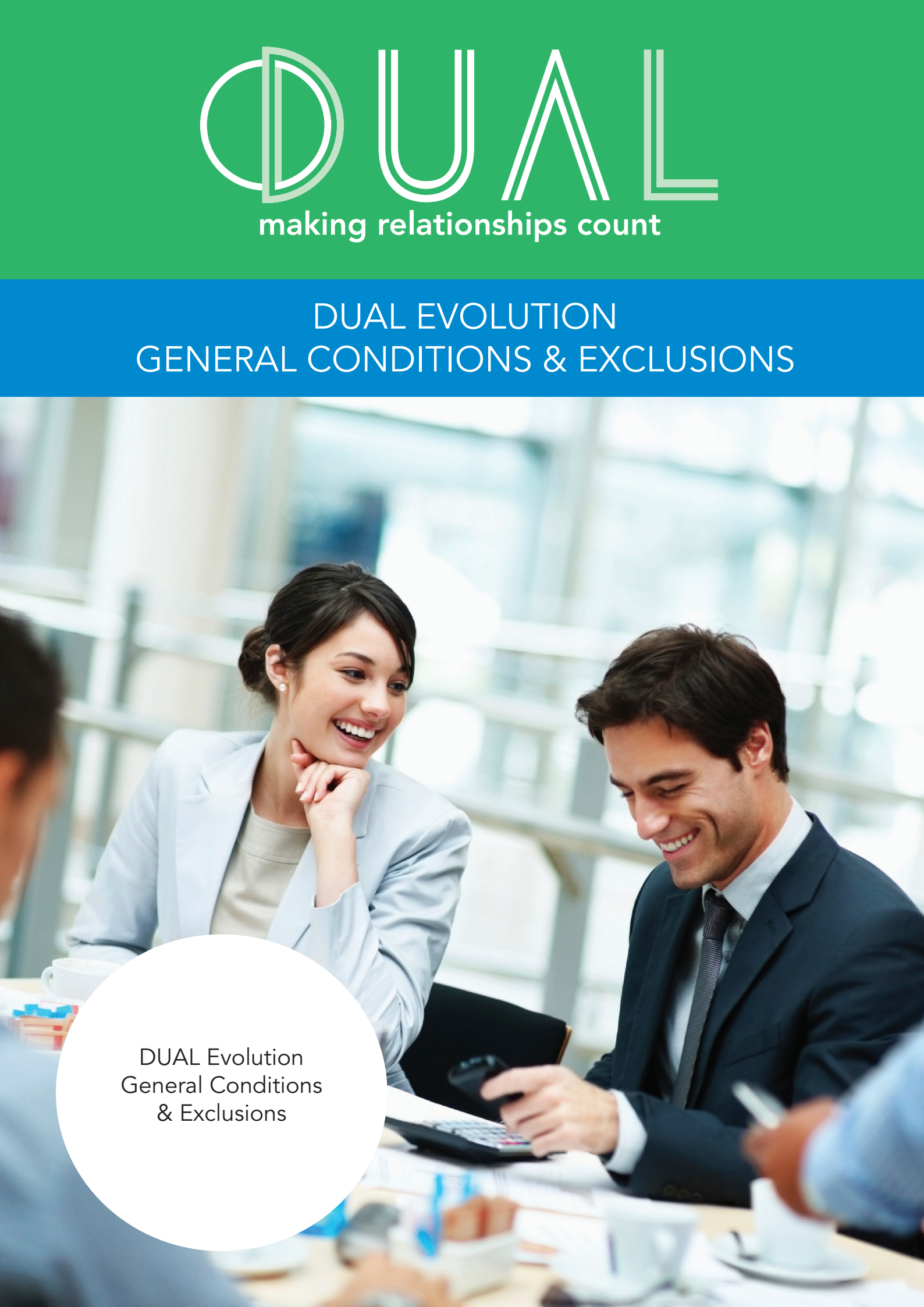




DUAL EVOLUTION GENERAL CONDITIONS & EXCLUSIONS

A background photograph of a business meeting. A woman in a light blue blazer is smiling and looking at a man in a dark suit who is using a calculator. They are sitting at a table with coffee cups and papers. The background is a blurred office environment with large windows.

