Insured's** custody or control for the purpose of parking;

Provided always that no indemnity is granted against liability for which compulsory insurance or security is required by legislation or for which the government or other authority has accepted responsibility.
- 8.4 Arising out of the ownership, possession or use by or on behalf of the **Insured** of any **aircraft**, spacecraft, **hovercraft**, offshore installation, rig, platform or **watercraft** (other than watercraft not exceeding 10 metres in length whilst on inland waterways)
- 8.5 Arising out of breach of professional duty or wrongful or inadequate professional advice given however this Exclusion 8.5 does not apply to:
 - 8.5.1 The rendering of or failure to render first aid or medical services by **Employees** of the **Insured**; or
 - 8.5.2 Injury or Damage arising therefrom providing such professional advice is not given for a fee.

SECTION B – PRODUCTS LIABILITY

9. SECTION B – INDEMNITY

The **Insured** is indemnified by this Section in accordance with the Insuring Clause arising from the **Insured's Products**.

10. SECTION B – EXCLUSIONS

This Section does not apply to or include legal liability:

- 10.1 Arising out of **Pollution**.
- 10.2 For costs incurred in the repair, reconditioning or replacement of any of the **Insured's** Product or part thereof which is or is alleged to be defective.
- 10.3 Arising out of the recall of any of the **Insured's** Product or part thereof.
- 10.4 Arising out of any of the **Insured's Product** which with the **Insured's** knowledge is intended for incorporation into the structure, machinery

or controls of any **aircraft**, other aerial device, **hovercraft** or **watercraft**.

- 10.5 arising by virtue of a contract or agreement other than a warranty of fitness or quality of the **Insured's Products** established or implied by virtue of the Sale of Goods Act or equivalent legislation or a warranty that work done will be performed in a workmanlike manner.

SECTION C - POLLUTION LIABILITY

11. INDEMNITY

The **Insured** is indemnified by this Section in accordance with the Insuring Clause arising out of **Pollution** which was the direct result of a sudden, identifiable, unintended and unexpected event which occurred in its entirety at a specific time and place during the **Period of Insurance**.

12. EXCLUSIONS

This Section is subject to the Exclusions of Sections A and B (other than 8.1 and 10.1) and also does not apply to or include legal liability for:

- 12.1 **Damage** to premises presently or at any time previously owned or tenanted by the **Insured**.
- 12.2 **Damage** to land or water within the boundaries of or below any land premises presently or at any time previously owned or leased by the **Insured**.
- 12.3 **Damage** caused or contributed to by the **Insured's** failure to take reasonable precautions to prevent **Pollution**.

GENERAL EXCLUSIONS

13. EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE Policy

This **Policy** does not apply to or include legal liability in any way connected to or arising from:

13.1 Contractual Liability:

For any obligation assumed by the **Insured** under any agreement or contract except to the extent that:

- 13.1.1. The liability would have been implied by law;
- 13.1.2. The liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges the **Insured** to effect insurance or provide indemnity in respect of the subject matter of that contract; or

- 13.1.3. The liability is assumed by the **Insured** under a warranty of fitness or quality as regards to the **Insured's Products**.
- 13.2 **Advertising Liability:**
- 13.2.1. Acts, errors, omissions or statements made in the course of the **Insured's** advertising activities prior to the commencement of the **Period of Insurance**; For breach of contract, other than misappropriation of advertising ideas contrary to an implied contract;
- 13.2.2. Infringement or passing off of a trade mark, service mark or trade name on any of the **Insured's Products**, goods or services sold, offered for sale or advertised. This does not apply to infringement of titles or slogans; or
- 13.2.3. Incorrect description of the price of the **Insured's Products**, goods or services.
- 13.3 **Care Custody and Control:** For or arising out of damage to property owned, leased, hired by, under hire purchase, on loan or rented to the **Insured** or otherwise in the **Insured's** care, custody or control other than:
- 13.3.1 Premises tenanted by the **Insured**
- 13.3.2 **Vehicles** (other than Vehicles owned or used by or on behalf of the **Insured**) in the **Insured's** Care, Custody and Control but on while such **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;
- 13.3.3 Directors', **Employees'** and visitors' clothing and personal effects;
- 13.3.4 Premises (including contents therein) occasionally occupied by the **Insured** for the purpose of carrying out works there but no indemnity is granted for liability in respect of physical **Damage** to or destruction of that part of any premises on which the **Insured** is or has been working on if the physical damage or destruction arises from such work;
- 13.3.5 Other property not owned by the **Insured** and temporarily in the **Insured's** possession provided:
- a) No indemnity is granted for liability in respect of damage to or destruction of that part of any property upon which the **Insured** is or has been working on;
- b) The **Insurer's** limit of liability under this Clause 12.3.4 does not exceed \$250,000 each and every **Occurrence** and in the aggregate for any one **Period of Insurance**.
- c) Provided further that no indemnity is granted under this **Policy** in respect of liability assumed by the **Insured** under any contract or agreement which requires the **Insured** to effect material damage insurance on premises, property or goods not owned by the **Insured**.
- 13.4 **Contractors, subcontractors and labour hire:** Notwithstanding the below, it is noted and agreed that this Exclusion 13.4 shall not apply to the **Insured** in respect of their own liabilities arising out of any act, omission or otherwise of any contractor, subcontractor or other entity mentioned below.
- 13.4.1. For or arising from any contractor or subcontractor of the **Insured**;
- 13.4.2. For or arising from any contractor or subcontractor of any contractor or subcontractor of the **Insured** or any tier thereof; or
- 13.4.3. For or arising from any director, executive officer, **Employee** or partner of any contractor or subcontractor (or any of their contractors or subcontractors) of the **Insured** or any tier thereof
- 13.5 The use of explosives.
- 13.6 The deliberate, conscious or intentional disregard by the **Insured's** technical or administrative management of the need to take all reasonable steps to prevent **Injury** or **Damage**.
- 13.7 Injury to an **Employee** where such Injury arises out of and in the course of employment by the **Insured** or any liability arising out of the Workers' Compensation Act or any similar legislation anywhere in the world.
- 13.8 Liquidated damages clauses, penalty clauses or performance warranties unless it is proven that liability would have attached in the absence of such clauses or warranties.
- 13.9 Directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.
- 13.10 directly or indirectly caused by or contributed to or arising out of:
- a) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b) The radioactive, toxic, explosive or other
- 13.11 Any award of punitive or exemplary damages whether as fines, penalties, multiplication of compensatory awards or damages, or in any other form whatsoever.
- 13.12 The Deductible stated in the Schedule in respect of the first amount of each **Occurrence**.

