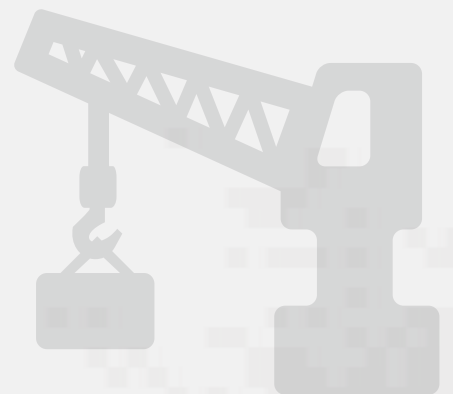


# **ANNUAL CONTRACT WORKS & LEGAL LIABILITY INSURANCE POLICY**



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# Important Information

## About CGU

Insurance Australia Limited trading as CGU Insurance (CGU) is the underwriter of this insurance policy. Our Australian Business Number is 11 000 016 722. Our Australian Financial Services Licence Number is 227681.

## Intermediary remuneration

CGU pays remuneration to insurance intermediaries when We issue, renew or vary a policy the intermediary has arranged or referred to us. The type and amount of remuneration varies and may include commission and other payments. If you require more information about remuneration We may pay your intermediary, you should ask your intermediary.

## 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, 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:

- reduces the risk We insure you for; or
- is common knowledge; or
- We know or should know as an insurer; or
- We waive your duty to tell Us about.

### If you do not tell us something

If you do not tell us anything you are required to, We may cancel your contract or reduce the amount We will pay 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 contract as if it never existed.

## General Insurance Code of Practice

CGU proudly supports the General Insurance Code of Practice.

The purpose of the Code is to raise standards of practice and service in the general insurance industry.

### The objectives of the Code are:

- to commit us to high standards of service
- to promote better, more informed relations between Us and You
- to maintain and promote trust and confidence in the general insurance industry
- to provide fair and effective mechanisms for the resolution of complaints and disputes between Us and You; and
- to promote continuous improvement of the general insurance industry through education and training.

## Our commitment to you

We have adopted and support the Code and are committed to complying with it. Please contact Us if You would like more information about the Code

## Our service commitment

CGU is proud of its service standards and supports the General Insurance Code of Practice. In an unlikely event that you are not satisfied with the way in which CGU have dealt with you, as part of Our commitment to customer service, CGU have an internal dispute resolution process in place to deal with any complaint you may have.

Please contact your nearest CGU office if you have a complaint, including if you are not satisfied with any of the following:

- one of Our products;
- Our service;
- the service of Our authorised representatives, loss adjusters or investigators; or
- Our decision on your claim.

Our staff will help you in any way they can. If they are unable to satisfy your concerns, they will refer the matter to their supervisor or manager. If the manager cannot resolve the matter, the manager will escalate the matter to Our internal dispute resolution department.

Further information about Our complaint and dispute resolution procedures are available by contacting us.

## How CGU protects your privacy

We use information provided by Our customers to allow Us to offer Our products and services. This means We may need to collect your personal information, and sometimes sensitive information about you as well (for example, health information for travel insurance). We will collect this information directly from you where possible, but there may be occasions when We collect this information from someone else.

CGU will only use your information for the purposes for which it was collected, other related purposes and as permitted or required by law. You may choose not to give Us your information, but this may affect Our ability to provide you with insurance cover.

We may share this information with companies within Our group, government and law enforcement bodies if required by law and others who provide services to Us or on Our behalf, some of which may be located outside of Australia.

For more details on how We collect, store, use and disclose your information, please read Our Privacy Policy located at [www.cgu.com.au/privacy](http://www.cgu.com.au/privacy). Alternatively, contact Us at [privacy@cgu.com.au](mailto:privacy@cgu.com.au) or 13 15 32 and We will send you a copy. We recommend that you obtain a copy of this Privacy Policy and read it carefully.

By applying for, using or renewing any of Our products or services, or providing Us with your information, you agree to this information being collected, held, used and disclosed as set out in this Privacy Policy.

Our Privacy Policy also contains information about how you can access and seek correction of your information, complain about a breach of the privacy law, and how We will deal with your complaint.

## Interest on unallocated premium

If We are unable to issue your insurance when We receive your application, We are required to hold your premium in a trust account on your behalf until your insurance can be issued.

We will retain any interest payable by Our bank to meet, among other things, bank fees and other bank costs We incur in operating the account.

## Insured Contract Works

CGU and the Insured are identified and referred to in the Policy and the Schedule. The Named Insured having paid, or agreed to pay, to CGU the premium shown in the Schedule for the Policy Period or a premium as advised by CGU as applying to any subsequent period, CGU will provide insurance against the risks described in each Section, subject to the terms, conditions, exclusions and endorsements of this Policy.

In issuing this Policy, CGU relies upon the information contained in the application and/or any written statements made by the Named Insured or anyone acting on their behalf.

The insurance applies only in respect of those Insured Items against which a Sum Insured is shown in the Schedule or which are otherwise indicated in the Schedule as being insured.

CGU will automatically provide cover under Section 1 and Section 2 (if shown on the Schedule as insured) for each Contract Works the Named Insured undertakes subject to the following:

- a) The Contract Works must be of the type defined in the Schedule.
- b) The Contract Works must commence within the Policy Period.
- c) The Contract Works must be within the Territorial Limits defined in the Schedule.
- d) The Contract Works must not be a Referral Contract as listed in the Schedule.
- e) The Estimated Contract Value for the Contract Works must be less than or equal to the Maximum Estimated Contract Value shown in the Schedule.
- f) The estimated Construction Period for the Contract Works at the time of commencement of the Contract Works must be less than or equal to the Maximum Construction Period shown in the Schedule; and
- g) The Defects Liability Period for the Contract Works at the time of commencement of the Contract Works must be less than or equal to the Maximum Defects Liability Period shown in the Schedule,

and subject to all Policy terms, conditions, exclusions and limitations.

The Contract Works complying with (a) to (g) above are known as the **Insured Contract Works**.

CGU will also automatically extend Products Liability cover for Contract Works that satisfy (a), (c) and (d) above and are completed prior to the Policy Period, provided that Products Liability is shown in the Schedule as insured and subject to all Policy terms, conditions, exclusions and limitations.

CGU will consider cover for Contract Works that do not fall within the automatic cover, subject to notification and acceptance prior to commencement of the Contract Works, at terms and conditions to be agreed.

In the event of cancellation or non-renewal of the Policy, cover will continue on all Insured Contract Works until expiry of the Period of Insurance. The Named Insured must declare to CGU any Contract Works which have not been completed and for which the Named Insured requires the runoff cover to apply at the end of the Policy Period, and pay any premium adjustment (as per Condition 13. Premium adjustment.)

## Definitions applicable to Section 1 and 2

Wherever appearing in the Policy, the following definitions apply:

**Average** shall mean and shall apply when the Sum Insured specified for an Insured Item is less than the replacement value of the Insured Item. Where average applies, then any claim on that Insured Item will be subject to average with the amount paid by CGU being reduced in the same proportion as the amount specified bears to 85 per cent of the replacement amount.

**Breakdown** shall mean Damage caused by mechanical, hydraulic, electrical or electronic failure which requires repair or replacement to enable normal working or operation to continue.

**CGU, Our, Us and We** means Insurance Australia Limited ABN 11 000 016 722 AFSL 227681 trading as CGU Insurance.

**Construction Contract** shall mean the contract or agreement between any Insured under subparagraphs a), b), c), d) (i.), (ii.) and (iii.) of the definition of Insured which gives rise to the insured Contract Works, and includes any sub-contract or sub-contract agreement entered into pursuant to such contract or agreement.

