

# Community Underwriting Industrial Special Risks Insurance Policy



Making a real difference to the way that insurance is provided to the  
Not for Profit sector

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## Important Information

### About Community Underwriting

Community Underwriting operates under a unique business model in the Australian insurance market. Our story begins over 30 years ago when the NSW Meals on Wheels Association assisted a few member Services that were having difficulty obtaining insurances at a reasonable cost. That grew over the next twenty years into a comprehensive insurance facility assisting over 800 Not for Profits around Australia. In 2014 we created a change in the way that the facility provided insurance to Not for Profit organisations.

Today we are an underwriting agency majority owned by our larger Not for Profit clients, returning our surplus funds back into the sector.

Our 30 year heritage and being uniquely owned by the sector gives us a level of knowledge and empathy that is difficult to match in a corporate insurance organisation.

Our business model is tangible proof of this difference. Each year seventy percent of our surplus is returned to our Not for Profit shareholders as donations. A further five percent of our surplus is set aside each year to fund a small grants program for our non shareholder clients. Our insurer partners now add to this grants pool to enable us to expand even further the number of clients that we are able to assist.

Community Underwriting Agency Pty Ltd (Community Underwriting) acts under a binding authority as Agent for Mitsui Sumitomo Insurance Company Limited (MSI) to issue, vary and cancel policies on MSI's behalf. In all aspects of this Policy, Community Underwriting acts as an agent for Mitsui Sumitomo Insurance Company Limited, the Insurer and not for the Insured.

### About the Insurer

Mitsui Sumitomo Insurance Company Ltd (MSI) ABN 49 000 525 637 AFS License No. 2401816 is part of the Tokyo listed MS & AD Insurance Group with a global network of offices across 42 countries and regions.

### Your Duty of Disclosure

Before You enter into a contract of general insurance with an insurer or its agent, you have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that You know, or could reasonably be expected to know, is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms. You have the same duty to disclose those matters to the insurer before You renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that Your insurer knows or, in the ordinary course of his business, ought to know;
- as to which compliance with Your duty is waived by the insurer.

## Non-Disclosure

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

## Terrorism Insurance Act

We have determined that this Policy (or part of it) is a policy to which the Terrorism Insurance Act 2003 applies. We may elect to reinsure part or all of Our liability under the Act with the Commonwealth Government reinsurer, the Australian Reinsurance Pool Corporation (ARPC).

As a consequence, We may be required to pay a premium to ARPC and that amount (together with the cost of that part of the cover provided by Us and administrative costs associated with the legislation) is reflected in the premium charged to You. As with any other part of Our premium, it is subject to government taxes and charges such as GST, Stamp Duty and where applicable, Fire Service Levy.

For further information contact Community Underwriting or Your broker.

## Privacy

Community Underwriting and Mitsui Sumitomo Insurance Company Limited (MSI) seek at all times to comply with the Privacy Act 1988 and the Australian Privacy Principles therein. If We disclose personal information to You for any reason You must also act in accordance with and comply with the terms of the Privacy Act and the Australian Privacy Principles.

Purpose for collection of information:

The information contained in this document and any other documents provided to Us will be dealt with in accordance with our respective Privacy Policies.

Disclosure of Information that you provide to us:

Community Underwriting and MSI will only use the information in accordance with the terms of the Privacy Policies. Without limiting the application of the Policy Community Underwriting and MSI may disclose personal information to other individuals or organisations in connection with Your claim, including legal advisors, other parties, other lawyers, experts and witnesses, courts and tribunals and other organisations that need to be involved in the matter. By submitting Your notification and continuing to deal with us you consent to Community Underwriting and MSI and these parties collecting, using and disclosing personal and sensitive information about you for these purposes. By signing the claim form You are consenting to the above.

You warrant to us that where you provide us with personal information that you have collected from other individuals:

- that the information has been collected in accordance with the Privacy Act 1988.
- that We are authorised to receive that information from you and to use it for the purpose of providing legal claims management services and advice.
- You, and the person who provided You with the information, are aware and have complied with the Privacy Act 1988 and have notified the person about whom the personal information is collected of the collection use and disclosure of such information.

By executing the claim form you are indemnifying Community Underwriting and MSI against any breach that arises directly or indirectly out of any act or omission of your part which does not accord with the conduct required under the Privacy Act 1988.

#### Direct Marketing:

We do not disclose personal information that We collect to a third party for the purpose of allowing them to direct market their products and services unless You have given Us Your permission for Us to do this.

