

Resource Liability

DUAL

Wordings.



DUAL Australia

Resource Liability Policy Wording

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Important Notices

You should read the entire **policy** carefully, including all definitions and, in particular, the exclusions to ensure that it meets your requirements. **We** recommend that you consult an insurance agent or broker to ensure a clear understanding of your rights and obligations under the **policy**.

Occurrence Based Policy

This is an **occurrence policy**. **We** shall only cover you for **personal injury, property damage and advertising liability** happening during the **insurance period**, caused by an **occurrence** in relation to your **business**.

About DUAL Australia Pty Ltd

DUAL Australia Pty Limited ABN 16 107 553 257 AFSL 280193 (**We/Us/Our**) is a Coverholder for certain Underwriters at Lloyd's of London. DUAL has the authority to bind this **policy** on behalf of Underwriters.

Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell **us** anything that you know, or could reasonably be expected to know, that may affect **our** decision to insure you and on what terms.

You have this duty until **we** agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell **us** anything that:

- a. reduces the risk **we** insure you for;
- b. is common knowledge;
- c. **we** know or should know as an insurance company; or
- d. **we** waive your duty to tell **us** about.

If you do not tell us something

If you do not tell **us** something you are required to, **we** may cancel your **policy** or reduce the amount **we** shall indemnify for you if you make a claim, or both.

If your failure to tell **us** is fraudulent, **we** may refuse to pay a claim and treat the **policy** as if it never existed.

Privacy Statement

We are committed to compliance with "Privacy Act 1988" (Cth) ("the Privacy Act.") **We** use your personal information to assess the risk of and provide insurance, assess and manage claims, to perform administrative functions and to comply with regulatory requirements. **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 do not consent to provide **us** with the information which **we** request, **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 Howden 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.

We understand that this information is often sensitive, and **we** shall treat it with the utmost care. **Our** Privacy Policy contain information about how you can access the information **we** hold about you, ask **us** to correct, or make a privacy related complaint. You can obtain a copy from **our** Privacy Officer by:

telephone (+61 (0) 2 9248 6300)

email (privacy@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.

General Insurance Code of Practice

We are compliant with the Insurance Council of Australia General Insurance Code of Practice.

The Insurance Council of Australia has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit www.codeofpractice.com.au

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to www.insurancecode.org.au

Complaints and Disputes

If you have any concerns or wish to make a complaint in relation to this **policy**, **our** services or your insurance claim, please let **us** know and **we** will attempt to resolve your concerns in accordance with **our** Internal Dispute Resolution procedure.

Please contact **us** in the first instance:

General Counsel Team

DUAL Australia Pty Limited

Email: complaints@dualaustralia.com.au

Telephone: 02 9248 6300

Level 29, Angel Place, 123 Pitt Street, Sydney NSW 2000

We will acknowledge receipt of your complaint and do **our** utmost to resolve the complaint to your satisfaction within 10 business days.

If **we** cannot resolve your complaint to your satisfaction, **we** will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team.

Lloyd's contact details are:

Lloyd's Australia Limited

Email: ldraustralia@lloyds.com

Telephone: (02) 8298 0783

Level 16, Suite 1603

1 Macquarie Place

Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

[Australian Financial Complaints Authority Limited](#)

GPO Box 3

Melbourne VIC 3001

Australia

Telephone Number: 1800 931 678

Facsimile Number: (03) 9613 6399

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply.

If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

Service of Suit and Legal Notices

The Underwriters accepting this **policy** agree that:

- i. if a dispute arises under this **policy**, this **policy** will be subject to Australian law and practice and the Underwriters 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 Underwriters may be served upon:

[Lloyd's Underwriters' General Representative in Australia](#)

Level 16, Suite 1603

Macquarie Place

Sydney NSW 2000

Australia

Telephone Number: (02) 8298 0700

Facsimile Number: (02) 8298 0788

Who has authority to accept service on the Underwriters' behalf;

- iii. If a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

Notification of Claims

In the event of a claim arising under this **policy**, immediate notice should be given to:

[The National Claims Manager](#)

DUAL Australia Pty Limited

Level 29, Angel Place, 123 Pitt Street Sydney NSW 2000

Or by email to claims@dualaustralia.com.au

Please refer to the Claims Conditions section of this **policy** for further details regarding the notification of claims or loss subject to this **policy**.

DUAL Australia Resource Liability

Policy Wording

Section 1: Preamble

- 1.1** In consideration of payment of the premium and subject to the terms and conditions of the **policy** and the **indemnity limit**, and in reliance upon the disclosures made in the **proposal**, **we** agree to provide insurance on the terms set out in this **policy**.

Section 2: Insuring Clauses

2.1 Liability

We agree to pay to or on behalf of the **insured** all amounts which the **insured** shall become legally liable to pay as **compensation** in respect of:

- a. **personal injury**;
- b. **property damage**; and/or
- c. **advertising liability**,

happening during the **insurance period** within the **territorial limits**, caused by an **occurrence** in connection with the **insured's business** or **products**.

2.2 Defence Costs and Supplementary Payments

Where coverage is provided under Insuring Clause 2.1 (Liability), **we** agree to:

- a. defend, in the name of and on behalf of the **insured**, any claim or suit against the **insured** alleging the **insured's** legal liability to pay **compensation** in respect of any **personal injury**, **property damage** or **advertising liability**, even if there is no legal and/or factual basis for the claim or suit; and
- b. pay reasonable legal costs and expenses, incurred by **us** and/or by the **insured** with **our** prior written consent (which shall not be unreasonably withheld or delayed) in:
 - i. defence or settlement of such claim or suit;
 - ii. bringing or defending appeals in connection with such claim or suit; and
- c. pay reasonable expenses incurred by the **insured** for first aid administered to others (by **medical persons** employed by the **insured**) at the time of **personal injury** caused by an **occurrence** (other than any medical expenses prohibited by any law); and
- d. pay reasonable expenses incurred by the **insured** with **our** prior written consent (which shall not be unreasonably withheld or delayed) as a result of **property damage**, for the temporary repair of, shoring up or preservation of property which has been damaged.

Any amounts payable by **us** under this Insuring Clause 2.2 are in addition to the applicable **indemnity limit**. However, in respect of any claims or suits originating in any court in North America, the applicable **indemnity limit** for amounts payable under this Insuring Clause 2.2 shall be inclusive of all defence costs and supplementary payments and not in addition to it.

In the event of a payment exceeding the **indemnity limit** being made to finalise a claim, **our** liability to pay costs, expenses and interest under the **policy** shall be limited to the portion of those costs, expenses and interest that the **indemnity limit** bears to the amount paid to finalise the claim.