**Construction Period** means the period commencing at the earliest of:

- a) the date specified in the Construction Contract; or
- b) the date of possession of the Contract Site; or
- c) the actual date of commencement of the works, provided such date is within the Policy Period specified in the Schedule and expiring at the earliest of:
  - a) the time of Practical Completion of the Contract Works; or
  - b) the time the Contract Works are taken into use by the Principal; or
  - c) the time the Contract Works are completed pending sale or leasing; or
  - d) with respect to any separable portion as defined under the Construction Contract:
    - i. the time of Practical Completion of that separable portion; or
    - ii. the time the separable portion is taken over, occupied or put into use by the Principal; or
- e) if the Construction Contract does not provide for separable portions:
  - i. with respect to any part or portion of the Contract Works, the time it is taken over, occupied or put into use by the Principal; or
  - ii. with respect to any part or portion of the Contract Works, the time it is completed pending sale or leasing; or
- f) the expiry of the Maximum Construction Period specified in the Schedule.

**Construction Plant and Equipment** means both Major Plant & Equipment and Minor Plant & Equipment

**Contract Site** means the location made available by the Principal for the purpose of carrying out the Contract Works within the Territorial Limits stated in the Schedule.

**Contract Works** means works of engineering, construction or mechanical installation or erection, including formwork, falsework, temporary works, temporary buildings including all associated contents, scaffolding, hoardings, Principal Supplied

Materials, free-issue materials, Employees effects (but only where such effects are required to be insured by any work place agreement) the cost of labour and all materials incorporated or to be incorporated in the works and included in the Estimated Contract Value.

**Damage** (for the purpose of Section 1 only) means sudden physical loss, physical destruction or physical damage neither intended nor expected by the Insured in the course of carrying out the Contract Works with Damaged having the corresponding meaning.

**Deductible** means the amount shown in the Schedule the Insured must first bear in relation to:

- a) each and every loss or Damage for Section 1 subject to Condition 17. Loss accumulation; and
- b) each Occurrence for Section 2,

and is payable by the Insured at such time required by CGU. The deductible applies to all amounts payable under this Policy.

**Defects Liability Period** means the period described in the Construction Contract during which an Insured is obligated or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the maintenance or other obligations under the Construction Contract and shall be no greater than the Maximum Defects Liability Period specified within the Schedule, and commencing at the expiry of the Construction Period.

**Electronic Data** means facts, concepts and information converted to a form usable for communications, display, distribution, interpretation, or, processing by electronic or electromechanical data processing or electronically controlled equipment.

**Employee** means any person engaged under a contract of service or deemed contract of service or apprenticeship with any of the Insured.

**Estimated Contract Value** means the total of all costs to complete the Contract Works at commencement of the Period of Insurance and shall be the Maximum Contract Works value to be automatically insured under the Policy. The estimated contract value must exclude goods and services tax.

**Estimated Turnover** means the total of all Estimated Contract Values for each Contract Works the Named Insured requires CGU to cover under this Policy commenced during the Policy Period. The estimated turnover must exclude goods and services tax.

**Final Contract Value** means the total of all costs to complete the Contract Works at expiry of the Construction Period, including escalations and variations. The final contract value must exclude goods and services tax.

**Flood** means the covering of normally dry land by water that has escaped or been released from the normal confines of any of the following:

- a) a lake (whether or not it has been altered or modified);
- b) a river (whether or not it has been altered or modified);
- c) a creek (whether or not it has been altered or modified);
- d) another natural watercourse (whether or not it has been altered or modified);
- e) a reservoir;
- f) a canal; or
- g) a dam.

**Insured means:**

- a) the Named Insured;
- b) the Named Insured's personal representatives;
- c) any of the Named Insured's directors, partners, executives, officers or Employees but only for liability incurred by them while acting within the scope of their duties in such capacity;
- d) any 'Additional Insured' comprising:
  - i. any Principal; or
  - ii. any head contractor; or
  - iii. any project manager; or
  - iv. all contractors and sub-contractors not being the Named Insured but with whom the Named Insured has entered into a Construction Contract and provided their interests are required to be insured jointly by the Named Insured, and then only to the extent required by such Construction Contract, and only in respect of work performed as a part of the Contract Works whilst at the Contract Site.

For the purposes of this Policy any contractor and sub-contractors shall not mean suppliers, manufacturers, design consultants or consultants of any kind whatsoever.

- v. any supplier or manufacturer being a legal entity who is required under a Construction Contract to be included as an Insured, with whom such supplier has entered into an agreement for the supply of any physical items for the Contract Works, but only in relation to their manual activities associated with the Contract Works and only whilst at the Contract Site.
- vi. any professional consultants being a legal entity who is required under a Construction Contract to be included as an Insured, but only in relation to their manual activities associated with such Contract Works and only whilst at the Contract Site.
- e) any officers, committees or members of the Named Insured's canteen, sports, social and welfare organisations and any member of the Named Insured's fire, first aid, medical or ambulance services (not being a qualified medical practitioners) whilst acting in their capacity as such and in respect of activities associated with the Contract Works.
- f) any legal entity identified by name in the Schedule as having a financial, legal, or equitable interest in the Contract Works, but only in respect of the insurance provided under Section 1 and only to the extent of such financial, legal, or equitable interest.

**Insured Contract Works** has the meaning set out in the section 'Insured Contract Works'.

**Insured Item** means those items specified in the Schedule as insured under the headings Limit of Liability, Additional Cover and Endorsements.

**Major Perils** means fire, lightning, explosion, earthquake, collapse, cyclone, storm, tempest, Flood, water, subsidence, ground heave or landslide.

**Major Plant & Equipment** means fixed and mobile cranes, concrete mixing Vehicles, earth moving equipment and other similar construction plant whether self propelled Vehicles or not. Major Plant & Equipment is specifically excluded from cover under this Policy unless an amount is specified against this item in the Schedule.

**Market Value** means the amount required to purchase an item of similar nature immediately before the loss, taking into account its make, model age and condition.

**Minor Perils** means any other cause of loss not defined as a Major Peril.

**Minor Plant & Equipment** means welding equipment, air compressors, pumps, surveying equipment, concrete mixing & batching equipment, formwork, falsework, temporary buildings including all associated contents, scaffolding, hoardings, drying and/or de-humidifying equipment, hand held power tools, non-powered trade hand tools and portable power generators.

Formwork, falsework, temporary buildings including all associated contents, scaffolding and hoardings shall be considered as Contract Works when situated on the Contract Site and minor plant & equipment when situated off the Contract Site.

Minor plant & equipment is specifically excluded from cover under this Policy unless an amount is specified against this item in the Schedule.

**Named Insured** means the legal entity having paid the premium to CGU and who is so named in the Schedule.

**Period of Insurance** begins with the commencement of the Construction Period and ceases at the end of the Defects Liability Period for each Contract Works covered under this Policy.

**Policy** means the contract of insurance between CGU and the Named Insured which comprises this policy wording, the Schedule, and any document issued by CGU varying the policy.

**Policy Period** means the period commencing at the inception date shown in the Schedule and ending at the expiry date shown in the Schedule.

**Practical Completion** means:

- a) when the requirements for practical completion as defined under the Construction Contract have been satisfied; or
- b) if the Construction Contract does not include any reference to practical completion; when the Contract Works have been completed except for minor omissions and minor defects which do not prevent the Contract Works from being capable of being occupied or used for their intended purpose.

**Pre-Existing Property** means any permanent building, structure or property located at the Contract Site prior to commencement of the Contract Works.

**Principal** means the owner or any other person or organisation (by whatever name) for or on behalf of whom the Contract Works is being carried out.

**Principal Supplied Materials** means any item supplied by the Principal, for incorporation as a permanent part of the Contract Works.

**Property Insured means:**

- a) Contract Works;
- b) Major Plant & Equipment;
- c) Minor Plant & Equipment; and
- d) Construction Plant and Equipment.

**Provisional Premium** means the premium calculated on the basis of the Estimated Turnover of all the Insured Contract Works at the agreed rates.