- 13.13 Any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing Asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss
- 13.14 Loss of use of tangible property, which has not been physically lost, damaged or destroyed, resulting from:
- a) delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement; or
 - b) the failure of the **Insured's Products** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**. However this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical Damage to or destruction of the **Insured's Products** or work performed by or on behalf of the **Insured** after such Product or work has been put to their intended use by any person or organisation other than the **Insured**.
- 13.15 The failure of underpinning or de-watering to perform the function for which it was designed or to perform as stated, warranted or guaranteed.
- 13.16 Direct or indirect Injury due to the inhalation or ingestion of, or exposure to tobacco or tobacco smoke or any ingredient present in any article, item or good which contain tobacco.
- 13.17 The use of any electric, oxy-acetylene or comparable welding equipment and associated processes by or on behalf of the **Insured** unless such welding was done in full compliance with Australian Standard 1674 Safety in Welding and Allied Processes.
- 13.18 Claims made and actions instituted within:
- a) The United States of America and the Dominion of Canada
 - b) Any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada
 - c) Any country or territory subject to the laws of the United States of America or the Dominion of Canada.
- Further provided that this Exclusion 13.18:
- d) Does not apply to **Occurrences** arising from any **Employee** who normally resides in the Commonwealth of Australia while such **Employee** is temporarily travelling on behalf of the **Insured** outside of the Commonwealth of Australia;
 - e) Includes any of the **Insured's Products** knowingly exported to the United States of

America and the Dominion of Canada or any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada;

- f) Includes the provision of manual work within the United States of America and the Dominion of Canada or any state, territory or protectorate incorporated in, or administered by, the United States of America or the Dominion of Canada.

- 13.19 for **Injury** or **Damage**, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This exclusion also applies to loss, injury, Damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the **Insurer** alleges that by reason of this exclusion, any **Injury** or **Damage**, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the **Insured**.

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

This exclusion shall take precedence over any other term of the **Policy**, including any endorsement added at any time, which does not expressly override it.

GENERAL CONDITIONS

14. GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS OF THE Policy

- 14.1 The **Insured** shall give immediate notice in writing to the **Insurer** of any **Occurrence** that may give rise to a claim under this **Policy** and shall give all such additional information as the **Insurer** may require. Every claim, writ, summons, notice of adjudication, referral notice or process and all documents relating thereto shall be forwarded to the **Insurer** immediately when they are received.
- 14.2 No admission, offer, promise or payment shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurer**, who shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any claim or to prosecute in the name of the **Insured** for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the **Insured** shall give all such information and assistance as the **Insurer** may reasonably require.

14.3 The **Insurer** may at any time pay to the **Insured** in connection with any claim or series of claims under this **Policy** to which a **Limit of Indemnity** applies the amount of such **Limit of Indemnity** (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and be under no further liability in connection with such claims except for the payment of **Defence Costs** and **Additional Expenses** incurred prior to the date of such payment.