DUAL Evolution
General Conditions
& Exclusions

DUAL EVOLUTION

General Conditions & Exclusions

Section 7: GENERAL CONDITIONS

7.1 Interpretation

The following General Conditions & Exclusions apply to all **policies** purchased and shown as having been purchased in the **schedule**.

Each **policy** purchased is to be read and interpreted as a separate contract of insurance with its own separate **indemnity limit**, unless specified otherwise in the **schedule**.

Words and phrases appearing in bold text and where used in a **policy**, have the meaning defined in that **policy** or **policies** purchased by the **policyholder** as shown in the **schedule**.

To the extent that there are any inconsistencies between a **policy** and this General Conditions & Exclusions Section, the terms and conditions contained in the **policy** will prevail.

In a **policy**:

- (a) the singular includes the plural and the masculine includes the feminine;
- (b) the headings are for descriptive purposes only; and
- (c) in the event that any portion of a **policy** is found to be invalid or unenforceable, the remainder will remain in full force and effect.

7.2 Notification – Claims Made and Notified

To the extent that a policy is a claims made and notified **policy** the **policyholder** and/or any **insured** will notify **us** of any **claim** or **investigation**, which may trigger this **policy** as soon as is reasonably practicable after they first became aware of such **claim** or **investigation** and within the **insurance period**.

Such written Notice will include the following, so far as is reasonably practicable and so far as the relevant **insured** is aware:

- (a) the identity of the claimant if relevant;
- (b) an outline of the facts alleged;
- (c) an estimate of the likely quantum of any **loss**; and
- (d) The policy under which the notification is made.

Such Notice to **us** will be given in writing, and delivered to:

The National Claims Manager

By Email: claims@dualaustralia.com.au

or by mail to: GPO Box 7101
Sydney NSW 2001
Australia

Any written Notice will be considered effective from the date such Notice is first received by **us**.

7.3 Notification – Discovery

To the extent that a **policy** is **discovery** based, the **policyholder** will, as a condition precedent to **our** obligations under the **policy** give written notice to **us** of any **loss** it suspects was caused by an **internal crime** or **external crime** as soon as practicable within the **insurance period** or **discovery period** (if a **discovery period** is operable and has been purchased) but in any event not later than 60 days after any **loss** is first discovered.

Such written Notice will include the following, so far as is reasonably practicable and so far as the relevant insured is aware:

- (a) the identity of the defalcator, if known;
- (b) an outline of the facts alleged; and
- (c) an estimate of the likely quantum of any **loss**.

Such Notice to **us** will be given in writing, and delivered to:

The National Claims Manager

By Email: claims@dualaustalia.com.au

or by mail to: GPO Box 7101
Sydney NSW 2001
Australia

Any written Notice will be considered effective from the date such Notice is first received by **us**.

7.4 Co-operation

The **insured** will, at the **insured's** own cost, frankly and honestly provide **us** with all information, documentation, evidence and assistance reasonably required by **us** and/or any lawyers, investigators or other professionals, who may be appointed by **us**.

The **insured** will, at their own cost, do all things reasonably practicable to minimise any **loss**, including but not limited to the **insured's** liability in respect of any **claim**.

Each **insured** will provide **us**, at their own cost, with all information, assistance and co-operation which **we** reasonably require, and in the event of a **claim** or potential **claim**, each **insured** agrees that they will not do anything that could foreseeably prejudice **our** position or **our** potential or actual rights of recovery.

7.5 Allocation

Our liability under this **policy** is limited to the proportion of **loss**, which is a fair and equitable allocation as between:

- (a) covered and uncovered parties; and/or
- (b) covered and uncovered matters;

having regard to the relative legal and financial exposures attributed to the covered and uncovered matters and/or parties. Only **loss** incurred by covered parties in relation to covered matters will be covered by this **policy**, and is subject always to the terms and conditions of this **policy**.

We will use **our** best endeavours to agree with the **insured** upon a fair and equitable allocation of the proportion covered under this **policy**, having regard to the relative legal and financial exposures attributable to covered and uncovered matters and/or parties.