**Residential Construction** means structures used, or intended to be used, as a place of residence.

**Schedule** means the current schedule attaching to this Policy and any document issued by CGU varying such schedule.

**Software** means programs, procedures and routines associated with the operation of electronic or electromechanical data processing or electronically controlled equipment, including any operating system.

**Sum Insured** means the amount specified against the Insured Item in the Schedule.

**Territorial Limits** means the territorial limits stated in the Schedule.

**Testing & Commissioning Period** means the period commencing with the commencement of testing or commissioning obligations under the Construction Contract or the application of test loads and expiring at the earliest of:

- a) the completion of testing or commissioning obligations under the Construction Contract;
- b) the taking into use of the Contract Works;
- c) the later of four weeks or the expiry of the testing & commissioning period specified in the Schedule; or
- d) the expiry of the Construction Period.

Simple functional checks of components or machines which do not involve the imposition of any loads and is prior to the commencement of testing of the installation as a whole will not constitute testing.

**Vehicle** means any type of machine on wheels, on skids or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer whilst attached thereto.

# Section 1

## Material Damage

### 1. Insuring clauses

If identified on the Schedule, the following insuring clauses apply to this Policy:

#### 1.1 Construction period cover

CGU will indemnify the Insured for Damage to the Insured Contract Works from any cause, not excluded, occurring at the Contract Site during the Construction Period.

#### 1.2 Testing & commissioning period cover

Where a Testing & Commissioning Period is required by the Construction Contract, CGU will indemnify the Insured for Damage to the Insured Contract Works consisting of Breakdown of any machinery, plant, equipment and/or boiler, not otherwise excluded, and which:

- a) arises out of the performance of the Testing & Commissioning; and
- b) occurs and is discovered during the Testing & Commissioning Period.

#### 1.3 Defects liability period cover

Where a Defects Liability Period is required by the Construction Contract, CGU will indemnify the Insured for Damage to the Insured Contract Works from any cause, not otherwise excluded, and which:

- a) manifests itself during the Defects Liability Period; and
- b) originates from:
  - i. a cause occurring and arising out of the performance of the Contract Works carried out by the Insured during the Construction Period and at the Contract Site; or
  - ii. a cause occurring and arising out of the course of operations carried out by the Insured at the Contract Site in complying with the requirements of the defects liability clauses in the Construction Contract.

The insurance shall cease to attach to the whole or any separable portion of the Contract Works following expiry of the Defects Liability Period.

#### 1.4 Construction plant and equipment cover

CGU will indemnify the Named Insured for Damage to:

- a) Major Plant & Equipment which is owned by the Named Insured or for which they have accepted responsibility to insure under contract, which is used in the performance of the Insured Contract Works and occurring on

the Contract Site during the Policy Period but this cover will only be provided if a Sum Insured is shown in the Schedule against Major Plant & Equipment; and

- b) Minor Plant & Equipment which is owned by the Named Insured or for which they have accepted responsibility to insure under contract, which is used in the performance of the Insured Contract Works and occurring within the Territorial Limits during the Policy Period but this cover will only be provided if a Sum Insured is shown in the Schedule against Minor Plant & Equipment.

Average will apply to cover under this clause 1.4, on the basis that the relevant Sum Insured is deemed to be the current new replacement value of all items owned by the Named Insured or for which they are responsible to insure.

## 2. Additional cover

Following Damage indemnified under Section 1 – Material Damage, Clauses 1.1, 1.2, 1.3 and 1.4, CGU will also pay the costs and expenses necessarily incurred by the Insured for:

### 2.1 Removal of debris

The cost of:

- a) removal and disposal of debris necessary to restore or replace Damaged Property Insured; and
- b) demolition, removal and disposal of Damaged Property Insured.

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the amount payable for this additional item of cover is limited to 10 per cent of the Estimated Contract Value.

### 2.2 Professional fees

Fees for architects, surveyors, engineers, project managers, project coordinators and other such professionals employed in the reinstatement of indemnifiable Damage to the Property Insured (but excluding any fees for the preparation of any claim under the Policy).

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the amount payable for this additional item of cover is limited to 10 per cent of the Estimated Contract Value.

### 2.3 Expediting expenses

Additional costs and expenses incurred for the sole purpose of expediting repairs or replacement of Damaged Property Insured. Such costs are limited to costs and expenses for:

- a) express delivery within Australia. Express delivery will include carriage by airfreight within Australia by the use of licensed airline(s)

operating a regular scheduled service, but not aircraft chartered specifically for such carriage;

- b) travel costs of the Insured, provided such costs are for regular service fares within Australia, but not aircraft chartered specifically for such carriage;
- c) the hire of additional labour and/or equipment;
- d) costs of purchasing resources necessary to reinstate repair or urgently replace lost or damaged parts of the Property Insured indemnified by this policy;
- e) overtime or penalty rates of labour and other related allowances or payments; and
- f) accommodation and boarding costs, including meals and other costs associated therewith.

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the amount payable for this additional item of cover is limited to 10 per cent of the Estimated Contract Value.

### 2.4 Mitigation expenses

The costs and expenses necessarily and reasonably incurred by the Insured in containing, mitigating, suppressing, protecting or preventing imminent or further Damage (indemnifiable under this Policy, or would be indemnifiable but for the suppression, containment or protection from such Damage) to the Property Insured.

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the amount payable for this additional item of cover is limited to 10 per cent of the Estimated Contract Value.

### 2.5 Access costs

Demolition, removal and disposal of undamaged parts of the Insured Contract Works necessary to enable the Damaged parts of the Insured Contract Works to be restored or replaced.

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the amount payable for this additional item of cover is limited to \$100,000.

### 2.6 Search & locate costs

Leak search costs incurred following irregularities discovered in the results of a hydrostatic test of the Insured Contract Works but only if the leak has been caused by Damage insured under this Policy. Such costs will include:

- a) the cost of hiring, operating and transporting apparatus; and
- b) the cost of earthworks on a trench not Damaged in itself, such earthwork becoming necessary in the search for and repair of leaks.

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the amount payable for this additional item of cover is limited to \$50,000.



## 2.7 Recovery of property insured

The costs for the recovery or retrieval of Property Insured, and if required the cost of dismantling and transportation of Property Insured to an appropriate place for assessment of any Damage including any transportation costs returning the Property Insured to the Contract Site or storage yard once it has been repaired or replaced, but only if the Property Insured has been identified as Damaged and such Damage is covered under this Policy.

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the amount payable for this additional item of cover is limited to \$50,000.

## 2.8 Firefighting expenses

The costs and expenses necessarily and reasonably incurred by the Insured for fire extinguishment to contain, mitigate, suppress, protect or prevent imminent or further Damage (indemnifiable under this Policy or would be indemnifiable but for the containment, mitigation, suppression, protection or prevention from such Damage) to the Property Insured. Such costs shall include but not be limited to recharging fire extinguishers, Damage incurred to gain access and reinstatement of any fire protection equipment.

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the amount payable for this additional item of cover is limited to \$100,000.

## 2.9 Plot Ratio Indemnity

In the event of Damage to Property Insured and as a result of the exercise of statutory powers and/or authority by any government or statutory authority the replacement of Property Insured as before is prohibited or is only permissible subject to a reduced floor space ratio index and/or to the payment of certain fees and contributions as a prerequisite to replacement or reinstatement, then CGU shall also pay:

- a) the difference between the actual cost of replacement or reinstatement incurred in accordance with a reduced floor space ratio index and the cost of replacement which would have been incurred had a reduced floor space ratio index not been applicable;
- b) the amount of any fees, contributions or other impost payable to any government department, local government or other statutory authority where such fee, contribution or impost is a condition precedent to consent being given to the replacement of such property; and
- c) the amount of any additional costs and expenses incurred by or on behalf of the Insured as a result of alterations to the specifications of such property brought about by the reduced floor space ratio index as aforesaid.

In arriving at the amount payable under this additional item of cover, any amount paid by CGU shall take into account any amounts payable under Clauses 2.10 Extra costs of reinstatement.