2.3 Limits of Liability

- a. The **indemnity limit** is the amount stated in the **schedule**. This is the maximum amount which:
 - i. **we** shall be liable to pay in respect of any one claim or series of claims for **general liability** arising out of any one **occurrence**;
 - ii. **we** shall be liable to pay in respect of any one claim or series of claims, and in the aggregate during any one **insurance period**, for **products liability**.
- b. A sub-limit of indemnity may apply to an Extension as specified in the **schedule**, which is part of and not in addition to the **indemnity limit** unless otherwise stated in the **policy**. **We** will have no liability in excess of the sub-limits specified in the **schedule** in the aggregate for the applicable Extension, irrespective of the number of **policy** sections, which respond to the claim or **investigation** associated with the **occurrence**. In such circumstances, **we** will apply the higher of the sub-limits or **indemnity limit** available.
- 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**.

2.4 Deductible

- a. The applicable **indemnity limit** will not be reduced by any applicable **deductible** payable by the **insured**. However, in respect of any sub-limited items, the sub-limit shall be additional to any applicable **deductible**.
- b. **Our** liability under the **policy** will only apply to that part of any **compensation, investigation costs**, defence costs or supplementary payments, which is in excess of the **deductible** specified in the **schedule**. Such **deductible** will be borne by the **insured**, except where otherwise provided. Unless otherwise expressed in the **schedule**, all **deductibles** are inclusive of **investigation costs**, defence costs and supplementary payments.

Section 3: Automatic Extensions

Subject to all the terms and conditions of the **policy**, **we** further agree to extend cover under the **policy** as follows.

3.1 Attendance at Investigations

Where coverage is provided under Insuring Clause 2.1 (Liability), **we** agree to pay to or on behalf of the **insured** all **investigation costs** arising from the **insured's** attendance at or preparation for any **investigation**.

This Automatic Extension applies only if:

- a. **our** consent is obtained before such costs are incurred; and
- b. the **insured** notifies **us** that the **insured** is legally compelled to attend the **investigation**, or **we** agree that it is reasonable for the **insured** to attend the **investigation**; and
- c. the **investigation** is not being held outside Australia.

At **our** option, **we** can nominate the legal advisers to represent the **insured** at or for the **investigation**.

3.2 Claims Preparation Costs

In addition to the **indemnity limit**, **we** will pay up to the amount shown in the **schedule** for reasonable professional fees and such other expenses incurred by the **insured** for the preparation of a claim under this **policy**.

However:

- a. **our** liability under this Automatic Extension 3.2 is limited to the amount shown in the **schedule** in respect of each claim or series of claims arising out of any one **occurrence** during the **insurance period**; and
- b. the cover provided under this Automatic Extension 3.2 operates in addition to and shall not in any way affect the cover provided under Insuring Clause 2.2 (Defence Costs and Supplementary Payments).

3.3 Hot Work

Notwithstanding Exclusion 5.15 (Hot Work), **we** agree to pay on behalf of the **insured** all sums which the **insured** shall become legally liable to pay as **compensation** in respect of **personal injury** or **property damage** happening during the **insurance period** and arising from the **insured** undertaking any **hot work**, provided that the **insured** fully complies with any applicable Australian Standard in relation to the conducting of that **hot work** at the time.

3.4 Panel Counsel

The **insured** is entitled to one (1) hour of free advice per enquiry from any one firm listed on **our** panel of solicitors for any matter relevant to the risks insured by the **policy**. **We** consent to that firm listed on our panel of solicitors being retained to act for an **insured** in respect of any claim covered by the **policy**.

Section 4: Optional Extensions

The following Optional Extensions are subject to all the terms and conditions of the **policy**, and shall apply only if they are specifically included in the **schedule**.

4.1 Goods on Hook

Notwithstanding Exclusion 5.14 (Goods on Hook), **we** agree to pay to or on behalf of the **insured** all sums that the **insured** shall become legally liable to pay for damage to property being lifted or lowered or moved or carried by any crane(s) owned, hired, or otherwise the responsibility of the **insured**.

4.2 Rectification of Faulty Workmanship (Machinery)

Notwithstanding Exclusions 5.12 (Faulty Workmanship), **we** agree to pay to or on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of the cost of rectifying, performing, re-performing, completing or improving any work undertaken by the **insured** that arises from or is in consequence of faulty workmanship, provided that:

- a. such faulty workmanship relates solely to the maintenance of machinery owned by a third party; and
- b. the original work:
 - i. was performed by the **insured**; and
 - ii. has caused resultant **property damage**; and

Provided that **our** liability under this Optional Extension:

- a. shall be limited to an amount equal to the wholesale price of parts, freight costs and the net labour costs necessarily and reasonably incurred to rectify, perform, re-perform, complete or improve the work undertaken by the **insured**; and
- b. **our** liability shall not exceed \$25,000 any one **occurrence** and \$50,000 in the aggregate during the **period of insurance**; and
- c. is subject to an **excess** of \$1,000 (costs inclusive).

4.3 Underground Services

Notwithstanding Exclusion 5.33 (Underground Services), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay as **compensation** in respect of **personal injury** or **property damage** happening during the **insurance period** arising out of damage to, or interference with, underground services where prior to the commencement of the work, the **insured** enquired with the relevant authorities or owners of such services, property or structures as to the exact location of such services, property or structures.

4.4 Vibration and Removal of Support

Notwithstanding Exclusion 5.35 (Vibration and Removal of Support), **we** agree to pay on behalf of the **insured** all sums that the **insured** shall become legally liable to pay in respect of **personal injury** or **property damage** arising from vibration, or removing, weakening or interfering with, the support of land or buildings.

Provided that:

- a. the land or buildings are not owned or occupied by the **insured**; and
- b. the **personal injury** or **property damage** arises from the actions of the **insured**.

Section 5: Exclusions

We will not cover any **insured** in connection with:

5.1 Advertising Liability

advertising liability arising from or directly or indirectly attributable to or in any way connected with any:

- a. statement made by the **insured** or at the direction of the **insured** when the **insured** knows that the statement is false or is recklessly indifferent to the possibility that the statement is false; or
- b. failure by the **insured** to perform any contractual obligations. However, this Exclusion 5.1(b) shall not apply to any claim for **compensation** for the unauthorised appropriation of advertising ideas in breach of any implied contract; or
- c. incorrect description of any **products** or of any service offered by the **insured**; or
- d. error in the advertised price of any **products** or of any service offered by the **insured**; or
- e. failure of any **products** or of any service offered by the **insured** to conform with its advertised performance, quality, fitness for purpose or durability; or
- f. **product** or service supplied by any **insured** whose principal occupation is advertising, broadcasting, publishing or telecasting.

5.2 Aircraft, Hovercraft or Watercraft

personal injury and/or **property damage** arising from or directly or indirectly attributable to or in any way connected with:

- a. the operation, ownership, possession or use by or on behalf of the **insured** of any **aircraft** or **hovercraft**; or
- b. the operation, ownership, possession or use by or on behalf of the **insured** of any **watercraft** exceeding ten (10) metres in length, while such **watercraft** is on, in or under water.

