



# POLICY

## **Annual Construction, Plant & Liability Policy**

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

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# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## IMPORTANT INFORMATION

### The Policy and Schedule

This Annual Construction, Plant & Liability Policy is divided into Sections for Your convenience. Please read them all carefully and contact Ensurance Underwriting Pty Ltd (Ensurance) if there is anything You do not understand.

Ensurance Pty Ltd, PO Box 523 Milsons Point NSW 1565.

The information contained in the Schedule sets out the covers that You have selected, including the Sums Insured and Limits of Liability. We rely on the information contained in the proposal form(s) You submitted and any other written or on-line statements or applications made by You or anyone acting on Your behalf.

### Your Policy

Your Annual Construction, Plant & Liability Policy consists of the terms, Conditions and Exclusions contained within this document, together with the Schedule and any Endorsements We give You. This Policy is a legal contract between You and Us.

When You pay the Provisional Premium, We will provide You with the cover You have chosen as set out in this Policy, during the Period of Insurance. The Excesses set out in the Schedule apply to all claims except where otherwise stated.

Please read Your Policy carefully, and satisfy Yourself that it provides the cover You require. If You want more information about any part of Your Policy, please contact Ensurance.

You should keep Your Policy in a safe and convenient place for future reference.

### Your Duty of Disclosure

Under the Insurance Contracts Act 1984, You have a Duty of Disclosure. You are required before You enter into, renew, vary, extend or reinstate Your Policy, to tell Us everything You know and that a reasonable person in the circumstances could be expected to know, that is relevant to Our decision whether to insure You, and if so, on what terms.

You do not have to tell Us about any matter:

- (a) that diminishes the risk,
- (b) that is of common knowledge,
- (c) that We know or should know in the ordinary course of Our business as an insurer,
- (d) which We indicate We do not want to know.

### Non-Disclosure

If You fail to comply with Your Duty of Disclosure, We may be entitled to reduce Our liability under this Policy in respect of a claim or may cancel this Policy. If Your non-disclosure is fraudulent, We may also have the option of avoiding this contract from its beginning.

### Adequacy of Sums Insured

Our liability to You for a loss under this Policy may be limited if the Sums Insured do not represent the full insurable value of Your property covered by this Policy. It is important that You read and understand the Adequacy of Sums Insured clause in the Conditions to Section 1 - Material Damage of this Policy.

### Preventing Our Right of Recovery

Our liability to You for a loss under this Policy may be excluded or limited if You enter into an agreement that excludes or limits Your or Our rights to recover monies from any other person in respect of that loss. This applies to an agreement before or after You enter into this Policy and before or after the loss.

### Other Party's Interest

You must tell Us about all parties (e.g. financiers, lessors) to be covered by this Policy. We will protect their interests only if You so nominate them and have them noted on the Schedule.

### Excesses

You will pay an Excess for every claim You make under this Policy, and such Excesses apply separately per Section. However, only the highest Excess is to apply where more than one Excess per Section could be applicable to a claim.

The Excess operates as a deductible, where the amount of the excess forms part of the Sums Insured/Limits of Liability. This means that the maximum amount payable under this Policy are the Sums Insured/Limits of Liability minus the Excess.

#### Section 1:

In respect of claims under Section 1, there are various types of Excesses that may apply as follows:

- (a) Major Perils Excess
- (b) Minor Perils Excess
- (c) Testing and Commissioning Excess
- (d) Existing Structures Excess
- (e) Burglary / Theft Excess.

The Major Perils Excess is payable where Insured Damage is caused by a Major Peril.

The Minor Perils Excess is payable where Insured Damage is caused by a Minor Peril.

The Testing and Commissioning Excess is payable where Insured Damage is caused by the testing and commissioning of the Contract Works covered under Section 1, Additional Insured Items, where declared in the Schedule.

The Existing Structures Excess is payable where Insured Damage is caused to any Existing Structures covered under Section 1, Additional Insured Items, where declared in the Schedule.

The Burglary / Theft Excess is payable where Insured Damage is caused by burglary or theft.

## ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

### IMPORTANT INFORMATION CONT.

#### Section 2:

In respect of claims under Section 2, there are Excesses for Personal Injury and Property Damage, Worker Injury and Vibration, Removal or weakening of supports and/or underpinning.

Any Excess will become payable by You progressively as the costs are incurred by Us, up to the full amount of Excess as stated in the Schedule.

In addition to the above, other types of Excesses may apply as stated in the Schedule.

#### Goods and Services Tax (GST)

The amount of premium payable by You for this Policy includes an amount on account of the GST. You must advise Us of Your correct Australian Business Number and Your entitlement to an Input Tax Credit on Your premium.

When We pay a claim, We will reduce the GST amount payable by the amount of any Input Tax Credits to which You are entitled for any Acquisition relevant to a claim, or to which You would have been entitled should You have made a relevant Acquisition. Any GST liability arising from Your incorrect advice is payable by You.

GST, Input Tax Credit and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended subsequently.

#### Privacy

The Privacy Act 1988 (as amended) and the Australian Privacy Principles regulate the way businesses can collect, handle, use, keep secure and disclose personal information. Both Ensurance and We are bound by the Privacy Act 1988, when collecting and handling Your personal information. Ensurance and We have developed their own respective Privacy Policies which explain what sort of personal information is held about You and how it will be collected, handled, used and disclosed.

Both Ensurance and We will (at the beginning and during the term of Your Policy) collect personal information from or about You for the purpose of assessing Your application for insurance and administering Your insurance Policy, including any claims You make.

Both Ensurance and We may need to disclose Your personal information to Our reinsurers, insurance intermediaries, insurance reference bureaux, credit reference agencies, business advisers and those involved in the claims handling process (including assessors and investigators), for the purposes of assisting in providing relevant services and products, or for the purposes of litigation. Such parties may be in Australia or overseas, including in the United Kingdom, Germany and the United States of America, but these may vary from time to time.

Both Ensurance and We may disclose Your personal information to people listed as co-insured on Your Policy and to family members or agents authorised by You. Both Ensurance and We may also disclose Your personal information to organisations which conduct customer service surveys on Our behalf.

If You do not provide Your personal information to both Ensurance and Us, We may not be able to issue insurance cover to You or process Your claim.

You have the opportunity to find out what personal information both Ensurance and We hold about You, and when necessary, correct any errors in this information, as set out in the Privacy Policies for both Ensurance and Us. You also have the opportunity to complain to Ensurance and Us if You believe there has been a breach of the Australian Privacy Principles in relation to Your personal information. The Privacy Policies contain information about how You can make a complaint about a breach of privacy, and how that complaint will be dealt with.