Cover under this additional item of cover will be provided up to the Estimated Contract Value.

## 2.10 Extra costs of reinstatement

The extra cost of reinstatement (including demolition or dismantling) of Damaged or undamaged Property Insured necessarily incurred by the Named Insured to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipality or other Statutory Authority but shall not include any extra costs with which the Named Insured was required to comply prior to the happening of Damage to Property Insured.

Unless another Sum Insured is shown in the Schedule for this additional item of cover, the maximum amount payable for this additional item of cover is \$100,000.

## 2.11 Undamaged foundations

Where Property Insured is Damaged, but the foundations are not Damaged, the abandoned foundations will be deemed to have been totally lost or destroyed if the Named Insured is required to reinstate the Property Insured upon another site due to any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipality or other Statutory Authority.

Any increase in value of the original Contract Site due to the abandoned foundations shall be regarded as salvage and deducted from any amount payable to the Named Insured or be repayable to CGU by the Named Insured.

Cover under this additional item of cover will be provided up to the Estimated Contract Value.

## 2.12 Undamaged ancillary or peripheral equipment

Where plant or machinery forming part of the Property Insured is Damaged but its ancillary and/or peripheral equipment is not Damaged but upon replacement of the Damaged plant or machinery the ancillary and/or peripheral equipment is rendered superfluous, then such equipment shall be deemed to be Damaged and its salvage value shall be:

- a) payable to CGU by the Insured upon completion of any sale; or
- b) deducted from the total amount otherwise payable by CGU under the Policy,

whichever shall occur later.

Cover under this additional item of cover will be provided up to the Estimated Contract Value.

### 3. Additional benefits

The cover under Section 1.1 Construction period cover is extended to include the following additional benefits.

#### 3.1 Materials in transit

The Section 1.1 Construction period cover is extended to include materials, components and equipment to be incorporated into the Contract Works whilst in transit within the Commonwealth of Australia during the Construction Period. Cover commences after completion of loading in an undamaged condition and expires upon completion of unloading at any offsite storage facility or the Contract Site.

Unless another Sum Insured is shown in the Schedule for this additional benefit, cover will be provided up to the Estimated Contract Value.

#### 3.2 Materials stored offsite

The Section 1.1 Construction period cover is extended to include materials, components and equipment to be incorporated into the Contract Works whilst in storage off site within the Commonwealth of Australia during the Construction Period. Cover commences after completion of unloading in an undamaged condition and expires upon completion of loading for transport to the Contract Site.

Unless another Sum Insured is shown in the Schedule for this additional benefit, cover will be provided up to the Estimated Contract Value.

#### 3.3 Offsite fabrication

The Section 1.1 Construction period cover is extended to include materials, components and equipment to be incorporated into the Contract Works at the Contract Site whilst being fabricated, assembled or cast within the Commonwealth of Australia during the Construction Period. Cover commences once such materials, components or equipment begin fabrication, assembly or casting and expires upon completion of loading for transport to the Contract Site.

Unless another Sum Insured is shown in the Schedule for this additional benefit, cover will be provided up to the Estimated Contract Value.

This additional benefit shall not include cover for any materials, components or equipment being supplied by a manufacturer or supplier.

#### 3.4 Residential construction

At the option of the Named Insured, the Section 1.1 Construction period cover may be extended for Residential Construction only.

Cover under this additional benefit expires:

- a) at the time the Principal arranges property insurance;
- b) at the time it is occupied or put into use by the Principal; or

c) at 4pm on the sixtieth (60) day following expiry of the Construction Period,

whichever occurs first.

#### 3.5 Contract of sale

At the option of the Named Insured and subject to a contract of sale being in place prior to the expiry of the Construction Period, the Section 1.1 Construction period cover will be extended.

Cover under this additional benefit expires:

- a) at the time of settlement under the contract of sale; or
- b) at 4pm on the thirtieth (30) day following expiry of the Construction Period,

whichever occurs first.

#### 3.6 Government and other fees

The Section 1.1 Construction period cover is extended to include any fee, contribution or other impost payable to any government, local government or other statutory authority necessarily incurred by the Named Insured to obtain consent to reinstate or replace or repair any of the Property Insured following Damage indemnified under Section 1.1 Construction period cover provided that CGU will not be liable for payment of any fines or penalties imposed by any such authorities.

Cover under this additional benefit will be provided up to a maximum of \$50,000.

### 4. Basis of loss settlement

The amount payable in respect of Damage indemnifiable under Section 1 Material Damage will be as set out below:

#### 4.1 Contract works

The amount payable in respect of Contract Works will be:

- a) In the case of Damage which can be repaired, the cost of repairs necessary to restore the Contract Works to a condition equal to but not better than or more extensive than the Contract Works immediately before the Damage, less any salvage; or
- b) In the case of a total loss, or where the cost of repairing any Damage exceeds the value of the Contract Works immediately before the Damage, the actual value of the Contract Works immediately before the Damage, less any salvage.

Provided always that all such costs claimed are included in the Estimated Contract Value details of which are to be provided immediately upon Our request. The burden of proving the Estimated Contract Value shall be upon the Insured.

## 4.2 Construction plant and equipment

The amount payable in respect of Construction Plant and Equipment will be:

- a) In respect of Damaged items less than twenty four (24) months of age:
  - i. In the case of Damage which can be repaired, the cost of repairs necessary to restore the item and return it to its state of serviceability immediately prior to the Damage; or
  - ii. In the case of a total loss, or where the cost of repairing any Damage exceeds the new replacement value, the cost of replacing the item with a similar item equal to but not better or more extensive than the Damaged item when new.
- b) In respect of Damaged items greater than twenty four (24) months of age:
  - i. In the case of Damage which can be repaired, the costs necessary to repair the item and return it to its state of serviceability immediately prior to the Damage, less allowance for depreciation in respect of parts replaced; or
  - ii. In the case of total loss, or where the cost of repairing any Damage exceeds the current Market Value, the Market Value immediately prior to the Damage.

Any amount payable under this clause will be less any salvage.

## 4.3 Reasonable satisfaction

CGU will not make any payment unless the Insured has produced to Our reasonable satisfaction all accounts, invoices, receipts and any other supporting documentation necessary to substantiate that repairs have been affected or replacement has taken place.

## 4.4 Improvements

CGU will not pay costs for any alterations, additions, improvements or overhauls nor the cost of any temporary repairs that do not constitute a part of the final repairs.

## 4.5 Overheads and profit

Where repairs or replacements are carried out by any of the Insured, allowance shall be made for appropriate levels of overhead charges and profit in any settlement. However, such overhead charges and profit shall not exceed the allowance originally made in the Estimated Contract Value.

## 4.6 Limitation

With respect to each Insured Contract Works, the maximum amount of CGU's liability will not exceed the Sum(s) Insured for each item as stated in the Schedule, less the application of any Deductible.

## 4.7 Claim payee

Any claim under this section of the Policy shall be settled with and paid to the Named Insured or to whom they may direct.

## 4.8 Marine/non marine loss sharing

In the event of Damage to the Property Insured being discovered after the risk has terminated under any marine cargo/transit insurance or any subsequent period of discovery attaching thereto (whichever shall be the later), and after proper investigation it is not possible to ascertain whether the cause of such Damage happened prior to termination of the marine or transit venture or subsequently, it is understood that the Section 1.1 Construction period cover shall extend to respond to 50% of the properly adjusted claim provided that the marine cargo/transit insurer(s) also agree to contribute 50% of such loss. Any such settlement will be without prejudice to the subsequent final apportionment of the loss agreed between CGU and the marine cargo/transit insurer(s).

Should CGU and the marine cargo/transit insurer(s) settle a claim as described by the provisions of this clause, the applicable Deductible will be reduced proportionally to the contribution made by CGU and the marine cargo insurer(s) to the total loss.