#### Cross Border:

We will share Your personal information with the Community Underwriting and MSI. Our data containing Your information is stored in our data centre using dedicated hardware and network. We may also use Saas, Cloud computing or other technologies from time to time and Your information may be stored outside Australia. We will not transfer personal information to a recipient in a foreign country unless We have appropriate protections in place as required by the relevant privacy laws. Your information will be stored on our data base for such period of time as required by law.

#### Further information:

If you would like further information, please review the

full Privacy Policy at [www.communityunderwriting.com.au](http://www.communityunderwriting.com.au) and [www.msi-oceania.com](http://www.msi-oceania.com) or if you have any complaints or concerns over the protection of the information you have given to us or that we have collected from others, contact:

Community Underwriting Agency Pty Ltd

P.O. Box 173, Balmain NSW 2041

Telephone 02 8045 2580

Mitsui Sumitomo Insurance Company Limited

Level 18, 1 Bligh Street

Sydney, NSW 2000

Telephone 02 9222 7600

Facsimile 02 9232 7006.

## Complaints

Any enquiry or complaint relating to this insurance should in the first instance be referred to:

Complaints Manager

Community Underwriting Agency Pty Ltd

P.O. Box 173, Balmain NSW 2041

Should we be unable to resolve your complaint within 45 days or you are not happy with our response/handling of your complaint at any given time, you can seek an external review via our external dispute resolution scheme, administered by the Australian Financial Complaints Authority (AFCA).

This is an independent national body and its services are free to you. As a member We agree to accept the AFCA's decision.

You can contact the AFCA by:

Mail: Australian Financial Complaints Authority Ltd,

GPO Box 3, Melbourne, Victoria 3001;

Phone: 1800 931 678;

[info@afca.org.au](mailto:info@afca.org.au)

Facsimile: (03) 9613 6399

Website: [www.afca.org.au](http://www.afca.org.au)

## Preamble

This Policy incorporates the Schedule, Sections, Definitions, Conditions, Exclusions, Endorsements, Memoranda and Warranties (if any) and any other terms herein contained which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

WHEREAS the Insured named in the Schedule has paid or agreed to pay to the Insurer(s) specified below the Premium shown on the Schedule, now the Insurer(s) agree(s), subject to the terms, Conditions, Exclusions, Memorandum, Warranties, limitations and other provisions contained herein or endorsed hereon, to indemnify the Insured as specified herein against loss arising from any insured events which occur during the Period of Insurance stated in the Schedule or any renewal thereof.

PROVIDED THAT the total liability of the Insurer(s) at any one Situation shall not exceed the appropriate Limit or Sub limit(s) of Liability as stated in the Schedule or such amount(s) as may be substituted therefore by Endorsement or Memorandum hereon or attached hereto.

### Definitions

The following definitions shall apply unless a more specific definition is provided elsewhere in the Policy.

**Accidental damage** shall mean –

Subject to the exclusions contained herein, physical loss, destruction or damage other than that caused by fire, smoke, explosion, earthquake, subterranean fire, volcanic eruption, thunderbolt, lightning, impact by vehicles or animals, impact by aircraft or other aerial devices, the acts of persons taking part in riots or strikes, acts of malicious intent, storm and/or tempest, rainwater, hail, flood, water, theft or burglary, loss of money or sprinkler leakage.

**Burglary** shall mean –

- (a) Theft consequent upon actual forcible and violent entry upon the premises where insured property is located, or any attempt thereat.
- (b) Theft, or any attempt thereat, by a person feloniously concealed on the said premises.

**Flood** shall mean –

The inundation of normally dry land by water escaping or released from the normal confines of any natural watercourse or lake whether or not altered or modified or of any reservoir, canal or dam.

**Theft** shall mean –

Theft not consequent upon actual forcible and violent entry upon the premises where insured property is located, or any attempt thereat.



## Section 1 - Material Loss or Damage

### The Indemnity

In the event of any Physical Loss, Destruction or Damage (hereinafter in Section 1 referred to as "damage" with "damaged" having a corresponding meaning) not otherwise excluded happening at the situation to the Property Insured described in Section 1 the Insurer(s) will, subject to the provisions of the Policy including the limitation of the Insurer(s) liability, indemnify the Insured in accordance with the applicable Basis of Settlement.