However, this Exclusion 5.2(b) does not apply to **personal injury** or **property damage** arising out of:

- i. **watercraft** used in operations carried out by an independent contractor for whose conduct the **insured** is legally liable, but **we** will not cover the independent contractor for the independent contractor's conduct or liability;
- ii. **watercraft** and **hovercraft** owned and operated by others and used by the **insured** for the purposes of business entertainment only.

5.3 Aircraft Products

personal injury and/or **property damage** arising from or directly or indirectly attributable to or in any way connected with any **product** which, with the **insured's** knowledge were, or were intended to be, incorporated into the structure, machinery or controls of any **aircraft** or aerial device.

5.4 Asbestos

personal injury and/or **property damage** arising from or directly or indirectly attributable to or in any way connected with asbestos, asbestos fibres or derivatives of asbestos in whatever form or quantity, including the manufacture, distribution, or rectification of asbestos or asbestos products.

5.5 Breach of Professional Duty

any actual or alleged liability arising from or directly or indirectly attributable to or in any way connected with any breach of a duty owed in a professional capacity by the **insured** or by any person(s) for whose breaches the **insured** may be held legally liable.

However, this Exclusion 5.5 shall not apply to claims arising from or directly attributable to:

- a. advice or service which is given by the **insured** without any fee or monetary reward; or
- b. the rendering of or failure to render professional medical advice by any **medical persons** employed by the **insured** to provide first aid and other medical services on the **insured's** premises.

5.6 Communicable Disease

any actual or alleged loss, liability, damage, **compensation**, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing (concurrently or in any sequence) to, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in any way connected with, a **communicable disease** or the fear or threat (whether actual or perceived) of a **communicable disease**.

For the purposes of this Exclusion 5.6, loss, liability, damage, **compensation**, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor, or test for, a **communicable disease**.

5.7 Contractual Liability

any actual or alleged liability which has been assumed by the **insured** under any contract or agreement that requires the **insured** to:

- a. effect insurance over property, either real or personal; or
- b. assume liability for **personal injury** and/or **property damage** regardless of fault.

However, this Exclusion 5.7(b) shall not apply to any:

- i. liabilities which would have been implied by law in the absence of such contract or agreement; or
- ii. liabilities assumed under **incidental contracts**; or
- iii. terms regarding merchantability, quality, fitness or care of **products** which are implied by law or statute; or
- iv. liabilities arising from any claim in respect of any subcontractor or agent for whose acts the **insured** is liable, provided that the **insured** has not waived or limited the **insured's** rights of indemnity against that subcontractor or agent. **We** will not indemnify the subcontractor or agent for the subcontractor or agent's own liability; or
- v. liabilities assumed under any contracts specifically designated in the **schedule** or in any endorsement to the **policy**.

5.8 Cyber Act, Cyber Incident, Data Loss

any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature arising from or directly or indirectly attributable to or in any way connected with any:

- a. **cyber act** or **cyber incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **cyber act** or **cyber incident**; or
- b. loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **data**, including any amount pertaining to the value of such **data**, regardless of any other cause or event contributing concurrently or in any other sequence thereto.

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

5.9 Damage to Products

property damage to any **products** arising from or directly or indirectly attributable to or in any way connected with a fault or defect in such **products**, but only to the extent of damage to that part, and only that part, of such **products** to which the damage is directly attributable.

5.10 Defamation

liability arising from or directly or indirectly attributable to or in any way connected with:

- a. statements made prior to the commencement of the **insurance period**; or
- b. statements made at the direction of the **insured** with knowledge that such statements are false or is recklessly indifferent to the possibility that the statements are false; or
- c. incurred by any **insured** whose principal occupation or **business** is advertising, broadcasting, publishing or telecasting.

5.11 Employers' Liability

- a. Bodily Injury to any Worker in respect of which the **insured** is or would be entitled to indemnity under any policy of insurance, fund, scheme or self-insurance (including a self-insured retention or excess) pursuant to, or required by, any legislation relating to workers' compensation or accident compensation, whether or not such policy, fund, scheme or self-insurance has been effected.

However, this Exclusion 5.11 shall not apply to the extent that the **insured's** liability would not be covered under any such policy, fund, scheme or self-insurance arrangement had the **insured** complied with the **insured's** obligations pursuant to any such law.

- b. liability imposed by:
 - i. the provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination or contract of employment or workplace agreement; or
 - ii. any law relating to **employment practices**.

Notwithstanding Exclusion 5.7 (Contractual Liability), this Exclusion 5.11 shall not apply with respect to liability of others assumed by the **policyholder** under a written contract or agreement.

For the purpose of this Exclusion 5.11:

- a. 'Worker' means any person deemed to be employed by the **insured** pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be Workers; and
- b. 'Bodily Injury' means bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium or services resulting therefrom.

5.12 Faulty Workmanship

the cost of performing, completing, correcting or improving any work undertaken by the **insured**.

5.13 Fines, Penalties, Punitive, Exemplary or Aggravated Damages

finer, penalties, punitive, exemplary or aggravated damages.

5.14 Goods on Hook

liability arising from or directly or indirectly attributable to or in connection with the lifting or lowering or movement or carrying of goods by any crane that is owned, hired, or otherwise the responsibility of the **insured**.

5.15 Hot Work

liability arising from or directly or indirectly attributable to or in connection with the **insured** carrying out **hot work**.

5.16 Liquidated Damages

any amounts payable or arising out of, any liquidated damages clauses, penalty clauses or performance warranties except to the extent that such liability would have attached in the absence of such clauses or warranties.

5.17 Loss of Use

loss of use of tangible property, which has not been physically lost, destroyed or damaged, arising from or directly or indirectly attributable to or in any way connected with:

- a. a delay in or lack of performance of any contract or agreement by or on behalf of the **insured**; or
- b. failure of any **products** or of any work performed by or behalf of the **insured** to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the **insured**.

However, this Exclusion 5.17 shall not apply to the **insured's** liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any **products** or to any work performed by or on behalf of the **insured** after such **products** or work have been put to use by any person or entity other than the **insured**.

5.18 North American Countries

personal injury or **property damage** arising from or directly or indirectly attributable to or in connection with **North American countries**, including any liability from or based on a settlement or arbitration in, or judgement or order of a court in **North American countries**.

However, this Exclusion 5.18 shall not apply to any legal liability for **personal injury** or **property damage** in any country outside the territory arising solely out of the actions of non-resident directors, executives and salespersons temporarily visiting that country in the course of the **business**, provided that:

- a. the **insured** has no premises, branch or **subsidiary** operation in the country being visited;
- b. the **insured's** legal liability does not arise out of:
 - i. any work performed by the **insured** in, on, or in connection with, the supply, manufacture, assembly, repair, servicing, maintenance, amendment, alteration or enhancement to any **insured's product**;
 - ii. the ownership, possession, control, or maintenance or use by the **insured** of any **vehicle** or **watercraft**.

5.19 Nuclear/Radioactivity

liability arising from or directly or indirectly attributable to or in any way connected with radioactivity or the use, or escape of any nuclear fuel, nuclear material or nuclear waste or action of nuclear fission or fusion.