## 5. Exclusions applicable to Section 1

CGU shall not be liable for:

### 5.1 Defects

Any costs rendered necessary by defects of material, workmanship, design, plan or specification and should Damage occur to any portion of the Property Insured containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Property Insured had been put in hand immediately prior to the Damage.

For the purpose of this Policy and not merely this exclusion, it is understood and agreed that any portion of the Property Insured shall not be regarded as Damaged solely by virtue of the existence of any defect of material workmanship design plan or specification.

### 5.2 Consequential loss

Consequential loss, loss of use, penalties, fines, liquidated damages, or aggravated, punitive or exemplary damages, or loss or damage in connection with any guarantees or warranties of performance or efficiency.

### 5.3 Gradual deterioration

Damage to and the costs necessary to replace, repair or rectify Property Insured that is worn, torn, rusted, mildewed or has gradually deteriorated.

However, this exclusion 5.3. shall not exclude Damage resulting therefrom to other Property Insured free of wear, tear, rust, mildew or gradual deterioration.

### 5.4 Money

Damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes, or securities.

### 5.5 Transit outside of Australia

Damage occurring during the course of ocean marine transit including unloading following ocean marine transit, other than transit within Australian coastal waters, in connection with the Contract Works and where the origin of the transit is within Australia.

### 5.6 Watercraft and aircraft

Damage to any vessel, craft or thing made or intended to float on or in, or travel on or through, water or air, or any plant, tools, equipment or other things in, on or attached to, any such vessel or craft.

### 5.7 Embezzlement

Damage due to embezzlement or fraudulent misappropriation or induced by trickery by any Employee of the Insured.

### 5.8 Undiscovered theft

Damage discovered only at the time an inventory is taken.

### 5.9 Breakdown

Damage to the Contract Works caused by Breakdown other than as provided in 1.2 Testing & commissioning period cover.

### 5.10 Construction plant and equipment breakdown

Damage to Construction Plant and Equipment caused by Breakdown.

### 5.11 Testing and commissioning

Damage:

- a) arising out of the imposition of abnormal operational conditions, intentional overloading or overheating or experiments; or
- b) to second hand machinery, boiler, pressure vessel, plant or equipment as a result of testing or commissioning; or
- c) that is spoilage of any feedstock or process materials as a result of testing and commissioning.

### 5.12 Construction plant and equipment

- a) Damage to any transport Vehicles, sedans, panel vans, utility Vehicles or trailers; or
- b) Theft of hand held power tools or non powered trade hand tools.

However, this exclusion shall not apply when Minor Plant & Equipment is insured under this Policy and

- i. such hand-held power tools or non powered trade hand tools are kept out of sight in either a locked receptacle or locked boot of a vehicle; and
- ii. forcible entry is visible to the locked receptacle or locked boot of a vehicle.

### 5.13 Pre-existing property

Damage to Pre-Existing Property.

## 5.14 Sanction Limitation and Exclusion Clause

Any provision of cover or payment of a benefit under this Policy that would expose CGU to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or United States of America.

# Section 2 Legal Liability

This section forms part of this Policy only if shown in the Schedule as insured.

## Definitions applicable to Section 2

Wherever appearing in Section 2 of this Policy, the following definitions apply:

**Advertising Injury** means:

- a) defamation; infringement of copyright of or passing off of a title or slogan;
- b) unfair competition, piracy or idea, concept or design misappropriation contrary to an implied contract; or
- c) invasion of privacy,

arising from any advertisement, publicity article, broadcast or telecast and caused by or arising out of advertising activities conducted by the Insured or on behalf of the Insured.

**Aircraft** means any vessel, craft or thing made or intended to fly or move in or throughout the atmosphere or space other than:

- a) model aircraft;
- b) unmanned tethered balloons used for advertising purposes;
- c) Remotely Piloted Aircraft (RPA) less than 2kg as defined by the Civil Aviation Safety Authority (CASA),

provided:

- i. the Insured complies with all rules and regulations required under the Civil Aviation Safety Regulations 1998 (CASR) and its subsequent amendments;
- ii. RPA is used for commercial surveying, photography, filming, mapping, and monitoring activities in respect of the performance on the Insured Contract Works.

**Computer Equipment** means data or part of data, computer hardware, operating system, computer network, equipment, web sites, servers, extranet, software, applications software, computer chip including microprocessor chip and coded instructions as well as any new technology, product or service replacing existing computer equipment.

**Construction Business** means all business activities in connection with construction including but not limited to:

- a) the ownership and occupation of premises for the purposes of that construction business;
- b) the provision or management of canteen, social, sports, welfare or child care services or activities for the Insured's Employees;
- c) internal first aid, fire and ambulance services;
- d) the occupation of a registered business office and/or workshop and/or storage facility used in connection with the Contract Works;
- e) participating in trade fairs and/or exhibitions;
- f) conducting tours of the Insured's premises;
- g) preparing tenders or quotations, including any associated site visits;

- h) visiting manufacturers and/or suppliers premises;
- i) the ownership of vacant land awaiting development for the Named Insured only.

**Employment Practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment or prospective employment by the Insured.

**Hovercraft** means any vessel, craft or device made to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.

**Occurrence** means an event including continuous or repeated exposure to substantially the same general conditions which results in Personal Injury or Property Damage neither expected nor intended from the standpoint of the Insured.

All events of a series consequent on or attributable to one source or original cause are deemed one Occurrence.

**Personal Injury** means any of the following:

- a) bodily injury, death, illness, disability, disease, shock, fright, loss of consortium, mental anguish or mental injury.
- b) false arrest, detention, false imprisonment, malicious prosecution or humiliation.
- c) wrongful entry or eviction or other invasion of privacy.
- d) defamation, libel or slander.
- e) discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law) not committed by or at the intentional direction of the Insured, but only in respect to liability other than for fines and penalties imposed by law.

**Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour(s), soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

**Products** means anything which is or is deemed to have been manufactured, grown, extracted, produced, processed, treated, altered, handled, sold, supplied, distributed, exported, repaired, installed, assembled, erected or constructed by any Insured or on behalf of the Insured, including any packaging or containers (excluding any vehicle associated with such container), after it has ceased to be in the possession or under the control of any Insured.

**Products Liability** means legal liability to pay compensation for Personal Injury or Property Damage:

- a) caused by an unknown defect, or the harmful nature of any Products; or
- b) resulting from an unknown defect or deficiency in any direction or advice given at any time or intended to be given by the Insured concerning the use or storage of the Products.

**Property Damage** means:

- a) physical damage to, or loss of or destruction of tangible property including subsequent loss of use of the property; or
- b) loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by physical damage to other tangible property.

**Public Liability** means legal liability to pay compensation for Personal Injury, Property Damage or Advertising Injury. It does not include Products Liability.

**Standard Construction Contract** means a contract which is prepared and/or published by the Standards Association of Australia, Master Builders Association, Australian Institute of Architects, Housing Industry Association, NSW Office of Fair Trading, Consumer Affairs Victoria or Queensland Building and Construction Commission.

**Tool of Trade** means the use or operation of a Vehicle or equipment, tool or apparatus which forms part of the Vehicle, but only while engaged in or undertaking its designated purpose of digging, scraping, shovelling, grading, boring, drilling, compacting, harvesting, ploughing, shredding, lifting, clearing, levelling, hosing, pumping, spraying, vacuuming or suction activities. Tool of Trade does not include any Vehicle whilst travelling to or from a worksite or Vehicles that are used to carry goods to or from any premises.

**Underground Services** means services usually located underground including but not limited to water, gas, sewerage, sewage, fuel pipes, electric and telephone cables or any underground property or structure for the purpose of storing, conveying transporting, transmitting, transporting, delivering of electricity, water, gas fuel, telecommunications media, signals, radio and other waves.

