

# Wordings.





## **DUAL Australia**

Evolution General Conditions, Claim Conditions  
& General Exclusions Policy Wording

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# DUAL Australia Evolution General Conditions, Claim Conditions & General Exclusions Policy Wording

## Section 7: Preamble

**7.1** The following Sections apply to all **policies** (including any **endorsements**) purchased and shown as having been purchased in the **schedules**.

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** or **endorsement**, have the meaning defined in that **policy** or **endorsement** purchased by the **policyholder** as shown in the **schedule**.

To the extent that there are any inconsistencies between a **policy** or **endorsement** and the following Sections, the terms and conditions contained in the **policy** or **endorsement** will prevail.

In a **policy** and **endorsement**:

- 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** or **endorsement** is found to be invalid or unenforceable, the remainder will remain in full force and effect.

## Section 8: Claim Conditions

### 8.1 Notification

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 factual matrix;
- 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](#)

DUAL Australia Pty Limited

Level 29, Angel Place, 123 Pitt Street,

Sydney NSW 2000

Australia

Or by email to: [claims@dualaustalia.com.au](mailto:claims@dualaustalia.com.au)

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

## 8.2 Notification of Crime Loss

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](#)

DUAL Australia Pty Limited

Level 29, Angel Place, 123 Pitt Street,

Sydney NSW 2000

Australia

Or by email to: [claims@dualaustalia.com.au](mailto:claims@dualaustalia.com.au)

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

## 8.3 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 endeavors to agree 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 President of the Bar Council of the jurisdiction in which the **policy** was underwritten. The Senior Counsel will make a determination 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**.

## 8.4 Co-operation

- a. 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**.
- b. 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**.

- c. 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 potentially prejudice **our** position or **our** potential or actual rights of recovery.

## 8.5 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.

## 8.6 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 **policyholder** does not indemnify an **insured person**; then
- b. to the extent of any remaining amount of the **indemnity limit** available after payment under 8.6 (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.

# Section 9: General Conditions

## 9.1 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 offer document 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.

## 9.2 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**.

## 9.3 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* (Cth).

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.

## 9.4 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** or **endorsement**;
- 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.

## 9.5 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.

## 9.6 Deductible

- a. **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.
- b. 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**.
- c. 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**.

## 9.7 Goods and 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 the **policyholder** 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 and Services Tax and Input Tax Credit have the meanings attributed to them under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 9.8 Governing Law and Jurisdiction

This **policy** and **endorsement** 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** or **endorsement** interpretation will be submitted to the exclusive jurisdiction of the Courts of the Commonwealth of Australia or the State or Territory of Australia where it was issued.

## 9.9 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.

## 9.10 Jurisdictional Limitation

Unless otherwise stated in the **policy** or **schedule**, and subject to General Exclusion 10.2 (Jurisdictional), the cover provided under this **policy** will extend to **loss** with respect to a **claim** or **investigation** brought and maintained anywhere in the world, except within the territorial limits of the United States of America or Canada or their respective territories or protectorates or to enforce any judgment, order or award obtained in or determined under the laws of the United States of America or Canada or their territories or protectorates.

## 9.11 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**.

If **loss** or any other amount insured by the **policy** is also potentially insured under any other insurance policy or policies, then the **insured** must advise **us** within 60 days of making a claim for indemnity under this **policy** and provide **us** with a copy of such other policy or policies.

## 9.12 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 covered **loss** arising from the **claim** or **investigation** within the **deductible** and, the applicable **deductible** will be paid by the **policyholder** to **us**.

## 9.13 Presumptive Indemnification

Where the **policyholder** is not prohibited by law from indemnifying an **insured person** and is not insolvent, then it is agreed that the **policyholder** will indemnify the **insured person** for all covered **loss**. In the event that a **deductible** applies, the **policyholder** 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.

## 9.14 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 **policyholder** will be imputed to the **policyholder**.

**We** agree not to rescind or avoid this **policy** in whole or in part, for any reason and otherwise waive all rights under Section 28(3) of the *Insurance Contracts Act 1984* (Cth) for non-fraudulent non-disclosure or non-fraudulent misrepresentation by the **policyholder**.

If **we** are entitled to reduce **our** liability pursuant to Section 28(3) of the *Insurance Contracts Act 1984* (Cth) 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.

## 9.15 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.

## 9.16 Subrogation and Recoveries

a. Where **we** have paid any amount of **loss** or **defence costs** 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**.

- b. 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.
- c. Where a recovery is made, the proceeds of such a recovery will be applied as follows:
  - i. firstly, to the satisfaction of all costs incurred in effecting the recovery; and
  - ii. 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**; and
  - iii. thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies; and
  - iv. finally, to the **insured** for the amount paid in respect of the **deductible**.

### 9.17 Territorial Limitation

Unless otherwise stated in the **policy** or **schedule** and subject to General Condition 9.10 (Jurisdictional Limitation), cover provided under this **policy** extends to the conduct of the **policyholder** anywhere in the world.

## Section 10: General Exclusions

It is agreed that the following Exclusions will apply to all **policies** (including any **endorsements**).

We will not cover the **insured, insured person or policyholder** for or in connection with:

### 10.1 Crypto

any **loss**, costs, expenses, liabilities, settlement sums and other amounts directly or indirectly connected to, involving or attributable to any **cryptoasset** or allegation relating to any **cryptoasset**, notwithstanding any provision to the contrary in this **policy** (including any **endorsement**).

### 10.2 Jurisdictional

any **claim, investigation, loss** or any other amount:

- a. in respect of any **claim, investigation**, court order, judgment, award, payment, costs and expenses or settlement delivered, made or incurred or arising from or in connection with:
  - i. a court of law (or equivalent) within any of the **territories**; or
  - ii. any Arbitration, Mediation or Adjudication (or any other dispute resolution process) within any of the **territories**; or
  - iii. any court of law or dispute resolution process operating under the laws of any of the **territories**; or
- b. in respect of any order made anywhere in the world to enforce any court order, judgment sums, award, payment, costs and expenses or settlement either in whole or in part arising out of (a) above; or
- c. incurred by or resulting from activities that involve or benefit either directly or indirectly the Government or State of any of the **territories**, or where the payment of such indemnity by the Insurer will benefit either directly or indirectly the Government or State of any of the **territories**; or
- d. agreed or incurred prior to, during or subsequent to any matters referred to in (a) and/or (b) above being brought by, or to the benefit of persons and/or **entities** that are resident in any of the **territories**.

### 10.3 Pollution

any **claim, investigation or loss** arising from or in any way connected with:

- a. the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants** into or upon land, the



atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or

- b. any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **pollutants**.

#### 10.4 Radioactivity

any **claim, investigation** or **loss** arising from or in any way connected with loss or destruction of or damage to any property whatsoever, or any loss or expense whatsoever resulting from or arising therefrom, or any consequential loss; or any legal liability of whatsoever nature, directly or indirectly caused by or contributed to or arising from:

- a. ionising radiations or contamination by radioactivity from any 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 nuclear component thereof.

#### 10.5 Sanctions

any **claim, investigation** or **loss** arising from or in any way connected with any matters where the provision of such benefit would expose **us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America. For the avoidance of doubt, **we** shall have no liability to the extent that this Exclusion applies.

#### 10.6 War / Terrorism

any **claim, investigation** or **loss** of whatsoever nature directly or indirectly caused by, resulting from or in any way connected with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, or civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b. any act of **terrorism**; or
- c. any action taken in controlling, preventing, suppressing or in any way relating to a) and/or b) above.