Subject to the liability of the Insurer(s) not being increased beyond the Limit(s) of Liability already stated herein, the Insurer(s) will also indemnify the Insured for:

- (a) Architects', surveyors', consulting engineers', legal and other fees and clerks' of works, salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon damage to property hereby insured but not such costs, fees and salary for preparing any claim hereunder.
- (b) Any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any building(s) insured hereunder; provided that the Insurer(s) shall not be liable for payment of any fines and/or penalties imposed upon the Insured by any such Authorities.
- (c) Costs and expenses necessarily and reasonably incurred for the purpose of extinguishing fire at or in the vicinity of property hereby insured or threatening to involve such property or for the purpose of preventing or diminishing imminent damage to property hereby insured by any other peril insured against by the Policy, including damage to gain access and the cost of replenishment of fire fighting appliances and charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines.
- (d) Costs and expenses necessarily and reasonably incurred for the temporary protection and safety of property hereby insured pending repair or replacement consequent upon damage recoverable hereunder.
- (e) Costs of replacing locks and/or keys and/or combinations where if as a result of burglary, theft or any attempt thereat the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations.
- (f) Costs and expenses necessarily and reasonably incurred in respect of:
  - (i) the removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to property insured by the Policy and occasioned by a peril hereby insured against;
  - (ii) the Insured's legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 8 in relation to premises, roadways, services, railways or waterways of others, for such costs together with the cost of cleaning provided that such liability is neither recoverable under any other policy of insurance nor was assumed by the Insured under an agreement entered into after the commencement of the period of insurance or any renewal thereof unless liability would have attached in the absence of such agreement  

Provided that the insurance under this section does not extend to any liability that the Insured may incur as a consequence of pollution of any kind.
  - (iii) the demolition and removal of any property belonging to the Insured which is no longer useful for the purpose it was intended, provided such demolition and removal is necessary for the purpose of the reinstatement or replacement of property insured under this Section and is consequent upon damage to insured property by a peril hereby insured against.
- (g) Damage to clothing and tools of trade belonging to directors and employees of the Insured whilst on the insured premises.

Provided that the insurance under Clauses (b) to (g) inclusive above shall not be subject to application of any Coinsurance Clause or memorandum contained in this Policy.

### The Property Insured

All real and Personal Property of every kind and description (except as hereinafter excluded) belonging to the Insured or for which the Insured is responsible, or has assumed responsibility to insure prior to the occurrence of any damage, including all such property in which the Insured may acquire an insurable interest during the Period of Insurance.

It is understood and agreed that the term "personal property" shall include Money (which shall mean current coin, bank notes, currency notes, cheques, credit card sales and/or discount house vouchers, postal orders, money orders, unused postage and revenue stamps and including the value of stamps contained in franking machines) whilst contained in the situations and whilst in transit to and from such situations anywhere in Australia, including whilst contained in the night safe of any Bank or financial institution where the Insured transacts business, and in the personal custody of the Insured and/or persons authorised by the Insured whilst contained in their private residences.

### Basis of settlement

- (a) On Buildings, Machinery, Plant and all other Property and Contents (other than those specified below); the cost of Reinstatement, Replacement or Repair in accordance with the provisions of the Reinstatement and Replacement and Extra Cost of Reinstatement Memoranda set out herein  
Provided that if the Insured elects to claim the indemnity value of any damaged property, the Insurer(s) will pay to the Insured the value of such property at the time of the happening of the damage or at its/their option reinstate, replace or repair such property or any part thereof. In any event the Insurer(s) will pay costs incurred by the Insured in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.
- (b) On raw materials, supplies and other merchandise not manufactured by the Insured; the replacement cost at the time and the place of replacement or, if such property is not replaced, the value thereof at the time and place of the damage.
- (c) On Material in Process of Manufacture; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon at the time and the place of the damage.
- (d) On Finished Goods; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon before any allowance for profit or the cost of re-stocking such goods, whichever is the lesser.
- (e) On computer systems records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description; the cost of reinstating, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to the Insured of the said information; or, if such is not required, the placement cost of materials as blank stationery at the time and place of damage.
- (f) On patterns, models, moulds, dies or lasts; the cost of repair or replacement (if actually replaced) otherwise the indemnity value to the Insured of such property.
- (g) On glass; the cost of repairing or replacing the broken glass including:
  - Temporary Shuttering and/or hiring of security service pending replacement of broken glass
  - Signwriting or Ornamentation on glass
  - Replacement Burglar Alarm Tapes on glass
  - Removing and re-fixing of Window and Show Case Frames and
  - Fittings and Heat Reflecting Material or process on glass.
- (h) On Directors' and Employees' clothing and tools of trade; the current replacement cost at the time of replacement subject to due allowance for wear and tear, depreciation and betterment.
- (i) On empty premises awaiting demolition; the salvage value of the building materials and/or landlords fixtures and fittings.