**Watercraft** means any vessel, craft or thing made or intended to float on or in or travel through or under water.

## 1. Compensation

If shown as insured in the Schedule, then subject to the terms, exclusions, definitions and limitations of this Policy, CGU will indemnify:

(a) the Insured for Public Liability happening during the Period of Insurance within the Territorial Limits as a result of an Occurrence arising out of performance of the Insured Contract Works; and

(b) the Named Insured for Public Liability and Products Liability happening during the Policy Period within the Territorial Limits as a result of an Occurrence arising out of the Named Insured's Construction Business or Products.

## 2. Limit of liability

The limit of CGU's liability in respect of any one Occurrence shall not exceed the Limit of Liability stated in the Schedule for Public Liability or Products Liability.

The total aggregate limit of CGU during any one Policy Period for all claims arising out of Products Liability shall not exceed the Limit of Liability stated in the Schedule.

Subject to clause 4., the Limit of Liability is exclusive of the Deductible and Defence costs and expenses.

## 3. Deductible

The Deductible is the amount the Insured must first bear in relation to each Occurrence.

The Deductible applies to each Occurrence and is payable by the Insured at such time required by CGU.

The Deductible applies to all amounts payable under this Policy.

## 4. Defence costs and expenses

With respect to the indemnity provided by Section 2 of this Policy, CGU will pay in addition to the Limit of Liability legal costs incurred by the Insured to defend a claim under clause 1. of Section 2 of this Policy with the prior written agreement of CGU.

CGU will defend any suit against the Insured seeking compensation for Personal Injury or Property Damage to which indemnity under Section 2 of this Policy applies even if the allegations of the suit are groundless false or fraudulent.

CGU is not obliged to pay any legal costs, defence costs or expenses or defend any claim or legal action after CGU's liability under Section 2 of this Policy to indemnify the Insured has been exhausted under condition 7. Discharge of liability.

If a payment exceeding CGU's liability under Section 2 of this Policy to indemnify the Insured has to be made to dispose of a claim, the liability of CGU for legal costs, defence costs and expenses is limited to the proportion that CGU's liability to indemnify the Insured under Section 2 of this Policy bears to that payment.

In the event of a claim being made against the Insured in any Court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and territories, the total amount payable in respect of the claim by CGU under Section 2 of this Policy including legal costs, defence costs and expenses are subject to the Limit of Liability stated in the Schedule.

## 5. Exclusions applicable to Section 2

This Policy does not cover:

### 5.1 Aircraft and airports

Any liability arising out of or in any way connected with:

- a) the ownership, use, maintenance, possession, operation, legal control, refuelling, loading or unloading by or on behalf of an Insured of any Aircraft; or
- b) the operation of any airport; or
- c) any Products that are incorporated into the hull or critical components of any Aircraft; or
- d) any Products which the Insured knew, or reasonably should have known, would be incorporated into the structure, machinery, controls or construction of any Aircraft.

### 5.2 Asbestos

Any liability arising out of or in any way connected with any actual or alleged liability whatsoever for any claim or claims in respect of Personal Injury, Property Damage, loss or losses arising directly or indirectly out of, or in any way connected with asbestos in whatever form or quantity.

### 5.3 Contractual liability

Any liability arising out of or in any way connected with:

- a) liabilities assumed under the terms of a contract, agreement or warranty; or
- b) liabilities assumed where the Insured would have been able to recover from another party(ies) but for an agreement between the Insured and such party(ies) where the Insured has limited, restricted, waived, released or abandoned any right of indemnity, contribution, recourse or recovery against such other party(ies) other than as outlined in Condition 5. Cross liabilities and Condition 9. Waiver of subrogation; or
- c) liability assumed by the Insured under or pursuant to any contract or agreement which requires the Insured to effect or maintain insurance with respect to premises, property or goods not owned by the Insured.

Sub-clauses a) and b) of this exclusion do not apply to:

- i. liabilities which would have arisen in the absence of such contract, agreement or warranty; or

- ii. liabilities assumed under a Standard Construction Contract; or
- iii. liabilities assumed under a contract for the hire of construction plant, machinery or equipment for use in the performance of the insured Contract Works.

#### 5.4 Employers liability

Any liability:

- a) in respect of which the Insured is or should be entitled to indemnity under any fund, scheme, policy of insurance or self- insurance pursuant to or required by any legislation relating to workers compensation, whether or not such fund, scheme or insurance has been effected. However, this Policy will respond to the extent that the Insured's liability would not be covered under any such policy, fund, scheme or self- insurance arrangement had it complied with its obligations pursuant to such law.
- b) imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination.
- c) relating to Employment Practices.

#### 5.5 Faulty work

Any liability arising out of or in any way connected with the cost of reinstating, repairing, replacing, performing, completing, correcting, improving any faulty work done or undertaken by or on behalf of an Insured.

#### 5.6 Fines or penalties and punitive damages

Any liability arising out of or in any way connected with fines, penalties, exemplary, punitive, liquidated or aggravated damages.

#### 5.7 Loss of use

Any liability for the loss of use of tangible property which has not been physically damaged or destroyed resulting from a delay in or lack of performance by or on behalf of the Insured in respect of any contract or agreement.

#### 5.8 Pollution

Any liability arising out of or in any way connected with:

- a) Personal Injury or Property Damage arising out of or in any way related to the discharge, seepage, migration, dispersal, release or escape of Pollutants into or upon any property, land, the atmosphere or any watercourse or body of water, including ground water; or
- b) the cost of testing, monitoring, containing, removing, nullifying, or cleaning up of Pollutants or the cost of preventing the release or escape of Pollutants.

This exclusion does not apply to liability otherwise excluded under paragraph 5.8 a) and 5.8 b) above arising from a sudden identifiable, unintended and unexpected event which takes place in its entirety at a specific time and place during the Period of Insurance and occurs outside United States of America, Canada and their respective protectorates and territories.

#### 5.9 Property in the physical or legal control

Any liability arising out of or in any way connected with Property Damage to property owned by the Insured or in the physical or legal control of the Insured other than:

- a) premises tenanted, leased, rented, hired by or temporarily occupied by the Insured for the purpose of carrying out the Construction Business; or
- b) existing buildings or structures (including any contents/plant therein) at which the Insured is undertaking work in connection with the Contract Works; or
- c) employees and visitors clothing and personal effects; or
- d) Vehicles in a car park unless:
  - i. the Vehicles are used by or on behalf of the Insured; or
  - ii. the car park is occupied or operated by the Insured for income or reward; or
- e) other property (not owned by the Insured) temporarily in the physical or legal control of the Insured.

Payments made under clauses a) to d) are subject to the overall Limit of Liability in the Schedule. The total of any payments made under clause e) above is subject to a maximum limit of \$100,000 for any one Occurrence and in the aggregate during any one Policy Period or as specifically stated in the Schedule for clause e) whichever is greater.

#### 5.10 Products guarantee

Any liability arising out of or in any way connected with any guarantee or warranty in respect of any Product. However, this exclusion does not apply to a guarantee or warranty imposed by legislation.

#### 5.11 Professional indemnity

Any liability arising out of any breach of duty owed in a professional capacity by the Insured or any person for whose breach of duty the Insured may be legally liable, however, this exclusion does not apply to claims:

- a) arising out of advice or service (not being design or specification advice or service) which is not given for a fee; or
- b) arising out of the rendering of or failure to render professional medical advice by any person employed by the Insured (not being a qualified medical practitioner) to provide first aid on the Insured's premises or Contract Site.



## 5.12 Recall of products

Any liability or expense arising out of or in any way connected with the withdrawal, recall, inspection, repair, adjustment, replacement, removal, cost of investigation, disposal or loss of use of any Products or any products of which the Products form a part.

## 5.13 Watercraft

Any liability arising out of or in any way connected with the ownership, use, maintenance, possession, operation, legal control, loading or unloading by or on behalf of an Insured of any Watercraft exceeding 8 meters in length or any Hovercraft. However, this exclusion does not apply to any Watercraft which is owned and operated by others and used by the Named Insured for the purposes of business entertainment.