For further information about the Privacy Policies or to access or correct Your personal information, please contact The Compliance Manager, Ensurance, PO Box 523 Milsons Point NSW 1565. Telephone: (02) 9806 2000 or Fax: (02) 9806 2099 or go to the Ensurance website [www.ensuranceunderwriting.com.au](http://www.ensuranceunderwriting.com.au) for details of and for copies of the Privacy Policies. Alternatively, You may contact the Insurer as stated in Your Schedule.

#### Dispute Resolution

Both Ensurance and We will do everything possible to provide a quality service to You. However, both Ensurance and We recognise that occasionally there may be some aspect of service or decision making made that You wish to query or raise.

Ensurance has a Complaints and Dispute Resolution Procedure which undertakes to provide an answer to Your complaints within pre-agreed guidelines.

If You would like to make a complaint or access the internal dispute resolution service please contact The Compliance Manager, Ensurance on 02 9806 2000.

For more information concerning the internal disputes procedure please go to: [www.ensuranceunderwriting.com.au](http://www.ensuranceunderwriting.com.au).

In the first instance in all cases any complaint or dispute should be referred to Ensurance via the details above or the administrator handling Your claim. However in the unlikely event that this does not resolve the matter or You are not satisfied with the way Your complaint has been dealt with and where an Insurer who is a Lloyds Underwriter appears in the Schedule, You should contact:

Lloyds Australia Ltd  
Suite 2, Level 21, Angel Place  
123 Pitt Street  
Sydney NSW 2000  
Telephone: 02 9223 0752  
Facsimile: 02 9223 1466  
Email: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

who will refer Your dispute to Policyholder & Market Assistance at Lloyds.

Complaints that cannot be resolved by the Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaint process.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## IMPORTANT INFORMATION CONT.

### Jurisdiction and Service

For any Section of this policy underwritten by certain Underwriters at Lloyds than those underwriters agree that:

- i. In the event of a dispute arising under this Insurance, the Underwriters at the request of the You will submit to the Jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- ii. Any summons notice or process to be served upon Underwriters may be served upon:  
  
Lloyds General Representative in Australia  
Suite 2, Level 21, Angel Place  
123 Pitt Street Sydney NSW 2000  
  
who has authority to accept service and to enter an appearance on the Underwriters behalf and who is directed at the request of You to give a written undertaking to You that he will enter an appearance on the Underwriters' behalf.
- iii. If a suit is instituted against any one of the Lloyds Underwriters, all Lloyds Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this insurance IMMEDIATE NOTICE should be given to Ensurance.

### Several Liability Notice

The subscribing insurers (Our) obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers (Us) are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligation.



# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## GENERAL DEFINITIONS

When used anywhere in this Policy the following definitions shall apply:

### Adjustment Premium

The amount You must pay under General Conditions, Adjustment Premium.

### Aircraft

Any vessel, craft or object made or intended to fly or move in or through the atmosphere or space.

### Business

All of Your activities and operations associated with the Named Insureds Business described in the Schedule and including the ownership and tenancy of premises, and the provision of management of canteen, social sports, welfare or child care organisations for Your employees and internal first aid, fire and ambulance services.

### Construction Period

The period commencing:

- (a) on the date of entering into each Insured Contract or,
- (b) the date of the Contract Site possession by You or,
- (c) the commencement date of the Contract Works provided such date is within the Period of Insurance specified in the Schedule or the commencement date of the Period of Insurance where projects are already on hand and are insured under this Policy,

whichever occurs first, and expiring:

- (d) at the time of Practical Completion of the Contract Works, and including up to fourteen (14) days after Practical Completion; or
- (e) in respect of completed portions of Contract Works which are taken over, occupied or put into use, on the date those completed portions of the Contract Works are taken over, occupied or put into use; or
- (f) on the expiration of the Maximum Construction Period specified in the Schedule,

whichever occurs first.

### Contract Site

The location(s) where any work is performed by You, for You, or in connection with the Contract Works.

### Contract Works

All property or services provided of every kind and description (unless otherwise excluded) associated or consumed in connection with the completion of the works under an Insured Contract including, but not limited to, temporary works, temporary structures or temporary site buildings, hutments or camps (including all associated contents), scaffolding, hoardings, shuttering, falsework, mouldings, formwork, free issue materials, principal supplied items, bridging and the like, whether owned or in the care, custody or control of You, or for which You are responsible to insure or have a financial, legal or equitable interest.

### Ensurance

Ensurance Underwriting Pty Ltd ABN 21 158 973 365 AFSL 429874

### Existing Structures

Any permanent buildings, framework or structure located at the Contract Site prior to the commencement of the Contract Works, including;

- interior decorations, fixtures and fittings, fitted appliances, machinery, plant, lifts and climate control systems;
- swimming pools, ornamental fountains and ponds;
- hard tennis courts, terraces, patios, driveways, footpaths, pathways, walls, gates, fences and hedges; and
- underground service pipes, cables, sewers, drains or other water courses, fixed domestic fuel tanks, externally fixed radio and television aerials, satellite dishes, their fittings and masts, solar panels,

but excluding:

- telephone, gas, water and electricity meters pipes conduits cables and wiring other than those not the responsibility of the relevant utility provider and only those items contained entirely within the Contract Site;
- any underground property other than domestic cellars and commercial car parks;
- any costs in cleaning or making good drains, sewers or water courses; and
- wall and floor finishes or coverings or any contents therein.

### Insured Contract

Any contract or agreement entered into by You and described in the Schedule, pursuant to which Contract Works will be undertaken, and includes any subcontract or subcontract agreement entered into by You pursuant to such contract or agreement.

### Maintenance Period

The period commencing at the end of the Construction Period and continuing for a period as may be specified in the Insured Contract for the performance of maintenance and defects correction works.

### Major Plant and Equipment

Your cranes, earth moving equipment, concrete mixing, batching, vibrating and screeding plant whether a self-propelled Vehicle or not.

### Minor Plant and Equipment and Tools

Your:

- drying and/or dehumidifying equipment;
- hoists, scaffolding, props and other miscellaneous lifting tackle;
- re-usable shoring and forming equipment;
- welding equipment, air compressors;
- surveying equipment including laser levels;
- hand held powered and non powered trade tools;
- all other items of Your plant and equipment, machinery, tools, any unregistered Vehicle, and unregistered plant,

whether owned by you or in the care, custody or control of You, or for which We have agreed to insure, not otherwise defined as Major Plant and Equipment.

## ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

### GENERAL DEFINITIONS CONT.

However Minor Plant and Equipment and Tools does not include computers, computer software, any computer peripheral, any photocopier, any camera, any mobile phone or any stationery.

#### Maximum Construction Period

The maximum continuous and unbroken time period from the commencement of the Construction Period.

#### Maximum Maintenance Period

The maximum continuous and unbroken time period from the commencement of the Maintenance Period.

#### Period of Insurance

The duration of this Policy as stated in the Schedule.