However, this Exclusion 5.19 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used:

- a. away from the place where they are made or produced;
- b. for purposes of or incidental to ordinary industrial, educational, medical or research pursuits.

5.20 Offshore Gas or Oil Platforms

liability arising from or directly or indirectly attributable to or in connection with work performed on or about any offshore gas or oil platform.

5.21 Oil and Gas

- a. liability for **pollution** or contamination unless arising directly from operations on land;
- b. liability for **pollution** or contamination arising directly from operations on land to the extent that the liability arises from or is directly or indirectly attributable to or in any way connected with:
 - i. the removal of, loss of, or damage to, any sub-surface oil, gas or any other substance which is the property of any third party, provided always that this paragraph (i) shall not apply to any liability which would otherwise be covered under this **policy** for the removal of, or for any legal liability for **compensation** for any loss or damage directly attributable to blow-out, cratering, or fire, of any oil or gas well that is owned or operated by, or under the control of, the **insured**; or
 - ii. loss of, damage to, or loss of use of, property directly or indirectly resulting from subsidence caused by any sub-surface operations of the **insured**; or

- ii. injury or loss of, damage to, or loss of use of, property directly or indirectly caused by seepage, **pollutants** or contamination, provided always that this paragraph (iii) shall not apply to liability for injury or loss of, or physical damage to, or destruction of, tangible property, or loss of use of such property damaged or destroyed otherwise covered by this **policy**, where such seepage, **pollutants** or contamination is caused by a sudden, unintended and unexpected happening during the **insurance period**; or
- iv. the cost of removing, nullifying or cleaning-up seeping, polluting, or contaminating substances unless the seepage, **pollutants**, or contamination is caused by a sudden, unintended and unexpected happening during the **insurance period**; or
- v. fines, penalties and punitive or exemplary **compensation**; and
- c. liability arising from or directly or indirectly attributable to or in any way connected with:
 - i. loss of, destruction of or loss of use of any exploration or production bore and/or hole and/or well; or
 - ii. loss of, destruction of or loss of use of any equipment in any exploration or production bore and/or hole; or
 - iii. the cost of removal of any debris arising from damage to any exploration and/or production vessel, platform or rig; or
 - iv. the cost of controlling and/or preventing any exploration or production bore and/or hole and/or well; or
 - v. the cost of controlling and/or preventing any escape of any substance from any exploration or production bore and/or well and any consequential losses arising therefrom.

5.22 Pollution

- a. **personal injury** and/or **property damage** arising from or directly or indirectly attributable to or in any way connected with the discharge, dispersal, release, seepage, migration or escape of **pollutants** into or upon land, the atmosphere or any water course or body of water; and/or
- b. any costs and expenses incurred in preventing the discharge, dispersal, release, seepage, migration or escape of, or testing and monitoring for, containing, removing, nullifying, or cleaning up of, **pollutants**.

Provided that, with respect to any such liability which may be incurred anywhere other than North America, this Exclusion 5.22 shall not apply where such discharge, dispersal, release, seepage, migration or escape is caused by an event which was sudden, identifiable, unintended and unexpected from the standpoint of the **insured** and which takes place in its entirety at a specific time and place.

5.23 Product Guarantee

any warranty or guarantee given by or on behalf of the **insured** in relation to any **products**.

However, this Exclusion 5.23 shall not apply to the requirements of any Federal or State legislation relating to product safety and/or product information.

5.24 Product Recall

liability for damages, costs or expenses arising from or directly or indirectly attributable to or in any way connected with the withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any **products** where such **products** are withdrawn or recalled from the market or from use by the **policyholder** because of any known, alleged or suspected defect or deficiency in those **products**.

5.25 Property in Your Care, Custody or Control

property damage to property which is:

- a. in the physical or legal care, custody or control of the **insured**; or
- b. owned by the **insured**.

However, this Exclusion 5.25 shall not apply to:

- i. the personal property, tools and effects of any directors, partners, proprietors, officers, executives or employees

of the **insured**, or the clothing and personal effects of any visitors to any premises occupied by the **insured** for the purposes of the **business**; or

- ii. premises or part(s) of the premises (including their contents) leased or rented to, or temporarily occupied by, the **insured** for the purpose of the **business**. However, no cover is provided by the **policy** if the **insured** has assumed any responsibility to insure those premises; or
- iii. any other property temporarily in the possession of the **insured** for the purpose of being worked upon. However, no cover is provided by the **policy** for damage to that part of any property upon which the **insured** is or has been working if the damage arises solely out of such work; or
- iv. any **vehicle** (including its contents, spare parts and accessories while they are in or on such **vehicle**) not belonging to or used by the **insured**, whilst any such **vehicle** is in a car park owned or operated by the **insured**. However, no cover is provided by the **policy** if the **insured** operates the car park for reward; or
- v. any other property (except property owned by the **insured**) whilst in the **insured's** physical or legal care, custody or control where the **insured** has accepted or assumed legal liability for such property. Provided that **our** liability under this Exclusion 5.25(v) shall not exceed \$250,000, or any other sub-limit as shown in the **schedule**, in respect of any one claim or series of claims arising out of any one **occurrence** and in the aggregate any one **insurance period**.

5.26 Sanctions Limitation Clause

and 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 Australia, New Zealand, European Union, United Kingdom or United States of America.

5.27 Sexual Abuse / Molestation

any claim, liability, costs or expenses arising from or directly or indirectly attributable to or in any way connected with any actual or alleged sexual assault, sexual abuse, molestation, physical, mental, emotional abuse or attempt thereof. Furthermore, **we** will not indemnify the **insured** for defence of claims as detailed in the **policy**.

5.28 Silica

any liability arising from or directly or indirectly attributable to or in any way connected with the actual, alleged, threatened, or suspected inhalation of, or ingestion of, **silica** or **silica-related dust**.

5.29 Tailings Storage Facility

any claim or liability arising from or directly or indirectly attributable to or in any way connected with the ownership, use, operation or maintenance, by, or on behalf of the **insured**, including any contractors or sub-contractors thereto, of any **tailings storage facility**.

5.30 Terrorism

loss, damage, liability, cost or expense of any nature arising from or directly or indirectly attributable to or in any way connected with any **act of terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the loss, including loss, damage, liability, cost or expense of any nature arising from or directly or indirectly attributable to or in any way connected with any action taken in controlling, preventing, suppressing or in any way relating to any **act of terrorism**.

5.31 Tobacco

personal injury arising from or directly or indirectly attributable to or in any way connected with the inhalation or ingestion of, or exposure to tobacco, tobacco smoke, or any tobacco products (or ingredients thereof) or any tobacco substitute products, including e-cigarettes.

5.32 Toxic Mould

personal injury and/or **property damage** arising from or directly or indirectly attributable to or in any way connected with the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins.