If an allocation cannot be agreed then it will be determined by a suitably qualified Senior Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then President of the Bar Association of the jurisdiction in which the **policy** was underwritten. The Senior Counsel will make a determination as an expert based on the relative legal and financial exposures attributable to covered and uncovered matters and/or parties. Submissions made to the Senior Counsel will be in writing. Pending Senior Counsel's determination **we** will meet the **loss** on an interim basis at the percentage, which **we** contend should be fairly and equitably allocated. After the allocation has been determined or agreed, such allocation will be applied retrospectively. The parties agree to be bound by the Senior Counsel's determination. The costs of any referral for determination to a Senior Counsel under this clause will be borne by **us**.

7.6 Legal Representation and Settlement

Unless otherwise specified in a **policy**, it will be **our** duty and not the duty of the **insured** to defend **claims** and arrange for legal representation at **investigations**.

The **insured** will not admit liability, settle any **claim**, make any admission, offer any payment or assume any obligation in connection with any **claim** or investigation, incur any **defence costs**, **investigation costs** or other **loss** covered by this **policy**, without **our** prior written consent, which will not be unreasonably withheld or delayed.

We will not be liable for any settlement, **defence costs** or other form of **loss**, admission, offer, payment or assumed obligation to which **we** have not given **our** prior written consent.

We will have the right and will be given the opportunity to associate with each **insured** and participate in the defence of any **claim** or **investigation** including the negotiation and settlement of a covered **claim**.

With respect to any **claim** or **investigation** involving more than one **insured**, the **insureds** agree that **we** have the right to require such **insureds** to retain separate legal representation.

7.7 Presumptive Indemnification

Where the **principal organisation** is not prohibited by law from indemnifying an **insured person** and is not insolvent, then it is agreed that the **principal organisation** will indemnify the **insured person** for all **loss**. In the event that a **deductible** applies, the **principal organisation** will pay the **deductible** directly to **us** and **we** will pay the **insured person's loss** on their behalf and will be entitled to claim an input tax credit which may be available.

7.8 Order of Payments

If the payment of **loss** is to be made where such **loss** in the aggregate exceeds the remaining available **indemnity limit**, **we** will:

- (a) first pay such **loss** for which the **principal organisation** does not indemnify an **insured person**; then
- (b) to the extent of any remaining amount of the **indemnity limit** available after payment under 7.8 (a) above, pay such **loss** for which coverage is provided under any other provision of this **policy**.

We will otherwise pay **loss** covered under this **policy** in the order in which such **loss** is presented to **us** for payment.

7.9 Subrogation & Recoveries

Where **we** have paid any amount of **loss** under a policy, **we** become entitled to assume any rights available to the **insured** against any party to the extent of **our** payment. On **our** request, the **insured** will assign all rights of recovery against any person or entity, but only to the extent that payment has been made under a policy.

The **insured** must, at its own cost, assist **us** and provide information as **we** may reasonably require, to exercise **our** rights of recovery and/or subrogation. This may include providing and signing statements and other documents and the giving of evidence.

Where a recovery is made, the proceeds of such a recovery will be applied as follows:

- (a) firstly, to the satisfaction of all costs incurred in effecting the recovery;
- (b) secondly, to the **insured** for the amount of **loss** in excess of the **indemnity limit** specified in the **schedule** which is also in excess of any excess insurance purchased over this **policy**;
- (c) thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies;
- (d) finally, to the **insured** for the amount paid in respect of the **deductible**.

7.10 Goods & Services Tax

We will charge an appropriate amount to the **policyholder** on account of GST.

It is the duty of the **policyholder** to inform **us** whether or not it is entitled to an Input Tax Credit in relation to any amounts claimed under this **policy**.

Our liability to pay **loss** under this **policy** will be calculated having regard to the **policyholder's** or any other **insured's** entitlement to claim an Input Tax Credit.

No payment will be made to the **policyholder**, for any GST liability on account of a covered **claim** or **investigation**, where the **policyholder** is entitled to claim an Input Tax Credit.

GST, Goods & Services Tax and Input Tax Credit have the meanings attributed to them under the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).

7.11 Alteration to Risk

If during the **insurance period** a **transaction** occurs then the cover under the **policy** will only apply to **wrongful acts**, **internal crime** or **external crime** committed prior to the effective date of the **transaction**.