## Memoranda to Section 1 of the Policy

Except to the extent that the Policy is hereby modified under the following Memoranda the terms, conditions and limitations of the Policy shall apply.

### Interests of other parties

The insurable interest of only those lessors, financiers, trustees, mortgagees, owners, and all other parties specifically noted in the records of the Insured shall be automatically included without notification or specification; the nature and extent of such interest to be disclosed in event of damage.

Where the insurance covers the interest of more than one party, any act or neglect of an individual party will not prejudice the rights of the remaining party/parties, provided the remaining party/parties shall immediately, on becoming aware of any act or neglect whereby the risk of damage has increased, give notice in writing to the Insurer(s) and on demand pay such reasonable additional premium as the Insurer(s) may require.

Notwithstanding the foregoing paragraph it is understood and agreed that, in the event of any of the parties referred to herein being entitled to the benefits of any 'Concessions Agreement', which it may have entered into with the Insurer(s), the said 'Concessions Agreement' will take precedence over the foregoing paragraph.

### Branded goods

Any salvage of branded goods and/or merchandise, the Insured's own or held by the Insured in trust or on commission, and/or goods sold but not delivered, shall not be disposed of by sale without the consent of the Insured. If such salvage is not disposed of by sale then the damage will be assessed at the value agreed between the Insured and the Insurer(s) after brands, labels or names have been removed by or on behalf of the Insured.

### Declared values

The Schedule of Declared Values at each Situation (in accordance with the applicable Basis of Settlement) attaches to and forms part of this Policy for the purpose of the application of Coinsurance.

### Reinstatement and replacement

(Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (i) under Basis of Settlement).

The Basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the damaged property at the time of its reinstatement, subject to the following provisions and subject also to the terms, conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy.

For the purpose of the insurance under this memorandum "reinstatement" shall mean:

- (a) Where property is lost or destroyed; in the case of a building, the rebuilding thereof, or in the case of property other than a building, the replacement thereof, by similar property, in either case in a condition equal to but not better or more extensive than its condition when new.
- (b) Where property is damaged; the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.

### Provisions

- (i) The work of rebuilding, replacing, repairing or restoring, as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Insured, but subject to the liability of the Insurer(s) not being thereby increased), must be commenced and carried out with reasonable dispatch, failing which the Insurer(s) shall not be liable to make any payment greater than the indemnity value of the damaged property at the time of the happening of the damage.

(ii) When any property insured to which this Memorandum applies is damaged in part only, the liability of the Insurer(s) shall not exceed the sum presenting the cost which the Insurer(s) could have been called upon to pay for reinstatement if such property had been wholly destroyed.

(iii) Property insured under this memorandum is separately subject to the following Coinsurance clause: -

in the event of damage to any property insured hereunder at any situation caused by an event hereby insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount that the Insured's declaration of value of property insured at such situation on the day of the commencement of the Period of Insurance bears to the sum representing eighty-five per cent (85%) per cent of the cost which would have been incurred in reinstatement if the whole of the such property had been destroyed on that day, but not exceeding the Limit of Liability expressed in the Schedule; provided that if the sum actually incurred or expended in rebuilding or replacing the damaged property, within the meaning of sub-paragraph (a) of the above mentioned definition of reinstatement, exceeds the amount which would have been payable under this Policy if this memorandum had not been incorporated herein, but is less than the cost of reinstatement as above defined, then the sum so actually incurred or expended shall, for all purposes of this memorandum, be deemed to be the cost of reinstatement of the property.

Provided further that the above Clause shall not apply if the amount of the damage does not exceed five (5) per cent of the amount of the Insured's declaration aforementioned.

(iv) No payment beyond the amount which would have been payable under the Policy if this Memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred; provided that where the Insured reinstates or replaces any lost or destroyed property at a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.

(v) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of the Insured shall be on a similar reinstatement basis.

### Extra cost of reinstatement

(Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (i) under Basis of Settlement).

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of the damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of the Policy.

#### **Provisions**

(i) The work of reinstatement (which may be carried out wholly or partially upon any other site(s), if the requirements of the aforesaid Act, Regulation or By-Law so necessitate, subject to the liability of the Insurer(s) not being thereby increased, must be commenced and carried out with reasonable dispatch, failing which the Insurer(s) shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein.

(ii) The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Insured had been required to comply prior to the happening of the damage.

(iii) Coinsurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for coinsurance purposes in terms set out in any clause contained in the Policy.

(iv) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of the Insured shall be on a similar basis.