5.33 Underground Services

any liability arising from or directly or indirectly attributable to or in connection with damage to or interference with:

- a. underground services consisting of, sewers, water pipes, gas pipes, fuel pipes, electric, fibre optics or telecommunications wires or cables or their supports or to any land or fixed property whatsoever and/or the contents thereof; and/or
- b. any other underground property and/or structure.

5.34 Vehicles

personal injury and/or **property damage** arising from or directly or indirectly attributable to or in any way connected with the ownership, possession or use by the **insured** of any:

- a. **vehicle** which is registered, or which is required to be registered, under any legislation; or
- b. **vehicle** in respect of which compulsory liability insurance or statutory indemnity is required by virtue of legislation (whether or not that insurance has been effected).

However, this Exclusion 5.34 shall not apply to:

- i. **personal injury** in respect of which no indemnity is provided pursuant to that compulsory liability insurance or statutory indemnity, provided that the reason no such indemnity is provided does not involve a breach by the **insured** of any legislation relating to **vehicles**; or
- ii. any **vehicle** (including any tool or plant forming part of or attached to or used in connection with that **vehicle**) whilst being operated or used by or on behalf of the **insured** as a **tool of trade** at the **insured's** premises or on any **worksites**; or
- iii. the delivery or collection of goods to or from any **vehicle**; or
- iv. the loading or unloading of any **vehicle**; or
- v. any **vehicle** temporarily in the **insured's** custody or control for the purpose of parking (other than registered **vehicles** owned or used by the **insured**); or
- vi. any **vehicle** operating its mechanical plant that it carries for its specialised function or purpose, and not as a **vehicle**; or
- vii. any bridge, viaduct, weigh bridge, road or anything beneath any **vehicle** caused by vibration or by the weight of the **vehicle** and/or its load.

5.35 Vibration and Removal Of Support

liability arising from or directly or indirectly attributable to or in connection with vibration, or removing, weakening, or interfering with, the support of land or buildings.

5.36 War

any liability or claim arising from or directly or indirectly attributable to or in any way connected with war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Section 6: Definitions

For the purposes of the **policy** only:

- 6.1 Act of terrorism** means any act, including but not limited to the use or threat of force or violence, of any person or group of persons, whether acting alone, or on behalf of, or in connection with, any organisation or government, which is committed for

political, religious, ideological or similar purposes with the intention to influence any government and/or to put the public, or any sector of the public, in fear.

6.2 Advertising liability means:

- a. libel, slander or defamation; or
- b. any infringement of copyright or passing off as title or slogan; or
- c. unfair competition, privacy, idea, misappropriation contrary to implied contract; or
- d. invasion of privacy; or
- e. any breach of Schedule 2 to the *Competition and Consumer Act 2010* (Cth), or similar legislation of any country, state or territory;

that is or was committed, or alleged to have been committed, during the **insurance period** in any advertising, publicity article, broadcast or telecast and caused by or arising out of the **insured's** advertising activities.

Advertising liability does not include any liability in connection with **products**.

6.3 Aircraft means any craft or object designed to travel through air or space, other than model aircraft or unmanned inflatable balloons used for advertising or promotional purposes.

6.4 Business means:

- a. the Business of the **insured** described in the **schedule**;
- b. the provision of any sponsorships, charities, first aid, medical, ambulance or fire fighting services by the **insured** or on the **insured's** behalf;
- c. private work undertaken by the **insured's** employees for any of the **insured's** directors, partners, proprietors, officers or executives;
- d. the provision of any canteen, social or sports and welfare organisations by the **insured** or on the **insured's** behalf, which are for the benefit of the **insured's** employees;
- e. any other activity that the **insured** may undertake provided that the **insured** gives **us** written notice of that activity and obtains **our** written acknowledgement of coverage within sixty (60) days of commencement of that activity.

6.5 Communicable disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- a. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not; and
- b. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- c. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health or human welfare or property damage.

6.6 Computer system means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

6.7 Cyber act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **computer system**.

6.8 Cyber incident means:

- a. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of

any **computer system**; or

- b. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **computer system**.

6.9 Compensation means any monies paid or agreed to be paid by judgement, award, settlement in respect of **personal injury** and/or **property damage** and/or **advertising liability**. Provided that such **compensation** is only payable in respect of an **occurrence** to which this **policy** applies.

6.10 Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **computer system**.

6.11 Deductible means the amounts specified in the **schedule**.

6.12 Employment practices means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination of or in respect of the **insured's** employees.

6.13 General liability means the **insured's** legal liability in respect of **personal injury** and/or **property damage** and/or **advertising liability** happening in connection with the **business** and caused by an **occurrence** other than **products liability**.

6.14 Hot work means any work involving;

- a. the application of heat, a naked flame, or an open heat source, or work that produces sparks;
- b. the use of welding equipment including cutting with such equipment; and/or
- c. cutting involving the use of rotary disc or grinding equipment, soldering, brazing or use of heat guns.

6.15 Hovercraft means any vessel, craft or thing made or intended to transport persons or property over land or water, supported on a cushion of air.

6.16 Incidental Contract(s) means:

- a. any written rental and/or lease and/or hiring agreement of real and/or personal property, other than with respect to any term or condition contained in such rental, lease and/or hiring agreement that requires the **insured** to insure such property; and
- b. any written licence agreement to occupy real property, other than with respect to any term or condition contained in such licence agreement that requires the **insured** to insure such property; and
- c. any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities by or on behalf of the **insured**; and
- d. any written contract with any railway authority for the loading, unloading and/or transport of **products**, including contracts relating to the operation of railway sidings; and
- e. any contracts specified as "Incidental Contracts" in the **schedule**.

6.17 Indemnity Limit means the amounts specified in the **schedule**.

6.18 Insurance period means the period specified in the **schedule** and any extension thereof which may be agreed in writing between the **insured** and **us**.

6.19 Insured means:

- a. the **policyholder**;
- b. all of the **insured's** existing subsidiary companies (including subsidiaries thereof) or any other entity under the **insured's** control over which the **insured** exercises active management, which are incorporated within Australia or any territory of Australia;

- c. every director, shareholder, partner, proprietor, officer, executive, employee or volunteer of the **insured** (including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the **business**) while such persons are acting for or on behalf of the **insured** and/or within the scope of their duties in such capacities;
- d. every **principal** in respect of the **principal's** liability arising out of:
 - i. the performance by or on behalf of the **insured** of any contract or agreement for the performance of work for such **principal**, but only to the extent required by such contract or agreement and in any event only for such coverage and **indemnity limit** as are provided by this **policy**; and
 - ii. any **products** sold or supplied by the **insured**, but only in respect of the **insured's** own acts or omission in connection with such **products** and in any event only for such coverage and **indemnity limits** as are provided by this **policy**.
- e. every person, corporation, organisation, trustee or estate to whom or to which the **insured** is obligated by reason of any law, agreement or permit (whether written or implied) to provide insurance such as is afforded by the **policy**, but:
 - i. only to the extent required by such law, agreement or permit; and
 - ii. in any event only for such coverage and **indemnity limit** as are provided by the **policy**; and
- f. every officer, member, employee or voluntary helper of the **insured's** canteen, social and/or sporting clubs, first aid, medical, ambulance or fire-fighting services, charities, educational, welfare and/or child care facilities, while acting in their respective capacities as such;
- g. every director, partner, proprietor, officer or executive of the **insured** in respect of private work undertaken by the **insured's** employees for such person, and any employee of the **insured's** whilst actually undertaking such work;
- h. every party including joint venture companies, co-venture, venture, or joint lease to whom the **insured** is obliged to provide insurance such as is afforded by the **policy** by virtue of any contract or agreement, but:
 - i. only to the extent required by such contract or agreement; and
 - ii. in any event only for such coverage and **indemnity limit** as are provided by the **policy**.