If, during the **insurance period**, the **policyholder** decides to make a public offering of its **securities** in any jurisdiction the **policyholder** will provide **us** with any prospectus or offering statement for **our** review and assessment. **We** will be entitled to amend the terms and conditions of any **policy** and/or charge an additional premium reflecting any potential increase in exposure, which we deem reasonable.

The **insured** will give **us** written notice of the above listed events as soon as reasonably practicable.

7.12 Assignment

The **insured** must not assign the **policy** or any rights under the **policy** without **our** prior written consent by way of endorsement to the **policy**.

7.13 Cancellation

The **principal organisation** may cancel any **policy** at any time by providing **us** with a minimum of 14 days written notice.

We may only cancel the **policy** for non-payment of premium and must do so in accordance with the provisions of the *Insurance Contracts Act 1984* (Commonwealth).

Provided that there have been no **claims** or notifications made on or under the **policy**, **we** agree to allow a refund of premium calculated on a pro-rata basis, provided that we will always retain a minimum of 25% of the full annual premium.

7.14 Several Liability of Underwriters

The obligations of **our** subscribing Underwriters, where there is more than one Underwriter named in the Schedule subscribing to the **policy**, are several and not joint and are limited solely to the extent of their individual subscriptions. No subscribing Underwriter is responsible for the subscription of any co-subscribing Underwriter who, for any reason, does not satisfy all or part of its obligations.

7.15 Confidentiality

The **insured** must not disclose, either personally or through any person or entity acting on the **insured's** behalf or at the **insured's** direction, to any third party:

- (a) the existence of this **policy**;
- (b) the nature of the indemnity provided;
- (c) the **indemnity limit**; or
- (d) the amount of premium paid.

However, the **insured** may disclose the above matters to the extent that:

- (i) the **insured** is required to do so by law; or
- (ii) **we** consent to the disclosure in writing.

7.16 Territorial Limitation

Unless otherwise stated in the **policy**, the cover provided under this **policy** will extend to **loss** with respect to a **claim** or **investigation** brought and maintained anywhere in the world.

7.17 Governing Law and Jurisdiction

This **policy** is governed by the laws of the Commonwealth of Australia and/or the State or Territory of Australia, where the **policy** was issued. Any dispute relating to **policy** interpretation will be submitted to the exclusive jurisdiction of the Courts of the Commonwealth of Australia.

7.18 Indemnity Limit

The **schedule** will indicate the **indemnity limit** applicable to each **policy**. **We** will have no liability in excess of the sub-limits specified in the **schedule** in the aggregate for the applicable extension of cover, irrespective of the number of **policy** sections, which respond to the claim or investigation. Where more than one Extension applies, **we** will apply the higher of the sub-limits or indemnity limit available.

7.19 Deductible

Our liability under the **policy** for **loss** will only apply to that part of each **loss** which is in excess of the **deductible** specified in the **schedule**. Such **deductible** will be borne by the **policyholder**, except where otherwise provided.

Unless otherwise expressed in the Schedule, all **deductibles** are inclusive of **defence costs** and/or **investigation costs** and/or **loss** to the amount of the **deductible**.

Except as otherwise stated in the **policy**, costs and expenses incurred by **us** in determining whether **we** are liable to indemnify the **insured** under the **policy** will not erode the **indemnity limit** and will be met by **us**.

7.20 Severability, Non-Imputation and Non-Avoidance

No state of mind or knowledge possessed by any one **insured person** will be imputed to any other **insured person** for the purpose of determining whether any provision in this **policy** applies. However, any state of mind or knowledge possessed by the chairman of the board, chief executive officer, chief operating officer or chief financial officer of the **principal organisation** will be imputed to the **policyholder**.

We agree not to rescind or avoid this **policy** in whole or in part, for any reason.

We waive all rights under section 28(3) of the Insurance Contracts Act 1984 (Commonwealth) for non-fraudulent non-disclosure or non-fraudulent misrepresentation by an **insured**.

If **we** are entitled to reduce **our** liability pursuant to section 28(3) of the Insurance Contracts Act 1984 (Commonwealth) as a result of fraudulent non-disclosure or fraudulent misrepresentation, **we** will only reduce our liability under a policy in respect of the **insureds** who were involved in or were aware of the fraudulent non-disclosure or fraudulent misrepresentation.