(v) If the cost of reinstatement of the damaged property insured is less than fifty per cent (50%) of that which would have been the cost of reinstatement if such property had been destroyed, the amount recoverable shall be limited to:-

(a) the extra cost necessarily incurred in reinstating only that portion damaged; or

(b) whilst applying to such property insured, the Sub Limit stated herein, whichever is the greater. In the event of a Sub Limit not being stated in the Policy the Insurer(s) liability shall be limited to the amount as described in sub-paragraph (a) of this provision.

### Floor space ratio index (plot ratio)

Subject to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy, in the event of the building(s) being damaged so as to constitute total loss or constructive total loss and, as a result of the exercise of statutory powers and/or authority by any Government Departments, Local Government or any other Statutory Authorities reinstatement of such building(s) as before is prohibited and reinstatement is only permissible subject to a reduced floor space ratio index:-

the Insurer(s) agree(s) to pay in addition to any amount payable on reinstatement of the such building(s) the difference between:-

- (a) the actual cost of reinstatement incurred in accordance with the reduced floor space ratio index and
- (b) the cost of reinstatement which would have been incurred had a reduced floor space ratio index not been applicable.

In arriving at the amount payable under (a) and (b) above any payments made by the Insurer(s) shall include the extra cost of reinstatement, including demolition or dismantling of the insured property, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority.

Any payment made for the difference between (a) and (b) above shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on behalf of the Insured in the reinstatement of the building(s).

### Acquired companies

This Policy extends to include property located in Australia belonging to companies and other organisations a controlling interest in which is acquired by the Insured during the currency of the Policy; subject to the Insured declaring details of such acquisition within a reasonable period following the date of acquisition. Provided the Business of the new acquisition shall be similar to the Business as stated in the Schedule.

For the purposes of this Memorandum a controlling interest shall in the case of a Company, mean the acquisition of shares carrying more than fifty per cent (50%) of votes capable of being cast at a general meeting of ordinary shareholders in such Company.

### Coinsurance

Unless otherwise stated herein to the contrary, this Policy is subject to the following Coinsurance memorandum:

In the event of damage to property insured hereunder at any situation caused by any event hereby insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount of the Insured's declaration of value of such property on the day of the commencement of the Period of Insurance bears to the sum representing eighty five per cent (85%) of the actual value of property insured at such situation on the day of commencement of the Period of Insurance but not exceeding the Limit of Liability expressed in the Schedule.

Provided that this clause shall not apply if the amount of any damage does not exceed 5% of the amount of the Insured's declaration aforementioned.

It is expressly understood and agreed that the provisions of this Coinsurance Memorandum shall not apply in respect of that part of any claim which is made under the provisions of the Reinstatement and Replacement Memorandum.

## Section 2 – Consequential Loss

### The Indemnity

In the event of any building or any other property or any part thereof used by the Insured at the Premises for the purpose of the Business being physically lost, destroyed or damaged by any cause or event not hereinafter excluded (loss, destruction or damage so caused being hereinafter termed 'Damage') and the Business carried on by the Insured being in consequence thereof interrupted or interfered with, the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) liability, pay to the Insured the amount of loss resulting from such interruption or interference in accordance with the applicable Basis of Settlement.

Provided that the Insurer(s) will not be liable for any loss under this section unless the Insured's property lost, destroyed or damaged is insured against such Damage (loss arising out of destruction or damage by explosion of Boilers and/or Economisers excepted) and the Insurer or Insurers by which such property is insured shall have paid for, or admitted liability in respect of such Damage unless no such payment shall have been made or liability shall not have been admitted therefore solely owing to the operation of a provision in such insurance excluding liability for loss below a specific amount.

### Basis of settlement

#### **Item No. 1**

The insurance under this item is limited to loss of Gross Profit due to: (a) Reduction in Turnover and (b) Increase in Cost of Working and the amount payable as indemnity thereunder shall be:

(a) In respect of Reduction in Turnover:

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Turnover;

(b) In Respect of Increase in Cost of Working

the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Provided that if the Declared Value of Gross Profit at the commencement of each Period of Insurance be less than the sum produced by applying the Rate of Gross Profit to the Annual Turnover, (or its proportionately increased multiple thereof, where the Indemnity Period exceeds 12 months) the amount payable hereunder shall be proportionately reduced.

#### **Item No. 2**

The insurance under this item is to cover such reasonable professional fees as may be payable by the Insured, and such other reasonable expenses necessarily incurred by the Insured and not otherwise recoverable, for the preparation of claims under the Insured's Material Damage and Consequential Loss insurance policies and the Insurer(s) shall indemnify the Insured for such reasonable fees and expenses.