6.20 Investigation means any official investigation, examination or inquiry relating to an **occurrence** which gives rise to a claim for **compensation** covered under this **policy**.

6.21 Investigation costs means reasonable legal fees, costs and expenses incurred with **our** prior written consent (which will not be unreasonably withheld or delayed) by or on behalf of an **insured** in:

- a. preparing for, attending or producing documents to an **investigation**; or
- b. responding to a raid on, or on-site visit to, any **insured** by an official body that involves the actual or possible production, review, copying or confiscation of files or interviews of any **insured**.

Investigation costs do not include the remuneration of any **insured**, or the cost of time or overheads of any **insured**.

6.22 Medical persons includes but is not limited to: qualified medical practitioners, medical nurses, dentists and first aid attendants.

6.23 North American Countries means the United States of America and Canada, including those territories to which the legal jurisdiction of the United States of America or Canada extends or applies.

6.24 Occurrence means an event, including continuous or repeated exposure to substantially the same general conditions, which results in **personal injury** and/or **property damage** and/or **advertising liability** that is neither expected nor intended from the standpoint of the **insured** (except for the matters set out in Definition 6.25(e)).

With respect to **personal injury** and/or **property damage**, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one **occurrence**.

All **advertising liability** arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used, or the number of claimants) shall be deemed to be one **occurrence**.

6.25 Personal injury means:

- a. bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish or mental injury; or
- b. false arrest, false imprisonment, wrongful detention or malicious prosecution or humiliation; or
- c. wrongful entry or eviction or other invasion of the right of privacy; or
- d. defamation of character; or
- e. assault and/or battery, not committed by or at the **insured's** direction, unless committed for the purpose of preventing or eliminating danger to persons or property; or
- f. in the event of **personal injury** claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

6.26 Policy means this policy wording, the **schedule**, the **proposal** and any endorsement attaching to and forming part of the **policy** either at commencement of or during the **insurance period**.

6.27 Policyholder means the person(s), corporation(s) or other organisation(s) specified as such in the **schedule**.

6.28 Pollutants means any substances, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.

6.29 Principal means any person or entity that employs another to do any act for their own benefit, or their own account.

6.30 Products means anything manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, resupplied or distributed, imported or exported, by or on behalf of the **insured** (including the **insured's** predecessors in the **business**), including:

- a. any packaging or containers thereof; or
- b. the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such **products**; or
- c. anything which, by law or otherwise, the **insured** is deemed to have manufactured in the course of the **business** including discontinued **products**.

However, **products** does not mean any:

- i. food and beverages supplied by or on behalf of the **insured**, primarily to the **insured's** employees, as a staff benefit; or
- ii. vending machine or any other property rented to or located on premises occupied by the **insured** for the use of others but not sold by the **insured**.

Any claims made against the **insured** in respect of **personal injury** and/or **property damage** arising out of any **occurrence** in connection with clauses i. and ii. above shall be regarded as **general liability** claims hereunder.

6.31 Products liability means the **insured's** legal liability in respect of **personal injury** and/or **property damage** caused by or arising out of any **products**, or the reliance upon a representation or warranty made at any time with respect to those **products**, but only where such **personal injury** and/or **property damage** occurs away from premises owned or leased by or rented to the **insured** and after physical possession of those **products** has been relinquished by the **insured** to others.

6.32 Property damage means:

- a. physical loss, destruction of or damage to tangible property, including resulting loss of use therefrom;
- b. loss of use of tangible property which has not been physically lost, destroyed, or damaged, provided that such loss of use is caused by or arising out of an **occurrence**.

6.33 Schedule means the **policy** schedule issued by **us**.

6.34 Silica means silicon dioxide (occurring in crystalline, amorphous, and impure forms), silica particles, **silica dust**, quartz or silica compounds in any form and any of its derivatives.

6.35 Silica-related dust means a mixture or combination of **silica** and other dust or particles.

6.36 Tailings storage facility means a structure made up of one or more dams used, or that may be used, to store waste products from a mining or milling process, including but not limited to uneconomical ore, ground up rock, sand, silt, or water.

6.37 Territorial limits means:

- a. anywhere in the Commonwealth of Australia and its external territories;
- b. elsewhere in the World other than North America, but excluding any claims or actions instituted within any country, state or territory where the law requires such liability only be insured or secured with an insurer or organisation licensed or authorised in that country, state or territory.
- c. overseas business visits by any of the **insured's** directors, partners, officers, executives or employees but not where they perform manual work in North America

In respect of the **products** the indemnity granted in relation to such **products** shall not apply to claims in respect of **personal injury** or **property damage** or **advertising liability** happening in North America where such products have been exported to North America with the **insured's** knowledge.

6.38 Tool of trade means any **vehicle** that:

- a. as tools, implements, machinery or plant attached to or towed by the **vehicle**; and
- b. is being used by the **insured** at the **insured's** premises or on any **worksite**.

Tool of Trade does not mean any **vehicle** which is:

- a. travelling to or from a **worksite**; or
- b. used to carry goods to or from any premises.

6.39 Vehicle means any type of machine on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power, and any trailer or other attachment to be utilised in conjunction with or drawn by any such machine.

6.40 Watercraft means any vessel, craft or thing made or intended to float on or in or travel on or through water, other than model boats.

6.41 We/us/our means DUAL Australia Pty Limited (ABN 16 107 553 257) for and on behalf of Certain Underwriters at Lloyd's of London.

6.42 Worksite means any premises or site where any work is performed for and/or in connection with the **insured's business**.

Section 7: Claim Conditions

7.1 Notification of Occurrence, Claim or Suit

The **insured** must give **us**:

- a. written notice, as soon as reasonably practicable, of any claim made against the **insured** or any **occurrence** that may give rise to a claim against the **insured** if and to the extent that any liability incurred in connection with any such claim would be covered by the **policy**; and
- b. all such additional information that **we** may reasonably require and every demand, writ, summons, proceedings, impending prosecution or inquest and all documents relating to any claim or **occurrence** as soon as practicable after any such matters are received, or known of, by the **insured**.