#### Practical Completion

When the certificate of Practical Completion is issued in accordance with the Insured Contract or, in the absence of such a contractual provision, 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.

#### Policy

This document, the Schedule, and any Endorsements, are incorporated and shall be read as one.

#### Property Damage

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

#### Provisional Premium

The amount You must pay under General Conditions, Provisional Premium.

#### Schedule

The Schedule or any future Schedule issued by Us as a replacement thereof.

#### Territorial Limits

Anywhere within Australia or its territories.

#### Testing Period

The period laid down under the Insured Contract for the testing and commissioning of the Contract Works.

#### Turnover

The value of all work performed including all materials, components, services, free issue materials and principal supplied items for Contract Works covered under this Policy during the Period of Insurance.

#### Vehicle

Any type of machine on wheels or self-laid track made to be propelled by other than manual or animal power, and any trailer or other attachment made or intended to be drawn by any such machine.

#### Watercraft

Any vessel, craft or object made or intended to float on or in or travel on or through or under water.

#### We, Us, Our

The Insurer(s) listed in the Schedule, each for their agreed proportion or Section of this Policy as stated in the Schedule. Each of the subscribing insurers' obligations are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## SECTION 1 – MATERIAL DAMAGE

### DEFINITIONS

When used in this Section 1 (including Endorsements) the following definitions shall apply:

#### Electronic Data

Any facts, concepts and/or information converted to a form usable for communications and/or displays and/or distribution and/or processing by electronic and/or electromechanical data processing and/or electronically controlled equipment which includes but is not limited to programs and/or software and/or other coded instructions for such equipment.

#### Event

A sudden and unforeseen happening that has taken place at a specific point in time.

#### Excess

The amounts shown in the Schedule that You shall be responsible for in respect of each claim.

#### Insured Damage

Physical loss or damage not otherwise excluded, arising out of an Event within the Territorial Limits during the Period of Insurance.

#### Major Peril

Earthquake, Storm, flood, water, landslip, erosion, subsidence, or collapse.

#### Minor Peril

Any cause other than burglary, theft or a Major Peril.

#### Storm

Violent wind (including cyclones and tornadoes), thunderstorms or hailstorms which may be accompanied by snow or rain.

#### Sum(s) Insured

The Sums Insured specified in the Schedule.

#### You, Your, Yourself

- (a) the Named Insured specified in the Schedule, including their directors, executive officers, employees, partners or shareholders, whilst acting within the scope of their duties in such capacity.
- (b) all the subsidiary companies (now or subsequently constituted) of the Named Insured provided their places of incorporation are within Australia or any territory of Australia, including their directors, executive officers, employees, partners or shareholders, whilst acting within the scope of their duties in such capacity.
- (c) every principal, in respect of that principal's financial, legal or equitable interest in the Contract Works.
- (d) each partner, joint venturer, co-venturer, or joint lessee of the Named Insured but only with respect to the financial, legal or equitable interest in the Contract Works.
- (e) any subcontractors of any tier, but only with respect to their financial, legal or equitable interest in the Contract Works.
- (f) any other person, firm or company having a financial, legal or equitable interest in the Contract Works.

You, Your, Yourself does not include the interest of any other person other than as described in (a) to (f) above.

### SCOPE OF COVER

#### During the Construction Period

We will cover You up to the Sums Insured stated in the Schedule, for Insured Damage to the Contract Works during the Construction Period.

#### During the Maintenance Period

We will cover You up to the Sums Insured stated in the Schedule, for Insured Damage to the Contract Works which manifests itself during the Maintenance Period and originates from:

- (a) a cause (unless excluded) occurring and arising out of the Contract Works carried out by You during the Construction Period; or
- (b) a cause (unless excluded) occurring and arising out of the operations carried out by You in complying with the requirements of the maintenance clause(s) of the Insured Contract.

### ADDITIONAL INSURED ITEMS

We only cover those of the Additional Insured Items (a) to (o) below in respect of which a corresponding Sum Insured is shown in the Schedule. The Sum Insured shown in the Schedule for any one or more of the Additional Insured Items (a) to (o) will apply in addition to the Contract Works Sum Insured.

#### (a) Expediting Expenses

We will cover You for those additional costs and expenses incurred by You or on Your behalf in connection with or incidental to expediting the commencement, carrying out or completion of the repair, reinstatement or replacement of the Contract Works or Existing Structures following Insured Damage, including but not limited to:

- (i) express or chartered carriage, freight or delivery including but not limited to by air or sea;
- (ii) travel including chartered travel by sea or air by any of the Named Insured directors, officers or employees, agents or subcontractors, consultants and representatives;
- (iii) hire of additional labour, plant or equipment, materials, expertise or services;
- (iv) accommodation or boarding costs including meals and other associated costs;
- (v) overtime or penalty rates of wages or salaries and other allowances and payments; and
- (vi) additional administrative or overhead expenses.

#### (b) Removal of Debris

We will cover You for the costs and expenses incurred by You or on Your behalf in the removal, clearance, dismantling or demolition of debris, materials, property or substances (including but not limited to the removal, clearance or demolition of any damaged or undamaged Contract Works or Existing Structures following Insured Damage which are no longer fit for the purpose for which it was intended or which is necessary to enable reinstatement of the Contract Works) including the carrying out of temporary repairs, shoring up, propping and protecting undamaged property and the restoration and/or resumption of original working conditions.



## ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

### SECTION 1 – MATERIAL DAMAGE CONT.

- (c) **Professional Fees**  
We will cover You for clerks of works salaries and expenses, legal costs, architects, engineers, surveyor's and consultant's fees necessarily incurred by You for the replacement or repair of any item of the Contract Works or Existing Structures following Insured Damage, but excluding any fees incurred for the preparation of a claim or estimation of a loss under this Policy.
- (d) **Existing Structures**  
We will cover You for Insured Damage to Existing Structures located within the boundary of the Contract Site and belonging to or held in Your care, custody and control.
- (e) **Minor Plant and Equipment and Tools**  
We will cover You for Insured Damage to Minor Plant and Equipment and Tools owned by, or the legal responsibility of You, and used in the performance of the Contract Works anywhere within the Territorial Limits and provided that such Minor Plant and Equipment and Tools are, when not in use, kept out of sight or locked in a secure receptacle.
- (f) **Major Plant and Equipment**  
We will cover You for Insured Damage to Major Plant and Equipment owned by, or the legal responsibility of You.
- (g) **Goods in Storage**  
We will cover You for Insured Damage to materials in storage away from the Contract Site but within the Territorial Limits, and which have been specifically allocated to planned Contract Works.
- (h) **Goods in Transit**  
We will cover You for Insured Damage to materials to be used in the Contract Works whilst in transit within the Territorial Limits:
- (i) beginning with loading in an undamaged condition; and
  - (ii) continuing during transit by road, rail, waterway or by a licensed airline operating a regular scheduled service (including transshipment incidental thereto); and
  - (iii) ending with the unloading at the intended destination.
- The onus of proof is with You to prove to Us that the materials were loaded in an undamaged condition.
- (i) **Testing and Commissioning**  
We will cover You for Insured Damage to the Contract Works by their own electrical or mechanical breakdown, failure or derangement arising out of testing and commissioning at the Contract Site, provided that the Testing Period did not exceed the Maximum Testing Period stated in the Schedule.
- Simple functional checks of components of individual machines which do not involve any loading will not be classed as testing and commissioning for the purpose of this Additional Insured Item.
- (j) **Mitigation Expenses**  
We will cover You for mitigation expenses, being the costs and expenses reasonably incurred by You in containing, reducing, suppressing or preventing further loss or damage following Insured Damage, provided such further loss or damage is not excluded under this Policy. The amount payable under this Additional Insured Item shall exclude any amounts payable under Additional Insured Items (b) and (c).
- (k) **Restoration of Records**  
We will cover You for the cost of restoration of records including but not limited to, Your remuneration for supervising and/or for actual work in collecting information, preparing and/or re-writing and/or reproducing files, plans, drawings, designs, specifications, documents, manuscripts, business and other books and systems, media and records which may be lost, destroyed or damaged consequent upon Insured Damage. The amount payable under this Additional Insured Item shall exclude any amounts payable under Additional Insured Item (c).
- (l) **Temporary Protection**  
We will cover You for shoring up, propping, underpinning or other temporary protection of the Contract Works consequent upon Insured Damage, deemed necessary by You or by a qualified person or entity representing You, to avoid further Insured Damage to the Contract Works.
- (m) **Government Charges**  
We will cover You for any fee, contribution or other impost payable to any government, local government or statutory authority for services rendered or equipment supplied for the purpose of helping to prevent further Insured Damage to the Contract Works.
- (n) **Increased Cost of Working**  
We will cover You for:
- (i) costs and expenses necessarily incurred for temporary work / installation undertaken pending permanent repair of Insured Damage; and
  - (ii) costs and expenses necessarily incurred for replacement plant to be hired in following Insured Damage to plant.
- (o) **Employees Effects**  
We will cover You for Insured Damage arising in connection with Your employees' involvement in the Contract Works to all property of every kind and description belonging to Your employees but excluding:
- (i) Vehicles, Watercraft, Aircraft or any building dwelling or other structure designed for habitation or storage; and
  - (ii) precious stones or metal, jewellery, keys, watches, money, credit or debit cards, cheques or any other forms of money or currency.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## SECTION 1 – MATERIAL DAMAGE CONT.

### AUTOMATIC EXTENSIONS

Cover is provided for the following Automatic Extensions up to the corresponding Sums Insured shown in the Schedule. In respect to Automatic Extensions (b) through to (d), the Sums Insured are the total amount We will pay, and do not apply in addition to any other Sums Insured. In respect of Automatic Extension (a), the Sum Insured applies in addition to the Contract Works Sum Insured.

#### (a) Escalation

If during the Period of Insurance there is an increase in any Insured Contract value that exceeds the Sum Insured any one Insured Contract as specified in the Schedule, then the Sum Insured any one Insured Contract will be increased by the same amount, provided the increase in that Insured Contract does not exceed the value specified in the Schedule.

#### (b) Dewatering

Cover is provided for the cost of dewatering necessary following Insured Damage to provide access to and allow repairs to be effected to completed sections of the Contract Works whether damaged or undamaged.

#### (c) Plot Ratio Indemnity

In the event that Contract Works insured under Section 1 suffers Insured Damage and as a result of the exercise of statutory powers and/or authority by any government, local government or other statutory authority, the replacement of the Contract Works 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, then We agree to pay You in addition to any amount otherwise payable:

- (i) the difference between the actual cost of replacement 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;
- (ii) the amount of any fees, contributions or other impost payable to any government, local government or other statutory authority where such fee, contribution or impost is a condition precedent to consent being given to the replacement of the Contract Works;
- (iii) the amount of any additional costs and expenses incurred by You or on Your behalf as a result of alterations to the specifications of the Contract Works brought about by the reduced floor space ratio index as aforesaid.

#### (d) Undamaged Foundations

Where the Contract Works or Existing Structures insured under Section 1 of this Policy are destroyed but the foundations are not destroyed and due to the exercising of statutory powers and/or delegated legislation and/or authority by government, local government or any other statutory authority, reinstatement of the Contract Works has to be carried out at another location, then abandoned foundations will be considered as being destroyed.

### BASIS OF SETTLEMENT

In the event of Insured Damage covered by this Policy, We will pay:

- (a) for the Contract Works and Existing Structures:
  - (i) in the case of Insured Damage which can be repaired, the cost of repairs necessary (including a reasonable margin for overhead costs and profit) to restore the damaged section to the condition present immediately before the Event of the Insured Damage, less any salvage enjoyed by You; or
  - (ii) in the case of Insured Damage which cannot be repaired, the replacement value of the damaged section, less any salvage enjoyed by You;
- (b) for Minor Plant and Equipment and Tools and for Major Plant and Equipment:
  - (i) in the case of Insured Damage which can be repaired, the reasonable cost to repair the damaged item to its former state of serviceability. In addition, when incurred for the purpose of effecting repairs, the cost(s) of dismantling, re-erection, and ordinary freight to and from a repair workshop, custom duties or other imposts levied to the extent that the Sum Insured is not otherwise exhausted. If repairs are carried out in a workshop owned by You, We will pay the cost of material and wages incurred for the purpose of the repairs, plus Your usual amount to cover profit and overhead charges.

No deduction will be made for depreciation of parts replaced, but the value of any salvage enjoyed by You will be deducted.

If the estimated cost of repairs equals or exceeds the actual value of the insured item immediately before the loss or damage occurred, then We will regard the item as destroyed, and settlement will be made on the basis provided for in (ii) below;
  - (ii) in the case of Insured Damage which cannot be repaired, the value of the item at the time of loss or damage, including the reasonable costs of ordinary freight and erection. The value of the item will be calculated by reference to the market value of the item immediately before the Insured Damage, having due regard to its state of repair and condition at that time, less the value of any salvage enjoyed by You.

We may at Our option repair, reinstate or replace any Insured Damage covered by this Section.

All Insured Damage which can be repaired must be repaired, but if the cost of repairing any damage equals or exceeds the value of the damaged section or item immediately before the Insured Damage, settlement will be made on the basis provided for under (a)(ii) and (b)(ii) above, as appropriate.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## SECTION 1 – MATERIAL DAMAGE CONT.

The amount of each claim otherwise payable will be reduced by the amount of the Excess and always limited to the Sums Insured stated in the Schedule.