## 5.14 Vehicles

Any liability arising out of or in connection with the ownership, operation, use or possession of any Vehicle:

- a) which is registered or required by any law to be registered; or
- b) in respect of which compulsory liability insurance or statutory indemnity is required by any law (whether or not such insurance has been effected).

However, this exclusion does not apply to:

- i. Property Damage arising out of the loading and unloading of goods to or from any Vehicle; or
- ii. Property Damage caused by any Vehicle being used as a Tool of Trade; or
- iii. Property Damage caused by any plant forming part of a Vehicle being used as a Tool of Trade operating at any Contract Site; or
- iv. Personal Injury where compulsory liability insurance or a statutory indemnity does not provide indemnity for reasons that do not involve a breach by the Insured of legislation relating to Vehicles or the insurance of Vehicles.

## 5.15 Underground services

Any liability arising out of or in any way connected with Personal Injury or Property Damage arising from work undertaken on or around Underground Services, pipes and cables of any kind unless prior to commencement of such works the Insured obtained and relied upon advice in printable form from the relevant authority as to the physical location of such services, pipes and cables.

## 5.16 Section 1 cover

Any liability in respect of Property Damage where such property consists of or forms part of the Contract Works or where such property comprises Pre-Existing Property or Construction Plant and Equipment which is insured under Section 1 of this Policy.

## 5.17 Libel and slander

Any liability in connection with the publication or utterance of a libel or slander:

- a) made before the commencement of the Policy Period; or
- b) made by the Insured, or at the direction of the Insured, with knowledge of its falsity; or
- c) by any Insured whose business is advertising, broadcasting, publishing or telecasting.

## 5.18 Products

Any liability arising out of or in any way connected with Products.

This exclusion 5.18 shall not apply to the Named Insured for any Products Liability occurring within the Territorial Limits and during the Policy Period.

## 5.19 Reinstatement, repair or replacement of products

Any liability arising out of or in any way connected with Property Damage to any Products where such damage is directly caused by a fault or defect in such Products or the unsuitability or harmful nature of such Products.

## 5.20 Advertising injury

Any liability for Advertising Injury:

- a) resulting from statements made by the Insured or at the direction of the Insured with knowledge that such statements are false; or
- b) resulting from the failure of performance of contract but this exclusion shall not apply to claims for unauthorized appropriation of advertising ideas contrary to an implied contract; or
- c) resulting from any incorrect description of Products or services; or
- d) resulting from any mistake in advertised price of Products or services; or
- e) result from failure of the Insured's Products or services to conform with advertised performance, quality, fitness or durability; or
- f) incurred by any insured whose principal business is advertising, broadcasting, publishing or telecasting.

# General Exclusions

With respect to both Section 1 and 2 of this Policy, CGU shall not be liable for:

## 1. War

Any loss or damage occasioned by or through or in consequence directly or indirectly of any of the following occurrences:

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.

This exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

## 2. Terrorism

Any loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any act of terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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

- a) involves violence against one or more persons; or
- b) involves damage to property; or
- c) endangers life other than that of the person committing the action; or
- d) creates a risk to health or safety of the public or a section of the public; or
- e) is designed to interfere with or to disrupt an electronic system.

This exclusion also excludes loss, damage, cost or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of terrorism.

## 3. Electronic data and software

Any claim of whatsoever nature, which consists of or arises directly or indirectly out of or in connection with:

- a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or Software;

- b) error in creating, amending, entering, deleting or using Electronic Data and/or Software; or
- c) total or partial inability or failure to receive, send, access or use Electronic Data and/or Software for any time or at all,

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

Further, with respect to Section 1 of this Policy only, this exclusion does not apply in the event that a peril listed below (being a peril insured by this Policy but for this exclusion) causes any of the matters described in paragraph a) above:

fire, lightning, thunderbolt, aircraft or other aerial devices or articles dropped therefrom, earthquake, subterranean fire, volcanic eruption, storm, tempest, rainwater, snow, sleet, wind, hail, water, liquids or substances discharged, overflowing or leaking from fixed apparatus, fixed appliances, fixed pipes or other systems, riots, civil commotions, strikes, or locked out workers or persons taking part in labour disturbances, explosion, impact by Vehicles, animals or trees or branches of trees, communication masts, towers, antennae, satellite dishes, watercraft, meteorites, or theft of Electronic Data and/or Software solely where such theft is accompanied by theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data and/or Software.

## 4. Radioactive contamination

Any loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from:

- a) ionizing radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or
- b) radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or
- c) any weapon, operation or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter; or
- e) the use of any nuclear reactor, atomic piles, particle accelerators, generators or similar devices; or
- f) the use, handling, transportation of any radioactive material.

This exclusion does not apply to radioactive isotopes or radium or radium compounds which have reached the final stage of fabrication, when used and/or stored away from the place where such are made or produced and when used exclusively incidentally to ordinary industrial, educational, scientific medical or research pursuits.

# Conditions (Applicable To Section 1 And 2)

## 1. Claims procedures

The Insured must give CGU notice in writing of every loss, damage Occurrence, claim, writ, summons, impending proceedings, impending prosecution or inquest that is or might give rise to a claim under this Policy.

The Insured or their legal representative must:

- a) provide details of the matters mentioned above to CGU and send written confirmation within 30 days;
- b) take all reasonable steps to minimise the loss, damage or liability and to prevent any further loss, damage or liability;
- c) take all reasonable precautions to preserve anything which might prove necessary or useful by way of evidence in connection with any claim;
- d) advise the nearest Police Station in the case of property lost, stolen or vandalised, and obtain a written Police report if requested by CGU;
- e) take all practical steps to recover any property; and
- f) retain all damaged property for inspection by CGU.

The Insured will, at their own expense, furnish CGU with:

- a) a statement in writing containing particulars of the property affected and its value; and
- b) such books of account and other business books, computer records, vouchers, invoices, balance sheets, and other documents, proofs, information, explanations and other evidence and any statutory declaration as CGU may require for the purpose of investigating or verifying a claim under this Policy and the Insured and their accountants must cooperate fully in this regard.

The Insured must not, without CGU's consent in writing, make any admission, offer, promise or payment in connection with any Occurrence or claim.

CGU will have full discretion in the conduct of any proceedings in connection with any claim and the Insured shall give all information and assistance as CGU may require in the prosecution, defence or settlement of any claim.

With respect to Section 1 of this Policy, upon notification of any Damage being given to CGU the Insured may carry out repairs or make good any minor damage, but in all other cases the Insured must give CGU, Our employees or agents an opportunity to inspect the Damage before any repairs or alterations are affected.

## 2. Prevention of loss

In the event of an Occurrence or Damage, the Insured must promptly take at the Insured's expense all reasonable steps to prevent other Damage, Personal Injury, Property Damage arising out of the same or similar conditions. These expenses are not recoverable under this Policy other than as provided in Additional Cover 2.4 Mitigation expenses.

## 3. Reasonable care

The Insured must take all reasonable precautions to:

- a) prevent any loss, Damage, Advertising Injury, Personal Injury or Property Damage;
- b) prevent the manufacture, sale or supply of defective Products;
- c) comply and ensure that the Insured's workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for or in connection with the safety of persons and property; and
- d) at the Insured's own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect.

## 4. Alteration of risk

The Insured must provide CGU with written notice, no later than 30 days after any change, which materially varies any of the facts or circumstances existing at the commencement of this Policy that comes to the Insured's knowledge, which will also be deemed to include the knowledge of any person whose knowledge would in law be the Insured's knowledge.

Material change will include (but not be limited to) an alteration in the type of Contract Works (specified in the Schedule) undertaken, method of construction or solvency of the Named Insured.

The scope of cover and premium will, if necessary, be adjusted by CGU accordingly. No material alteration will be made or allowed by the Named Insured whereby the risk is increased unless agreed to in writing by CGU.