#### **Item No. 3**

The insurance under this item is limited to loss in respect of Payroll and the amount payable as indemnity thereunder shall be:-

(a) In respect of Reduction of Turnover

- (i) during the portion of the Indemnity Period beginning with the occurrence of the Damage and ending not later than the number of weeks thereafter specified in the Schedule: the sum produced by applying the Rate of Payroll to the Shortage in Turnover during the said portion of the Indemnity Period less any saving during the said portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Payroll paid.

- (ii) during the remaining portion of the Indemnity Period: the sum produced by applying the Rate of Payroll to the Shortage in Turnover during the said remaining portion of the Indemnity Period less any saving during the said remaining portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Payroll paid; but not exceeding the sum produced by applying the percentage of the Rate of Payroll specified in the Schedule to the Shortage in Turnover during the said remaining portion of the Indemnity Period, increased by such amount as is deducted for savings under the terms of Clause (a)(i)

**Note:**

At the option of the Insured the number of weeks referred to in Clause (a)(i) above may be increased to the number of weeks specified in the Schedule under the heading 'Consolidated Period' provided that the amount arrived at under the provisions of Clause (a)(ii) shall not exceed such amount as is deducted under Clause (a)(i) for savings effected during the said increased number of weeks.

- (b) In respect of Increase in Cost of Working

So much of the additional expenditure described in clause (b) of Item 1 as exceeds the amount payable thereunder, but not more than the additional amount which would have been payable in respect of Reduction in Turnover under the provisions of clauses (a)(i) and (ii) of this item had such expenditure not been incurred

Provided that if the Declared Value of Insured Payroll at the commencement of each Period of Insurance be less than the sum produced by applying the Payroll limits to the sum produced by applying the rate of Payroll to the Annual Turnover (or its proportionately increased multiple thereof, where the Indemnity Period exceeds 12 months) the amount payable shall be proportionately reduced.

**Item No. 4**

The Insurance under this item is limited to increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of the damage for the purpose of avoiding or diminishing the reduction in Turnover and/or resuming and/or maintaining normal business operations and/or services.

Definitions

**Gross Profit**

the amount by which:-

- (a) the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed
- (b) the sum of the amount of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses as set out in the Schedule

**Note:** The amounts of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with the Insured's normal accountancy methods, due provision being made for depreciation.

**Turnover**

the money (less discounts, if any allowed) paid or payable to the Insured for goods sold and delivered and for services rendered in course of the Business at the premises.

**Indemnity Period**

the period beginning with the occurrence of the Damage and ending not later than the number of months specified in the Schedule thereafter, during which the results of the Business shall be affected in consequence of the Damage.

**Payroll**

the remuneration (including but not limited to payroll tax, bonuses, holiday pay, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) of all employees.

**Shortage in Turnover**

The amount by which the Turnover during a period shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period.

**Rate of Gross Profit**

The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the Damage to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage or which would have affected Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage.

**Annual Turnover**

The Turnover during the twelve months immediately before the date of the damage.

**Standard Turnover**

The Turnover during that period in the 12 months immediately before the date of the Damage which corresponds with the Indemnity Period.

**Rate of Payroll**

The rate of Payroll to Turnover during the financial year immediately before the date of Damage.

[Memoranda to Section 2](#)

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

**Turnover elsewhere after damage**

If during the Indemnity Period goods shall be sold or services shall be rendered elsewhere than at the Premises for the benefit of the Business either by the Insured or by others on his behalf, the money paid or payable in respect of such sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

**Departmental clause**

If the Business be conducted in departments the independent trading results of which are ascertainable the provision of clauses (a) and (b) of Item Nos. 1 and 3 shall apply separately to each department affected by the Damage.

**New business**

In the event of Damage occurring at the premises before the completion of the first year's trading of the Business the terms 'Rate of Gross Profit', 'Annual Turnover', 'Standard Turnover' and 'Rate of Payroll' shall bear the following meanings and not as within stated:

**Rate of Gross Profit:**

The rate of Gross Profit earned on the Turnover during the period between the date of the commencement of the Business and the date of the Damage.

**Annual Turnover:**

The proportional equivalent, for a period of 12 months of the Turnover realised during the period between the commencement of the Business and the date of the Damage.

**Standard Turnover:**

The proportional equivalent, for a period of 12 months of the Turnover realised during the period between the commencement of the Business and the date of the Damage.