### CONDITIONS

The following Conditions apply to Section 1 of this Policy. There are also General Conditions which apply to all Sections of this Policy.

#### Adequacy of Sums Insured

The Sums Insured specified in the Schedule for the following insured items must be not less than:

- (a) for Existing Structures, their replacement / rebuild value; and
- (b) for items of Major Plant and Equipment and Minor Plant and Equipment and Tools, their actual current market value at commencement of the Period of Insurance.

If in the event of Insured Damage the Sums Insured are less than 80% of the amounts required to be insured as per clause (a) and (b) above, the amount recoverable by You under this Policy in respect of these items will be reduced by such proportion as the Sums Insured bears to the amounts required to be insured.

The above clause will not apply if the amount of Insured Damage does not exceed 5% of the value of the Sums Insured.

#### Automatic Reinstatement

The Sums Insured will, immediately after any Insured Damage, be automatically reinstated, with any additional premium to be agreed between You and Us subsequent to the time of that reinstatement.

#### Contract Declaration

If requested by Us, You will submit within thirty (30) days of the commencement of each Insured Contract, an Insured Contract declaration in a reasonable and achievable format that We outline.

#### Licensed Tradesmen

You must take reasonable care to ensure all Contract Works are carried out by fully licensed tradesmen, in respect of those trades required to be licensed by law.

#### Internal Finishes

Prior to the installation of any internal finishes being floor coverings, wall and ceiling panels, ceiling tiles and lining boards, the section of the Contract Works where internal finishes are to be installed must be made weather proof to the extent that all windows, glazing, external walls, roof and floor openings have been sealed against the ingress of external sources of water and wind.

#### Partial Occupation of Contract Works

If the whole or any section of the Contract Works is taken over, occupied, or put into use by You or others prior to Practical Completion, We will not be liable for any Insured Damage in respect of:

- (a) the occupants or their property; or
- (b) third parties or their property,

arising from such actions, unless expressly agreed upon and specified in the Schedule and You have paid any additional premium and bear any Excess which may be required by Us.

#### Progress Payments

For Insured Damage where We or Our representatives have undertaken initial or preliminary investigations and We estimate the Insured Damage will exceed \$10,000, We agree to pay You a progress payment equal to at least 50% of the estimated value of claim within one (1) month of the Insured Damage having been investigated by Us or Our representatives, provided that We have admitted liability under this Policy and the costs in respect of which the progress payments are made have been incurred by You.

#### Difference in Conditions/Deductible/Excess

Subject to individual agreement and rating by Us, where another party elects to effect the Contract Works insurance, this Policy will apply to losses not recoverable or in excess of losses recoverable thereunder, subject always to the terms, Conditions and Exclusions of this Policy.

### EXCLUSIONS

The following Exclusions apply to Section 1 of this Policy. There are also General Exclusions which apply to all Sections of this Policy.

#### Excluded Contracts

Contracts that:

- (a) have a contract value greater than the Sum Insured for any one Insured Contract specified in the Schedule (other than as provided for by Automatic Extension (a) Escalation) or,
- (b) have Maximum Construction Periods or Maximum Maintenance Periods greater than those stated in the Schedule,

will not be covered by this Policy, unless expressly agreed by Us and specified in the Schedule.

#### We will not be liable for any loss or damage:

- (a) caused by wear and tear, corrosion, oxidation or deterioration, due to lack of use or atmospheric conditions.
- (b) caused to machinery, plant or equipment during testing and commissioning:
  - (i) by intentional overloading or experiments,
  - (ii) for which the supplier or manufacturer is responsible by law or under contract, or
  - (iii) which is second-hand, re-conditioned, refurbished, used, experimental or prototypical.
- (c) caused by electrical or mechanical breakdown to the Contract Works during testing and commissioning unless covered under Additional Insured Item (i).
- (d) to Vehicles registered for general road use, unless such Vehicles are covered under Additional Insured Item (e) or (f).
- (e) to Watercraft exceeding ten (10) metres in length, or Aircraft.

## ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

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



## ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

### SECTION 1 – MATERIAL DAMAGE CONT.

- (g) caused by action of vermin, termites, moths or other insects.
- (h) to Electronic Data provided this Exclusion does not apply to loss or damage of Electronic Data arising directly in consequence of an Event for which indemnity is provided for by this Policy.
- (i) caused by sonic boom or pressure wave arising from Aircraft or Watercraft.
- (j) caused by mould, mildew, fungus, spores or other micro organism of any type, nature or description including but not limited to any substance whose presence poses an actual or potential threat to human health. This Exclusion additionally applies to any loss of use, occupancy or functionality, or any costs or expense arising from its removal, clean up, abatement, disposal or other steps taken to control its future presence or medical and/or legal concern.
- (p) additional dewatering expenses incurred because the quantities of water exceed those allowed for in the Insured Contract unless incurred as a result of Insured Damage.
- (q) expenses incurred for additional installations and facilities for the discharge of run-off or underground water unless incurred as a result of Insured Damage.
- (r) expenses incurred for grouting or any other measures to remedy leakage of water into excavations, foundations or basements unless incurred as a result of Insured Damage.
- (s) consequential loss, loss of use, penalties, fines, liquidated damages or aggravated, punitive or exemplary damages.
- (t) legal liability resulting from any Event.

#### **We will not be liable for the cost of:**

- (k) (i) replacement, repair or rectification of any Insured Damage caused by any fault, defect, error or omission in material, workmanship, design, plan or specification, but this Exclusion will be limited to that component part or individual item that is faulty or defective or subject to error or omission.
- (ii) any property lost or damaged to enable the replacement, repair or rectification of (k) (i).

Exclusion (k) (i) shall not apply to other property which is free from fault, defect, error or omission damaged in consequence thereof.

For the purpose of this Policy and not merely this Exclusion, property shall not be regarded as lost or damaged solely by virtue of the existence of any fault, defect, error or omission in material, workmanship, design, plan or specification in any property item or component part thereof.

- (l) loss discovered only at the time an inventory or stock check is taken unless such loss can be attributed to burglary or theft.
- (m) normal upkeep of the Contract Works.
- (n) any temporary repairs, unless such repairs are covered under Additional Insured Items.
- (o) replaceable parts and attachments of Minor Plant and Equipment and Tools and Major Plant and Equipment such as (but not limited to) fuses, shear-pins, rupture plates, or other expendable load limiting devices, bits, drills, knives, saw blades or other cutting devices, blades, dies, moulds, patterns, pulverizing and crushing surfaces, screens and sieves, filter, ropes, belts, chains, elevator and conveyor belts, batteries, flexible pipes, seals, glands, jointing, packing material, tyres and tracks unless damaged as a result of Insured Damage.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## SECTION 2 – LEGAL LIABILITY

### DEFINITIONS

When used in this Section 2 (including Endorsements) the following definitions shall apply:

#### Employment Practices

Any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination directly or indirectly related to employment of any person or persons by You.