Provided that if the **Insurer** exercises the above option and the amount required to dispose of any claim or series of claims exceeds the **Limit of Indemnity** and such Deductible amount is **Insured** either in whole or in part, with **Defence Costs** payable in addition to the **Limit of Indemnity** under this **Policy** then the **Insurer** will also contribute their proportion of subsequent **Defence Costs** and **Additional Expenses** incurred with their prior written consent as the **Limit of Indemnity** bears to the amount paid to dispose of a claim.

14.4 The **Insured** shall give notice to the **Insurer** of any alteration or circumstance which materially affects the risks **Insured** under this **Policy** and until the **Insurer** is advised of such alteration or circumstance and shall have expressly agreed in writing to accept liability for such altered risk and the **Insured** has paid or agreed to pay the additional premium, if any, the **Insurer** shall not be liable in respect of any claim or claims due wholly or partially to any such alteration or circumstance.

14.5 Where the premium is provisionally based on the **Insured's** estimates, the **Insured** shall keep accurate records and within 90 days of expiry of the **Period of Insurance** declare such particulars as the **Insurer** shall require. The premium shall then be adjusted and any difference paid or allowed to the **Insured** as the case may be subject to any minimum premium that may apply. Failure to declare such particulars to the **Insurer** shall entitle the **Insurer** to estimate if they so wish such particulars and to assess the further premium payment due calculated on such estimated particulars.

14.6 Any written proposal and/or declaration made by the **Insured** shall form the basis of this contract of insurance and is deemed to be incorporated herein.

14.7 If any claim under this **Policy** is in any respect fraudulent all benefit in respect of such claim shall be forfeited.

14.8 The **Insurer** may cancel this **Policy** for any of

the reasons allowed by the Insurance Contracts Act 1984 (as amended) by giving 30 working days notice in writing of such cancellation to the **Insured's** last known address, subject to any longer notice period provided for in the Premium Payment Condition, if any, contained herein.

14.9 This **Policy** and the Schedule will be interpreted in accordance with the law of Australia. The **Policy** and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this **Policy** or the Schedule shall bear such specific meaning wherever it may appear.

14.10 All disputes concerning the interpretation of this **Policy** are understood and agreed by both the **Insured** and the **Insurer** to be subject to Australian Law. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within Australia and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

14.11 The **Insured** shall advise the **Insurer** at the time of any claim under this **Policy** of the details of all other liability insurance from which the **Insured** may benefit, regardless of whether such claim is in the **Insured's** opinion recoverable from such other insurance, in order for the **Insurer** to establish rights of contribution which they may have.

PREMIUM PAYMENT CLAUSE

The **Insured** undertakes that premium will be paid in full to the **Insurer** within 30 days of inception of this **Policy** (or, in respect of instalment premiums, when due).

If the premium due under this **Policy** has not been so paid to the **Insurer** by the 30th day from the inception of this **Policy** (and, in respect of instalment premiums, by the date they are due) the **Insurer** shall have the right to cancel this **Policy** by notifying the **Insured** in writing. In the event of cancellation, premium is due to the **Insurer** on a pro rata basis for the period that the **Insurer** is on risk but the full **Policy** premium shall be payable to the **Insurer** in the event of a loss or **Occurrence** prior to the date of termination which gives rise to a claim under this **Policy**.

It is agreed that the **Insurer** shall give not less than 15 days' prior notice of cancellation to the **Insured**. If premium due is paid in full to the **Insurer** before the notice period expires, notice of cancellation shall automatically be revoked. If not, the **Policy** shall automatically terminate at the end of the notice period.

Unless otherwise agreed, the **Insurer** (and Agreement Parties if appropriate) are authorised to exercise rights

under this clause on their own behalf and on behalf of all **Insurers** participating in this contract (if appropriate).

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause, which will remain in full force and effect.

NMA1854 SERVICE OF SUIT CLAUSE

The **Insurer** accepting this insurance agrees that:

- (i) if a dispute arises under this insurance **Policy**, this insurance will be subject to Australian law and practice and the **Insurer's** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the **Insurer's** may be served upon:
Lloyd's Underwriters' General Representative in Australia

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

SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or

provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

COMPLAINTS

If the Insured has any questions or concerns about this insurance or the handling of a claim, please contact the broker named through whom this insurance was arranged.

If the Insured wishes to make a complaint, the Insured can do so at any time by referring the matter to the Complaints Manager at:

Complaints Manager
Brooklyn Underwriting
Level 28, 123 Pitt Street
Sydney, NSW, 2000
t: (02) 8270 1790
e: privacyaustralia@axaxl.com

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

NOTIFICATION OF A CLAIM

In the event of a Claim arising under this Policy as soon as practicably possible notice should be given to:

Claims Manager
Brooklyn Underwriting
Level 28, 123 Pitt Street
Sydney NSW 2000
t: (02) 8270 1790
e: privacyaustralia@axaxl.com