Any written notices to **us** must be given in writing via the **insured's** insurance broker and delivered to:

The National Claims Manager,

DUAL Australia Pty Limited

Level 29, Angel Place, 123 Pitt Street, Sydney NSW 2000

Or by email to claims@dualaustralia.com.au

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

7.2 Your Duties in the Event of an Occurrence, Claim or Suit

- a. The **insured** must not, without **our** prior written consent (which consent shall not be unreasonably withheld or delayed), make any admission, offer, promise or payment in connection with any **occurrence** or claim.
- b. The **insured** must use the best endeavours to preserve all property, products, appliances, plant, and all other things which may assist in the investigation or defence of a claim or suit or in the exercise of rights of subrogation and, so far as may be reasonably practicable, no alteration or repair shall be effected:
 - i. without **our** consent; and
 - ii. until **we** have had an opportunity to inspect the property requiring alteration or repair.
- c. The **insured** must, when so requested, provide **us** with details of any other insurances current, at the time of any **occurrence**, and/or **personal injury** and/or **property damage** and/or **advertising liability**, that may cover any of the liability covered by the **policy**, in part or in full. Subject to the *Insurance Contracts Act 1984* (Cth), **we** reserve the right to seek a contribution from any other insurer(s).

7.3 Our Rights Regarding Claims

- a. Following the happening of any **occurrence** in respect of which a claim is, or may be, made under the **policy**, **we** shall have full discretion in the conduct of any proceedings in connection with any claim. The **insured** must give **us** any information and assistance that **we** may reasonably require in the prosecution, defence or settlement of any claim. **We** will act reasonably having regard to the interests of the **insured**, and will keep the **insured** informed if the **insured** asks **us** to do so.
- b. **We** may at any time pay to the **insured**, in respect of all claims against the **insured** arising directly or indirectly from one source or original cause:
 - i. the **indemnity limit** or the remaining **indemnity limit** taking into account any amounts already paid by **us** within the **indemnity limit**; or
 - ii. any lesser sum for which the claim(s) can be settled.
- c. Upon making any payment pursuant to Claims Condition 7.3(b), **we** shall relinquish conduct and control of, and have no further liability under the **policy** in connection with, such claim(s) except for defence costs and supplementary payments:
 - i. recoverable from the **insured** in respect of the period prior to the date of such payment (whether or not pursuant to an order made subsequently); or
 - ii. incurred by **us**, or by the **insured** with **our** written consent, prior to the date of such payment, which will not be unreasonably withheld or delayed.

Section 8: General Conditions

8.1 Adjustment of Premium

- a. If the premium for this **policy** has been calculated on estimated figures provided by the **policyholder** and the **policy** is identified as subject to adjustment based on a minimum and/or deposit premium the **policyholder** shall within a reasonable period after expiry of each **insurance period** furnish to **us** such information as **we** may require for such

expired period and the premium for such period shall be adjusted by **us** and the difference be paid by or allowed to the **policyholder** subject to any minimum premium applicable.

- b. The **policyholder** shall keep an accurate record containing all particulars relative thereto and shall at all reasonable times allow **us** to inspect such records.

8.2 Alteration of Risk

Every change which substantially varies any of the material facts or circumstances existing at the commencement of each **insurance period**, that shall come to the knowledge of the **insured** shall be notified to **us** as soon as reasonably practicable thereafter and the **insured** shall (if so requested) pay such reasonable additional premium as **we** may require.

8.3 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**.

8.4 Bankruptcy or Insolvency

In the event that the **insured** should become bankrupt or insolvent, **we** shall not be relieved of any obligation to pay any claims under the **policy** by reason only of such bankruptcy or insolvency.

8.5 Breach of Condition or Warranty

The **insured's** rights under the **policy** shall not be prejudiced by any unintentional and/or inadvertent:

- a. breach of a condition or warranty without the **insured's** knowledge or consent; or
- b. error in the name or title of any person(s), corporation and/or other organisation which forms part of the **insured**; or
- c. error in name, description or situation of property; or
- d. failure to report any property and/or entity and/or insurable exposure in which the **insured** has an interest.

Provided always that, upon discovery of any such fact or circumstances referred to above, the **insured** shall give written notice thereof to **us** as soon as reasonably practicable thereafter and the **insured** shall (if so requested) pay such reasonable additional premium that **we** may require.

8.6 Cancellation of this Policy

By the **insured**

- a. The **insured** may cancel the **policy** at any time by notifying **us** in writing. The cancellation will take effect from 4pm on the day **we** receive that written notice or such time as may be otherwise agreed.

By **us**

- b. **We** may cancel the **policy** for any of the reasons set out in the *Insurance Contracts Act 1984* (Cth).

In the event of cancellation of this **policy** by either party, the **insured** shall be entitled to a refund of premium calculated on a pro-rata basis (subject to any minimum and deposit premium agreed by **us** and the **insured**), provided that **we** will always retain a minimum of 25% of the full annual premium.

If the premium is subject to adjustment pursuant to General Condition 8.1 (Adjustment of Premium), cancellation will not affect the **insured's** obligation to supply **us** with such information as is necessary to permit the premium adjustment to be calculated.

8.7 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; or
- iii. **we** provide a Certificate of Currency with the intention that it can be provided to third parties.

8.8 Cross Liability

Where the **insured** is comprised of more than one party, each of those parties will be considered as a separate and distinct unit and the word **insured** will be considered as applying to each party in the same manner as if a separate policy had been issued to each of them, provided always that nothing in this General Condition 8.8 will result in an increase of the **indemnity limit** as stated in the **schedule**.

8.9 Currency

- a. All amounts referred to in the **policy** are in Australian Dollars.
- b. If the **insured** incurs liability to settle any claim for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by **us** shall be the value of such award or settlement together with costs awarded or payable to any person claiming **compensation** from the **insured**, converted to Australian Dollars at the cash rate for the purchase of Australian Dollars set by the Reserve Bank of Australia as at 4pm on the date which the foreign payment becomes due; subject always to the applicable **indemnity limit**.

8.10 Governing Law

- a. The **policy** is a contract of insurance and shall be governed by and construed in accordance with the laws of Australia and the States and Territories thereof.
- b. Each party agrees to submit to the jurisdiction of any Court of competent jurisdiction in a State or Territory of Australia and to comply with all requirements necessary to give such Court jurisdiction. All disputes arising under this **policy** shall be determined in accordance with the law and practice of such Court.