#### Excess

The amounts shown in the Schedule that You shall be responsible for in respect of each Occurrence.

#### Limit of Liability

The applicable Limit of Liability specified in the Schedule.

#### Occurrence

An event which results in Personal Injury or Property Damage neither expected nor intended from Your standpoint. All Personal Injury and Property Damage arising out of continuous or repeated exposure to substantially the same general conditions shall be construed as arising out of one Occurrence.

#### Personal Injury

- (a) bodily injury (and this expression includes death and illness), disability, shock, fright, mental anguish, mental injury including loss of service resulting therefrom;
- (b) false arrest, wrongful detention, false imprisonment, malicious prosecution, humiliation or discrimination;
- (c) wrongful entry or eviction or other invasion of the right to private occupancy;
- (d) a publication or utterance of a libel or slander or other defamatory, disparaging or derogatory material;
- (e) assault and battery not committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons and/or property.

#### Pollutants

Any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

#### You, Your

- (a) The Named Insured specified in the Schedule.
- (b) All the subsidiary companies (now or subsequently constituted) of the Named Insured specified in the Schedule provided their places of incorporation are within Australia or any territory of Australia.
- (c) Every director, executive officer, employee, partner or shareholder of one of the insured parties designated in paragraphs (a) or (b) but only whilst acting within the scope of their duties in such capacity.

- (d) Every principal, in respect of that principal's vicarious liability for the acts or omissions of any other party insured under this Policy in the performance by them of work for that principal, but subject always to the extent of coverage and the Limit of Liability provided by this Policy.
- (e) Every officer bearer or member of social and sporting clubs, canteen and welfare organisations and first aid, fire and ambulance services formed with Your consent (other than a party designated in paragraph (d) or (f) in respect of claims arising from their duties connected with the activities of any such club, organisation or service).
- (f) Each partner, joint venturer, co-venture or joint lessee of the Named Insured specified in the Schedule but only with respect to liability incurred in the partnership, joint venture, co-venture, or joint leases.
- (g) Any subcontractors and/or sub-subcontractors but only arising out of their performance of any Insured Contract.
- (h) Any directors or senior executives of the Named Insured in respect of private work undertaken by employees of the Named Insured for such director or senior executive.

You, Your does not include the interest of any other person other than as described in (a) to (h) above.

#### Products/Completed Operations

All Your completed Contract Works (which includes without limitation, buildings, refurbishments, construction/civil works of every description, all goods, property, products or materials sold, owned (or Your responsibility) hired out, worked upon, altered, repaired, manufactured or supplied by or under Your direction) and including all discontinued Product/Completed Operations, where such work or property is no longer in Your custody or control.

Contract Works which may require further service, maintenance, correction, repair or replacement because of any defect or deficiency but which are otherwise completed shall be deemed completed.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## SECTION 2 – LEGAL LIABILITY CONT.

### SCOPE OF COVER

#### Public Liability

We will pay up to the Limit of Liability:

- (a) all sums which You become legally liable to pay by way of compensation; and
- (b) all costs awarded against You,

in respect of Personal Injury or Property Damage happening during the Period of Insurance and caused by an Occurrence within the Territorial Limits in connection with the carrying out of the Named Insureds business specified in the Schedule.

Products/Completed Operations liability (applies where indicated on the Schedule as being operative).

- (a) We will indemnify You up to the Limit of Liability against claims for compensation in respect of:

- (i) Personal Injury, or
- (ii) Property Damage,

occurring during the Period of Insurance within the Territorial Limits as a result of an Occurrence and caused by the nature, condition or quality of Your Products/Completed Operations.

#### Defence of Claims

With respect to the Indemnity provided by this Section 2, We will:

- (a) defend in Your name and on Your behalf any claim or legal action against You seeking damages on account of Personal Injury or Property Damage even if the action is groundless, false or fraudulent, and We will investigate, negotiate and settle any claim or legal action as We see fit;
- (b) pay all legal costs and expenses incurred by Us and all interest accruing after judgment until We have paid, tendered or deposited in court such part of the judgment as does not exceed the Limit of Liability;
- (c) reimburse You for all reasonable expenses, other than loss of earnings, incurred in connection with the defence of a claim or legal action with Our consent;
- (d) pay reasonable expenses incurred by You for first aid to others at the time of Personal Injury caused by an Occurrence (other than medical expenses prohibited by Section 126 of the Health Insurance Act 1973).

Provided that:

- (a) We will not be obliged to pay any claim or judgment or to defend any claim or legal action if the Limit of Liability has been exhausted by payment of judgments or settlements.
- (b) If a payment exceeding the Limit of Liability has to be made to dispose of a claim, Our liability to pay any costs, expenses and interest under this Section 2 will be limited to that proportion of those costs, expenses and interest as the Limit of Liability bears to the amount paid to dispose of the claim.

The amount thus incurred, except payments in settlement of claims, suits and all costs awarded against You, are payable by Us in addition to the Limit of Liability except in respect of any claims made or actions taken in the USA or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries where the Limit of Liability shall apply inclusive of all costs and expenses as set out in 'Defence of Claims' in this Policy.

#### Limit of Liability

Our maximum liability in respect of any one Occurrence will not exceed the Limit of Liability.

In relation to Products/Completed Operations Liability, Our maximum liability in respect of any one Occurrence and in the aggregate for all Personal Injury or Property Damage occurring during any one Period of Insurance shall not exceed the Limit of Liability shown in the Schedule.

### EXCLUSIONS

The following Exclusions apply to this Section 2 of this Policy. There are also General Exclusions which apply to all Sections of this Policy.

This Section 2 does not cover liability in respect of:

#### Employment Liability

Personal Injury imposed:

- (a) by any workers compensation law,
- (b) by the provision of any industrial award, agreement or determination or any contract or employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award, agreement or determination or contract of employment or workplace agreement, or provided that if You are:
  - (i) required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such Personal Injury, or
  - (ii) not required to so insure or otherwise fund such liability by reason only that the Personal Injury is to a person who is not a worker or employee for the purposes of the relevant worker's compensation laws or the Personal Injury is not an injury which is subject to such law,

then this Policy will respond to the extent that Your liability would not be covered under such fund, scheme, policy of insurance or self insurance arrangement had You complied with Your obligations pursuant to such law.

There is no cover under this Policy for and in respect of Employment Practices.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## SECTION 2 – LEGAL LIABILITY CONT.

### Property in Your Care, Custody or Control

Property Damage to:

- (a) property owned by or leased or rented to You; or
- (b) other property in Your physical or legal control.