) to which such adjustment  
) shall be made as may be  
) necessary to provide for the  
) trend of the Business and  
) for variations in or other  
) circumstances affecting the  
) Business and for variations  
) in or other circumstances  
) affecting the Business either  
) before or after the Damage  
) or which would have  
)



**Rate of Payroll:**

The rate of Payroll to Turnover during the period between the date of the commencement of the Business and the date of the damage to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Damage or which would have affected the Business had the Damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Damage would have been obtained during the relative period after the Damage.

) affected the Business had  
 ) the Damage not occurred so  
 ) that the figures thus  
 ) adjusted shall represent as  
 ) nearly as may be reasonably  
 ) practicable the results  
 ) which but for the Damage  
 ) would have been obtained  
 ) during the relative period  
 ) after the Damage

**Accumulated stocks**

In adjusting any loss, account shall be taken and equitable allowance made if any Shortage in Turnover due to the damage is postponed by reason of the Turnover being temporarily maintained from accumulated stocks of finished goods.

**Books of account**

Any particulars or details contained in the Insured's books of account or other business books or documents which may be required by the Insurer(s) for the purpose of investigating or verifying any claim hereunder may be produced and certified by the Insured's auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates.

The words and expressions used herein shall have the meanings usually attached to them in the books and accounts of the Insured unless otherwise defined in this Policy.

**Public Utilities Extension**

Any loss resulting from interruption or interference with the Business in consequence of damage to property caused by a peril damage as a result of which is insured hereunder, at any electricity station or sub-station, gas works or water works of a public supply undertaking which is situated on or immediately adjacent to the Premises shall be deemed to be loss resulting from Damage to Property used by the Insured at the Premises.

**Turnover/output alternative**

At the option of the Insured the term 'Output' may be substituted for the term 'Turnover' and for the purpose of the Policy, 'Output' shall mean the sale and/or invoice value of goods manufactured and/or processed by the Insured in the course of the Business at the Premises. Provided that only one such meaning shall be operative in connection with any one event involving damage.

If the meaning set out above be used, the memorandum 'Turnover Elsewhere After Damage' shall be altered to read as follows:

"If during the Indemnity Period goods shall be manufactured and/or processed other than at the Premises for the benefit of the Business either by the Insured or by others on the Insured's behalf the sale and/or invoice value of the goods so manufactured and/or processed shall be brought into account in arriving at the Output during the Indemnity Period".

**Computer**

This Policy extends to include loss (not otherwise recoverable) resulting from interruption of or interference with the Business occasioned by Damage to computer installations, including ancillary equipment and data processing media utilised by the Insured anywhere in Australia.

**Salvage sale**

If, following Damage giving rise to a claim under this Policy, the Insured shall hold a Salvage Sale during the Indemnity Period:

- (i) Clause (a) of Item 1 of this Section shall, for the purpose of such claim, read as follows:
  - (a) In respect of Reduction in Turnover, the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale.

(ii) The definition of Shortage in Turnover shall, for the purpose of such claim, read as follows:

Shortage in Turnover shall mean the amount by which the Turnover during a period (less the Turnover for the period of salvage sale) shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which shall be deducted the Payroll paid during the period of the salvage sale.

**Premises in the vicinity (prevention of access)**

Loss as Insured by the Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of the Premises caused by a peril, damage as a result of which is insured hereunder, which shall prevent or hinder the use thereof or access thereto, whether the Premises or property of the Insured therein shall be damaged or not, shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

Loss as insured by this Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of and forming part of or contained in the complex of which the Premises forms part caused by a peril, damage as a result of which is insured hereunder, which results in a cessation or diminution of trade due to temporary falling away of potential custom whether the Premises or property of the Insured therein shall be damaged or not shall be deemed to be loss resulting from damage to property used by the Insured at the Premises.

**Registered vehicles and/or trailers**

Notwithstanding the provisions of Property Exclusion 5, this Policy extends to include loss resulting from interruption of or interference with the Business occasioned by Damage to registered vehicles and/or trailers whilst such vehicles or trailers are at the Premises owned or occupied by the Insured; provided always that this Policy does not cover loss resulting from physical loss, destruction of or damage to such vehicles and/or trailers whilst they are being used on any public highway or thoroughfare.