8.11 Goods and Services Tax

- a. The **insured** must inform **us** of the extent to which the **insured** is entitled to an input tax credit for the premium paid for the **policy** each time the **insured** makes a claim under the **policy**. No payment will be made the **insured** for any GST liability that arises on the settlement of a claim under the **policy** when the **insured** has not informed **us** of the **insured's** entitlement or correct entitlement to an input tax credit.
- b. Notwithstanding anything contained in the **policy** to the contrary, **our** liability will be calculated after taking into account:
 - i. any input tax credit to which the **insured**, or any person or entity claiming **compensation** from the **insured**:
 - A. is entitled for any acquisition relevant to a claim paid under the **policy**; and/or
 - B. would have been entitled were the **insured**, or any such person or entity, to have made a relevant acquisition; and
 - ii. the GST exclusive amount of any supply made by the **insured** which is relevant to the **insured's** claim under the **policy**. If the applicable **indemnity limit** is not sufficient to cover the **insured's** claim under the **policy**, **we** will only pay GST (less any relevant input tax credit) that relates to **our** proportion of that claim.
- c. The terms 'GST', 'input tax credit', 'acquisition' and 'supply' have the meanings ascribed to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

- d. This outline of the effect of the GST on the **policy** is for general information only. The **insured's** individual circumstances will be important to and may affect the tax treatment of any premiums the **insured** pays or any claims paid. The **insured** should not rely on this information without first seeking expert advice on the application of the GST to the **insured's** particular circumstances.

8.12 Inspection and Audit

- a. **We** shall be permitted, but not obliged, to inspect the **insured's** premises and operations at any reasonable time and frequency. Neither **our** right to make inspections, nor **our** failure to make inspections, nor **our** making of inspections, nor any report of any inspection, shall constitute an undertaking, on behalf of or for the benefit of the **insured** or others, to determine or warrant that such premises or operations are safe or healthful or are in compliance with any law, rule or regulation.
- b. **We** may examine and audit the **insured's** books and records at any time with reasonable notice during the currency of the **policy** and within three (3) years after the final termination of the **policy**, but only with regard to matters which in **our** opinion are relevant to the **policy**.

8.13 Interpretation

- a. The **policy** incorporates the **schedule**, Insuring Clauses, Extensions, Exclusions, Definitions, Claims Conditions and General Conditions and any other terms herein contained or endorsed hereon, which are to be read together.
- b. Where any word or expression has been given specific meaning in any part of the **policy**, such word or expression shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which such word or expression appears.
- c. Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender.
- d. Headings have been included for ease of reference and it is understood and agreed that the terms and conditions of the **policy** are not to be construed or interpreted by reference to such headings.

8.14 Jurisdictional Limitation

Unless otherwise stated in the **schedule**, cover provided under this **policy** extends to **compensation** and defence costs with respect to claims brought and maintained anywhere in the world, except to enforce any judgement, order or award obtained in or determined under the laws of North America or their territories or protectorates.

8.15 Non-Imputation

Where this insurance is arranged in the joint names of more than one **insured**, it is hereby declared and agreed that:

- a. each **insured** shall be covered as if it had made its own proposal for this insurance; and
- b. any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each **insured**; and
- c. any knowledge possessed by any **insured** shall not be imputed to any other **insured(s)**.

8.16 Other Insurance

If liability or any other amount insured by the **policy** is also potentially insured under any other insurance policy or policies, then:

- a. the **insured** must advise **us** within sixty (60) days of making a claim under the policy and provide **us** with a copy of such other policy or policies; and
- b. to the extent permitted by the *Insurance Contracts Act 1984* (Cth), this **policy** will always apply as excess of loss insurance over any other valid and collectable insurance or indemnification available to the **insured** and **we** will not make any payment(s) pursuant to this **policy** unless and until the other valid and collectible limit(s) of insurance or indemnification are exhausted.

8.17 Premium Funders

If the premium has been funded by a premium funding company which holds a legal right over the **policy** by virtue of a notice of assignment and irrevocable power of attorney, then (subject to Section 60 of the *Insurance Contracts Act* 1984 (Cth)) **we** may cancel the **policy** at the request of the premium funding company, after substantiation of the debt and default in payment by the **insured** has been made and proven to **us**, by giving the **insured** not less than three (3) business days written notice to that effect, following which a refund will be made to the premium funding company of the proportionate part of the premium applicable to the unexpired **insurance period**.

8.18 Reasonable Precautions

The **insured** must:

- a. exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition; and
- b. take reasonable precautions to:
 - i. prevent **personal injury** and/or **property damage** and/or **advertising liability**; and
 - ii. prevent the manufacture, sale or supply of defective **products**; and
 - iii. comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property.

8.19 Release

- a. Where the **insured** is required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or any landlord from liability in respect of loss, destruction or damage or legal liability insured against under the **policy**, such release is allowed without prejudice to this insurance.
- b. Notwithstanding General Condition 8.21 (Subrogation and Recoveries), **we** agree to waive all **our** rights of subrogation against any such Authority or landlord in the event of any **occurrence** for which a claim for indemnity may be made under the **policy**.

8.20 Several Liability of Underwriters

The obligations of **our** subscribing Underwriters, where there is more than one Underwriter referred to 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.

8.21 Subrogation and Recoveries

- a. The **insured** and any other person indemnified by this **policy** shall, at **our** request and expense, permit **us** to take all reasonable steps required to enforce any rights or remedies, or obtain relief or indemnity from any other organisation(s) or person(s), which **we** would be entitled to upon paying for or indemnifying the **insured** in respect of legal liability under this **policy**.

However, **we** waive all rights of subrogation under this **policy** against:

- i. any corporation or organisation the majority whose capital stock is owned or controlled by the **insured**;
- ii. any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this **policy**.

Where such corporation, organisation, or person is protected from liability insured against by any other policy of indemnity or insurance, **our** right of subrogation is not waived to the extent and up to the amount of such other policy.

- b. Where a recovery is made either by the **insured** or **us**, the proceeds of such a recovery will be applied as follows:
 - i. firstly, to the satisfaction of all costs incurred in effecting the recovery;
 - 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**;

- iii. thirdly, to **us** and any excess insurers amounts paid under the **policy** and such excess policies;
- iv. fourthly, to the **insured** for the amount paid in respect of the **deductible**; and
- v. finally, in the event that the recoveries exceed the amounts applied in accordance with sub-clauses i. to iv., above, to the **insured** if the **insured** effected the recovery or to **us** if **we** effected the recovery or to the **insured** and to **us** in equal proportions if **we** and the **insured** conducted the recovery jointly.

8.22 Terrorism Insurance Act Notice

- a. **We** have treated this insurance (or part of it) as an insurance to which the *Australian Terrorism and Cyclone Insurance Act 2003* (Cth) ('ATCIA') applies.
- b. ATCIA and the supporting regulations made under the ATCIA deem cover into certain policies and provide that the Terrorism Exclusion to which this insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATCIA.
- c. Any coverage established by ATCIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATCIA. The Terrorism Exclusion to which this insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".
- d. All other terms, conditions, insured coverage and exclusions of this insurance including applicable limits and **deductibles** remain unchanged.
- e. If any or all of the Underwriters and/or Insurer(s) have reinsured this insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters and/or Insurer(s) will not be liable for any amounts for which they are not responsible under the terms of ATCIA due to the application of a "reduction percentage" as defined in ATCIA which results in a cap on the Underwriters and/or Insurer(s) liability for payment for "eligible terrorism losses".