But this Exclusion does not apply to liability for Property Damage to:

- (c) premises (including landlord fixtures and fittings) which are leased or rented to You; or
- (d) premises (or their contents) not owned, leased or rented by You but temporarily occupied by You for work therein; or
- (e) any other property in the physical or legal control of You, other than that described in (a) to (d) above. However Our liability under this clause (e) shall not exceed the amount specified in the Schedule for property in Your custody or control.

### Aircraft and Watercraft

Claims arising out of the ownership, maintenance, operation or use by You of:

- (i) any Aircraft or hovercraft, or
- (ii) any Watercraft exceeding 10 metres in length.

### Vehicles

Personal Injury or Property Damage arising out of the ownership, possession, operation, maintenance or use by You of any Vehicle:

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

Exclusions (a) and (b) above do not apply to Vehicles being used as a tool of trade including loading and unloading of or the delivery or collection of goods to or from any Vehicle in connection with the Named Insureds Business specified in the Schedule and Exclusions (a) and (b) do not apply to:

- (c) Personal Injury where:
  - (i) That compulsory liability insurance or statutory indemnity does not provide indemnity; and
  - (ii) The reason or reasons why that compulsory liability insurance or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles.

### Contractual Liability

Any obligation assumed by You under any agreement or contract except to the extent that:

- (a) the liability would have been implied by law;
- (b) the liability arises from a provision in a contract for lease of real or personal property other than a provision which obliges You to effect insurance or provide indemnity in respect of the subject matter of that contract;

- (c) the liability is assumed by You under a warranty of fitness or quality as regards to Your Products/Completed Operations.
- (d) The liability is assumed under a contract that is usual to the Named Insureds Business specified in the Schedule. For the purposes of this clause a contract which is usual to the Named Insureds Business does not include that part of any contract or agreement that indemnifies an architect, engineer, surveyor or other professional for liability arising out of the provision, approval or the failure to provide or approve maps, drawings, opinions, reports surveys, change orders, designs or specifications.

### Professional Liability

The rendering of or failure to render professional advice or service provided for a fee by You or any error or omission connected therewith provided this Exclusion shall not apply to:

- (a) Personal Injury or Property Damage resulting therefrom; or
- (b) the rendering of or failure to render professional medical advice by medical persons employed by You to provide first aid and other medical services on any of Your premises or in connection with the Named Insureds Business specified in the Schedule.

### Libel and slander

The publication or utterance of a libel or slander:

- (a) made prior to the commencement of the Period of Insurance; or
- (b) made by You or at Your direction with knowledge of its falsity; or
- (c) related to advertising, broadcasting or telecasting activities conducted by You or on Your behalf.

### Territorial Limits

- (a) claims made or actions instituted within any country, state or territory (outside Australia) that require insurance to be insured or secured with an insurer or organisation licensed in that country, state or territory to grant such insurance;
- (b) claims made and actions instituted within the USA or Canada or any other territory coming within the jurisdiction of the courts of the USA or Canada;
- (c) claims and actions to which the laws of the USA or Canada apply.

Provided that, Exclusions (b) and (c) above do not apply to claims and actions arising from the presence outside Australia of any of Your employees and/or directors, partners or proprietors who are normally resident in Australia and who are not undertaking manual work or supervision of work of any kind while in the USA or Canada.



# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## SECTION 2 – LEGAL LIABILITY CONT.

### **Asbestos**

Liability resulting from the presence, existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.

### **Products/Completed Operations**

For Property Damage to Your Products/Completed Operations or work completed by or for You or for any costs or expenses incurred in repairing, replacing or making any refund in respect of Your Products/ Completed Operations or work.

### **Product Guarantee**

For Personal Injury or Property Damage occurring as a consequence of the failure of any of Your Products/Completed Operations to cure, alleviate, prevent, monitor, detect, eliminate or retard any Personal Injury or Property Damage or any other product guarantee as expressly or impliedly warranted or represented by You or which is imposed by law or statute.

### **Product Recall**

For damages, costs or expenses claimed for or arising from the recall, inspection, repair, replacement or loss of use of Your Products/ Completed Operations or work completed by or for You or of any property of which Your Products/Completed Operations or work form a part, if such Products/Completed Operations, work or property recalled from the market or from use because of any known or suspected defect or deficiency therein.

### **Faulty Workmanship**

For the cost of performing, completing, correcting or improving any work undertaken by You.

### **Game, match, race, practice or trial.**

For Personal Injury to or Property Damage of any participants of any game, match, race, practice or trial.

### **Exports to the USA or Canada**

For Personal Injury or Property Damage caused by or arising out of Your Products/Completed Operations exported to United States of America or the Dominion of Canada or any territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada.

### **Fines, Penalties or Liquidated Damages**

Fines, penalties or liquidated damages imposed by law.

### **Punitive Damages**

Punitive damages, exemplary damages, aggravated damages and any additional damages resulting from the multiplication of compensatory damages.

### **Assault and Battery**

Personal Injury or Property Damage caused by or arising from assault and battery committed by You or at Your direction unless reasonably necessary for the protection of persons or property.

### **Tobacco**

Personal Injury arising directly or indirectly out of or due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke; or
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

### **Information Technology Hazards, Computer Data, Program and Storage Media**

- (a) liability in respect of Personal Injury or Property Damage arising, directly or indirectly, out of, or in any way involving Your internet operations; or
- (b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
  - (i) the use of any computer hardware or software;
  - (ii) the provision of computer or telecommunication services by You or on Your behalf; or
  - (iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

But this Exclusion does not apply to:

- (c) Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced in its site; or
- (d) liability which arises irrespective of the involvement of Your internet operations.

Nothing in this Exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this Exclusion.

### **Loss of Use of Tangible Property**

The loss of use of tangible property which has not been physically damaged or destroyed resulting from:

1. A delay in or lack of performance by or on behalf of You of any contract or agreement; or
2. The failure of any Products/Completed Operations to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You but this Exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Products/Completed Operations after such Products/Completed Operations have been put to use by any person or organisation other than You.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## GENERAL CONDITIONS

The following General Conditions apply to all Sections of this Policy.

### Multiple Insureds and Severability

Each of the parties comprising You shall for the purpose of this Policy be considered a separate insured entity, with the words You, Your, Yourself applying to each as if they were separately and individually insured provided that Our total liability under this Policy to You collectively shall not exceed the applicable Sums Insured or Limit of Liability.

Accordingly Our liability under this Policy to any one insured party shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this Policy or of any duties imposed upon that insured party relating thereto and shall not be affected by any failure in such observance or fulfilment by any such other party.

It is understood and agreed that any payment or payments by Us to any one or more of the insured parties shall reduce to the extent of that payment Our liability to You arising from any one Occurrence or Event, as relevant, giving rise to a claim under this Policy.