7.21 Preservation of Right to Indemnity

In the event and to the extent that the **policyholder** has not indemnified an **insured person** but is legally permitted or required to do so in respect of a **claim** or **investigation**, but for whatever reason, refuses to do so, then **we** will pay on behalf of the **insured person** any **loss** arising from the **claim** or **investigation** within the deductible and, the applicable **deductible** will be paid by the **policyholder** to **us**.

7.22 Other Insurance

As permitted by the *Insurance Contracts Act 1984* (Cth.), this **policy** will only cover **loss** to the extent that the amount of such **loss** is in excess of any indemnity or cover available to the **insured** in respect of that **loss** under the **other insurance policy/policies** listed in the **schedule**.

7.23 Currency

Any reference to premium, limits, **deductibles, loss, defence costs, investigation costs** or any other amounts payable by **us** under this **policy** are expressed and are payable in Australian Dollars. Where any payment is to be made into an admitted foreign jurisdiction, such payment is to be made and denominated in Australian Dollars at the cash rate for the purchase of Australian Dollars set by the Reserve Bank of Australia as at 4.00pm on the date which the foreign payment becomes due.

7.24 Complaints Procedures

Any inquiry or complaint relating to this Insurance should be referred to **us** in the first instance. If **we** are unable to resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21 Angel Place 123 Pitt Street Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

7.25 Service of Legal Notices

The Underwriters hereon agree that any Summons, Writ or other like legal Notice or Process, which is to be served upon the Underwriters may be served upon Lloyd's General Representative at Lloyd's Australia:

Lloyd's Underwriters' General Representative in Australia
Suite 2, Level 21 Angel Place 123 Pitt Street Sydney NSW 2000
Telephone Number: (02) 9223 1433
Facsimile Number: (02) 9223 1466

who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the **insured** (or reinsured) to give a written undertaking to the **insured** (or reinsured) that he will enter an appearance on Underwriters' behalf.

If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

7.26 General Insurance Code of Practice

This **policy** is compliant with the Insurance Council of Australia's General Insurance Code of Practice. Underwriters at Lloyd's and DUAL Australia proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of the General Insurance Code of Practice is available by contacting DUAL Australia or is available for download from:

www.codeofpractice.com.au

Section 8: GENERAL EXCLUSIONS

It is agreed that the following Exclusions will apply to all **policies** to which these General Conditions & Exclusions apply.

8.1 War & Civil War

We will not cover the **insured** for any form of **loss** directly or indirectly based upon, arising from or in consequence of war, invasion, acts of foreign enemies, military hostilities (whether war be declared or not), civil war, rebellion, revolution, or insurrection.

8.2 Pollution and Radioactive Contamination

We will not cover the **insured** for **loss** directly or indirectly caused by or contributed to by or arising from:

- a) ionizing radiation or contamination by radioactivity from a nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly; or
- c) the actual, alleged or threatened discharge of **pollution**.

8.3 Sanctions Limitation Exclusion

We will not cover the **insured** for **loss** to the extent that trade or economic sanctions or other laws or regulations prohibit **us** from providing insurance.

PRIVACY STATEMENT

At DUAL Australia Pty Ltd, we are committed to compliance with the *Privacy Act 1988* (Cth). We use your personal information to assess the risk of and provide insurance, and assess and manage claims. We may also use your contact details to send you information and offers about products and services that we believe will be of interest to you. If you don't provide us with full information, we may not be able to provide insurance or assess a claim. If you provide us with information about someone else you must obtain their consent to do so.

We provide your information to the insurer we represent when we issue and administer your insurance. When providing a quotation or insurance terms, we will tell you if the insurer is overseas and if so, where they are. We are part of the Hyperion Insurance Group and may provide your information to UK based Group entities who provide us with business support services. We may also provide your information to your broker and our contracted third party service providers (e.g. claims management companies), but will take all reasonable steps to ensure that they comply with the Privacy Act.

Our Privacy Policy contains information about how you can access the information we hold about you, ask us to correct it, or make a privacy related complaint. You can obtain a copy from our Privacy Officer by telephone (+61 (0)2 9248 6300), email (reception@dualaustralia.com.au) or by visiting our website (www.dualaustralia.com.au).

By providing us with your personal information, you consent to its collection and use as outlined above and in our Privacy Policy.