## 5. Cross liabilities

Where more than one party comprises the Insured each of the parties shall be considered as a separate and distinct unit and the word Insured shall be considered as applying to each party in the same manner as if a separate Policy had been issued to each, provided that nothing in this clause results in the increase of the Limit of Liability provided by clause 2 of Section 2 or Sum Insured in respect of any Damage, Occurrence, Policy Period or Period of Insurance.

## 6. Non-imputation

Where this Policy is arranged in the joint names of more than one Insured:

- a) each Insured shall be covered as if it made its own proposal for this insurance
- b) any declaration, statement or representation made in any proposal will 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 the other Insured(s).

## 7. Discharge of liability

CGU may at any time pay to the Insured in respect of all claims against the Insured arising directly or indirectly from one Occurrence the Limit of Liability (after deduction of any amount already paid by CGU in respect of those claims). This payment will extinguish all liability under the Policy in connection with such claim or claims, including Defence costs and expenses.

## 8. Subrogation

In the event of payment under this Policy to or on behalf of the Insured, CGU is subrogated to all the Insured's rights of recovery against all persons and organisations and the Insured shall execute and deliver instruments and papers and do all that is necessary to assist in the exercise of such rights.

## 9. Waiver of subrogation

CGU agrees to waive its rights of subrogation under this Policy against any Insured other than:

- a) any professional consultants, except in relation to their manual activities associated with the Contract Works and only whilst at the Contract Site; and
- b) any supplier or manufacturer, except for their manual activities at the Contract Site and only whilst at the Contract Site.

## 10. Other insurances

If the Insured makes a claim under this Policy in respect of an Occurrence recoverable under this Policy which Occurrence is or may be covered in whole or in part by any other insurance, then the Insured must advise CGU of the full details of such other insurance when making a claim under this Policy.

Notwithstanding anything contained in this Policy to the contrary, CGU agrees that this Policy will, in respect of the Contract Works where the Principal, owner, head contractor or another (including the Insured) has effected contractor's liability or any public liability insurance (the Primary Insurance), provide the following indemnity:

- a) to pay as compensation in respect of Personal Injury or Property Damage not otherwise recoverable under those policies;
- b) to pay all amounts in excess of that recoverable under those policies; and
- c) to pay the difference (if any) between excess or deductible under the Primary Insurance and the excess or Deductible that would have been applicable under this Policy if the contract had been insured,

provided that such losses and/or amounts would but for the existence of the specified policies be recoverable under this Policy and subject to the Limit of Liability and provided that such cover is for the sole benefit of the Insured defined in a), b), c), d) i., d) ii. and d) iii. of the definition of Insured, and is not for the benefit of sub-contractors or other contractors, principals or owners.

## 11. Cancellation

The Named Insured may cancel this Policy by giving thirty (30) days' notice in writing to CGU.

After cancellation by the Named Insured, the premium for the period to cancellation shall be adjusted on a pro-rata basis.

CGU may cancel this Policy in any of the permitted circumstances set out in the Insurance Contracts Act 1984 (Cth).

When the premium is subject to adjustment, cancellation will not affect the Named Insured's obligation to supply such information as CGU may require for the adjustment of the premium. Cancellation will not affect the Named Insured's obligations to pay the amount of adjustment applicable up to the date of cancellation.

## 12. Inspection

CGU is permitted, but not obliged, to inspect the Insured's Property Insured and operations at any time.

Neither CGU's right to make inspections, the making of them or any report on them constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe, or fit for any purpose.

CGU may examine and audit the Insured's books and records at any time during the Period of Insurance and/ or Policy Period and within three (3) years after the end of this Policy, as far as they relate to the subject matter insured.

## 13. Premium adjustment

Within thirty (30) days of the expiry of the Policy Period, the Named Insured shall furnish to CGU a declaration and details of the Final Contract Values including Principal Supplied Materials of each of the Contract Works commenced during the Policy Period (hereinafter referred to as Final Turnover).

Where the Final Turnover differs from the Estimated Turnover, then the final premium for this Policy shall be determined by applying the agreed rate to the Final Turnover.

The difference between the final premium and the Provisional Premium will be calculated and will be:

- a) the amount payable by the Named Insured if the Final Turnover exceeds the Estimated Turnover; or
- b) the amount refunded by CGU if the Final Turnover is lower than the Estimated Turnover. CGU shall not be called upon to refund more than thirty per cent (30%) of the Provisional Premium.

## 14. Australian jurisdiction

The law of Australia applies to this Policy.

CGU and the Insured submit to the jurisdiction of all Australian Courts in relation to all disputes arising under this Policy.

## 15. Goods and Services Tax

Where CGU makes a payment under this Policy for the acquisition of goods, services or other supply CGU will reduce the amount of the payment by the amount of any input tax credit the Insured is, or will be, or would have been entitled to under A New System (Goods and Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

Where CGU makes a payment under this Policy as compensation instead of payment for the acquisition of goods, services or other supply, CGU will reduce the amount of payment by the amount of any input tax credit that the Insured would have been entitled to under A New System (Goods and Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or other supply.

## 16. Contract works completion

In the event that any Contract Works is completed prior to the expiry date of the Construction Period specified in the Schedule, no return premium shall be allowed for the unexpired portion of the Construction Period.

## 17. Loss accumulation

With respect to Section 1 of this Policy; all Damage resulting from storm, tempest, Flood, cyclone or earthquake occurring during any period of 72 consecutive hours shall be considered as one instance of Damage for the purpose of applying the Deductible, whether or not such storm, tempest, Flood, cyclone or earthquake is continuous or sporadic in its sweep or scope and whether or not the Damage was due to the same climatic or seismological conditions. Each such instance shall be deemed to have commenced on the first happening of any such Damage, not within the period of any previous such instance.

## 18. Reinstatement of sum(s) insured

With respect to Section 1 of this Policy, following payment of a claim under this Policy, CGU will reinstate the Sum(s) Insured, provided the Named Insured pays an additional premium to be agreed by CGU, but no such additional premium will be required unless the claim payment exceeds \$100,000.

## 19. Progress payments

Where CGU has accepted liability to meet a claim under Section 1 of this Policy, and where CGU's total liability in respect of such a claim is estimated to exceed \$50,000 after the application of any Deductible, CGU will pay at the Named Insured's request progress payment(s) on account of such claim for such amount(s) and at such intervals as may be agreed; but:

- a) provided always that the Named Insured can demonstrate to CGU reasonable satisfaction that the amount of the progress payment requested has actually been expended; and
- b) provided further that the interval(s) between such progress payment shall be no less than thirty (30) days.

Such progress payment(s) shall be deducted from the amount finally determined in accordance with this Policy as being CGU's liability for such claim.

## 20. Escalation and variations

If during the Construction Period there is an increase in the Estimated Contract Value to any Insured Contract Works, the Sum Insured for the insured Contract Works and its corresponding Additional cover shall be increased by the same proportion. The amount of such increase shall not exceed 15 per cent of the Contract Works Sum Insured in the Schedule, unless expressly agreed in writing and an additional premium shall be paid at the end of the Policy Period at the original rates in accordance with General Condition 13. Premium adjustment.

## 21. Cessation of work

Any cessation of work exceeding 30 consecutive days, or immediately following abandonment shall be notified to CGU. CGU reserves the right to alter the terms and conditions of cover, including cancellation of the Policy.

## 22. Insolvency or bankruptcy

Any insolvency or bankruptcy of the Named Insured or head contractor shall be notified to CGU.

CGU reserves the right to alter the terms and conditions of cover, including cancellation of the Policy.

## 23. Notices

Where the Named Insured has provided appropriate details of a Notice Nominee as specified in the Schedule, CGU shall in addition to notifying the Named Insured notify the Notice Nominee specified in the Schedule in the event of cancellation, variation or amendment to this Policy.

# Notes

# Notes



## CONTACT DETAILS

**Enquiries** 13 24 81

**Claims** 13 24 80

### Mailing address

GPO Box 9902 in your capital city

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Sydney NSW 2000

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