We shall be entitled to avoid this Policy in respect of any insured party in circumstances of fraudulent misrepresentation or fraudulent non-disclosure (each referred to in this clause as a Vitiating Act) committed by that insured party.

For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has a financial, legal or equitable interest and who has not committed the Vitiating Act.

### Our Right of Inspection

We will be permitted but not obliged to inspect the Contract Works at any time. Neither Our right to make inspections nor the making of such inspection or any report will constitute an undertaking to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.

### Subrogation

We shall waive any rights and remedies to which We become entitled by subrogation against any party insured under this Policy, except as against a party insured under this Policy that is responsible for a Vitiating Act (as defined in the Multiple Insureds and Severability General Condition).

In the event that We have a right to recover any monies payable under this Policy from any person other than You, You must co-operate with Us fully in any action which We may take. We may take action before We pay Your claim and whether or not You have been fully compensated for Your actual loss.

### Other Insurance

In the event of any claim being made under this Policy, You must notify Us of any other insurance covering the same loss or damage.

### Breach of Conditions

Any breach of any Condition of this Policy, without Your knowledge and consent or beyond Your control shall not prejudice the cover provided by this Policy. Notice in writing shall be given to Us upon such breach coming to Your knowledge and such additional premium as may be reasonably required by Us shall be paid as from the date of the breach first coming to Your knowledge.

### Provisional Premium

The Provisional Premium will be a deposit and will be calculated by applying the agreed rate to the estimated Turnover for the Period of Insurance.

### Adjustment Premium

At the expiry of the Period of Insurance, the Named Insured will furnish to Us a declaration and details of the actual Turnover generated during the Period of Insurance.

Where the actual Turnover differs from the estimated Turnover, then the final premium for the Period of Insurance shall be determined by applying the agreed rate to the actual Turnover.

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

- where the final premium exceeds the Provisional Premium, the Named Insured will be required to pay to Us, or cause to be paid to Us, the difference in those premiums, being the Adjustment Premium; or
- where the final premium is less than the Provisional Premium, We will refund to the Named Insured the difference in those premiums. However the maximum amount We will refund to the Named Insured will be 50% of the Provisional Premium.

### Run Off Basis

Notwithstanding the Scope of Cover as provided by this Policy, in the event of cancellation or non-renewal of this Policy, the Scope of Cover will continue following Our written acceptance of Your written request for Insured Contracts commenced prior to the date of cancellation or non-renewal until expiry of the relevant Construction Period and any contractual Maintenance Periods applicable, and subject to payment of additional premium as required by Us.

### Reasonable Care and Precautions

You must take all reasonable care and precautions:

- (a) to prevent Personal Injury and Property Damage;
- (b) to comply with all laws and statutory obligations and by-laws or regulations imposed by any public authority for the safety of persons or property;
- (c) to employ competent contractor, subcontractors of every tier, and employees; and
- (d) to maintain all premises, fittings and plant and everything used in the Contract Works in sound condition.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## GENERAL CONDITIONS CONT.

### Policy Cancellation

This Policy may be cancelled:

- (a) by the Named Insured, giving written notice to Us at any time. Notice will be effective when received by Us. If You have made, or will make a successful claim under this Policy during the Period of Insurance to be cancelled, You will not be entitled to a refund of premium in respect of the unexpired Period of Insurance. In all other circumstances We may retain the premium for the period the Policy was in force plus 10% of the premium for the unexpired Period of Insurance;
- (b) by Us, in accordance with the provisions of the Insurance Contracts Act 1984. The Named Insured will be entitled to a refund of premium in respect of the unexpired Period of Insurance, provided You have not made a claim during the Period of Insurance to be cancelled.

In either event, You must provide all information requested by Us to enable the calculation of the final premium and any Adjustment Premium.

### Claims Procedures

Upon the discovery of any Event, Occurrence or circumstance giving rise or likely to give rise to a claim under this Policy, You must:

- (a) give Ensurance notice as soon as is reasonably practicable after You become aware of such happening;
- (b) take reasonable steps to prevent further loss;
- (c) furnish all such proof, information and declaration with respect to the claim as Ensurance or We may reasonably require;
- (d) at all reasonable times permit Us, Our agents or representatives to enquire into, investigate and examine the circumstances of any loss;
- (e) in the event of suspected criminal activity, inform the police;
- (f) if required, carry out repairs or make good any minor damage, but in all other cases You must give Us, Our employees, agents or representatives an opportunity to inspect the loss or damage before any repairs or alterations are effected. If no inspection is carried out by, or on behalf of Us within a period of time, which is reasonable having regard to the location of the risk, weather conditions and any other relevant factors, You may proceed with such repairs or replacement.

### Law and Jurisdiction

This Policy is exclusively subject to the law of New South Wales.

All disputes arising out of or under this Policy will be subject to determination by any court of competent jurisdiction in New South Wales.

### Headings

The 'headings' in this Policy are included for the purposes of reference only and do not form part of this Policy for interpretation purposes.

# ANNUAL CONSTRUCTION, PLANT & LIABILITY POLICY

## GENERAL EXCLUSIONS

The following General Exclusions apply to all Sections of this Policy.

We will not be liable for:

### Abandonment

- (a) Insured Damage or any liability in the event that there has been abandonment of the Contract Works or cessation of the Contract Works (other than delay due to Insured Damage) exceeding sixty (60) consecutive days.

### War

- (b) Insured Damage arising out of a consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, or military or usurped power, confiscation, nationalisation, requisition or destruction or damage by or under the order of any government or public or local authority.

### Nuclear Risks

- (c) Insured Damage of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
  - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion or nuclear fuel, or
  - (ii) nuclear weapons material.

For the purpose of this General Exclusion only, combustion shall include any self-sustaining process of nuclear fission.

### Wilful Acts, Omissions and Recklessness

- (d) any wilful act, wilful omission or recklessness committed by You.

### Terrorism

- (e) any act(s) of terrorism.

For the purpose of this General Exclusion, 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:

- (i) involves violence against one or more persons; or
- (ii) involves damage to property; or
- (iii) endangers life other than that of the person committing the action; or
- (iv) creates a risk to health or safety of the public or a section of the public; or
- (v) is designed to interfere with or to disrupt an electronic system.

### Pollution

- (f) Personal Injury or Property Damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon land, the atmosphere, or any water course or body of water, but this General Exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.
- (g) any cost or expense incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this General Exclusion does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage.
- (h) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Products/ Completed Operations that has been discarded, dumped, abandoned or thrown away by others.
- (i) the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants in the USA or Canada or in any country to which the laws of the USA or Canada apply.

Our liability under clauses (f) and (g) above in respect of any one discharge, dispersal, release, migration or escape and for all discharges, dispersals, releases, seepage and escape of Pollutants during any one Period of Insurance will not exceed the Limit of Liability.