## Exclusions - Applicable to all Sections of the Policy

### Property Exclusions

This Policy does not cover physical loss, destruction of or damage to the following property or loss under Section 2 resulting therefrom:-

1. Property (except Money) whilst in transit other than during the incidental movement of such property within situations occupied by the Insured. This exclusion shall not apply during temporary removal of property (other than stock and/or merchandise) and unregistered motor vehicles to any situation in the Commonwealth of Australia but, whilst such property is in transit, cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest
2. Money
  - (a) Whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured excepting the excess amount over and above such more specific insurance which excess is held to be covered hereunder  
Provided that where in the ordinary course of business the Insured enters into an agreement with such carriers and such agreement provides that the Insured shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result of any event hereby insured against. This insurance shall operate as if this Property Exclusion 2(a) had been deleted.
  - (b) stolen from an unlocked and unattended vehicle
  - (c) stolen from a safe or strongroom opened by a key or by use of details of a combination, either of which has been left at the Situation outside business hours, unless such key or combination details have been properly secured
  - (d) where the loss is not discovered within five (5) working days of the event
  - (e) where the loss arises out of:
    - (i) kidnapping;
    - (ii) bomb threat;
    - (iii) hoax;
    - (iv) extortionor any attempt thereat.
3. Jewellery, furs, bullion, precious metals or stones other than as stock and/or merchandise of the Business
4.
  - (a) any locomotive or rolling stock or watercraft other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder whilst any watercraft is on water.
  - (b) any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.
5. vehicles or trailers registered or licensed to travel on a public road, provided this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by the Insured
6. livestock, animals, birds or fish
7. standing timber, growing crops and pastures
8. land, provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy
9. bridges, canals, roadways and tunnels, railway tracks (other than on the premises occupied or used by the Insured), dams and reservoirs (other than tanks) and their contents
10. docks, wharves and piers not forming part of any building

11. mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy
12. property during the course of, and as a result of, its processing
13. (a) gates, fences, retaining walls, textile awnings and blinds  
(b) property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof caused by wind, rainwater or hail
14. (a) property undergoing construction, erection, alteration or addition when the value of work exceeds 10% of the Limit of Liability or \$500,000 whichever is the lesser  
(b) empty premises undergoing demolition
15. oil and gas drilling and/or production rigs whilst offshore
16. All Machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electro-mechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.

Provided that Property Exclusion 16 shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded herein which results from any of the events referred to in this exclusion.

For the purpose of Property Exclusion 16, Machinery means:

any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.

17. Any boiler (other than a boiler used for domestic purposes) economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such loss or destruction or damage. This exclusion shall not apply to Section 2 as specifically stated therein.

## Perils Exclusions

The Insurer(s) shall not be liable under Sections 1 and/or 2 in respect of:

1. physical loss, destruction or damage to the Property Insured
  - (a) directly or indirectly occasioned by or happening through or connected with war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power
  - (b) resulting from confiscation, nationalisation, requisition or damage to property by or under the order of any Government or Public or Local Authority

Notwithstanding the provisions of Perils Exclusion 1(b) the Insurer(s) shall be liable for loss, destruction of or damage to or the cost of removal of, sound property at the Premises for the purpose of preventing or diminishing imminent damage by, or inhibiting the spread of, fire or any other peril insured against under this Policy

2. (a) physical loss, destruction or damage to the Property Insured  
(b) any legal liability 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 waste or from the combustion of nuclear fuel.

For the purpose of this exclusion only, "combustion" shall include any self-sustaining process of nuclear fission

(ii) nuclear weapons materials

3. physical loss, destruction or damage occasioned by or happening through:-

(a) flood, which shall mean the inundation of normally dry land by water overflowing from the normal confines of any natural watercourse or lake (whether or not altered or modified), reservoir, canal or dam.

(b) water from or action by the sea, tidal wave or high water

Provided that Perils Exclusions 3(a) and 3(b) shall not apply if loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance

4. physical loss, destruction or damage occasioned by or happening through:-

(a) moths, termites or other insects, vermin, rust or oxidation, mildew, mould, contamination or pollution, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom)

(b) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good

(c) error or omission in design, plan or specification or failure of design

(d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration

(e) faulty materials or faulty workmanship

Provided that this Exclusion 4(a) to (e) shall not apply to subsequent loss, destruction of or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion

5. physical loss, destruction or damage occasioned by or happening through:-

(a) incorrect siting of buildings consequent upon

(i) error in architectural design or specification

(ii) faulty workmanship

(iii) non compliance by the Insured (or anyone acting on behalf of the Insured) with the necessary permits issued by Government, Public or Local Authorities

(b) demolitions ordered by Government or Public or Local Authorities due to failure on the part of the Insured or their agents to obtain the necessary permits required

6. physical loss, destruction or damage occasioned by or happening through:-

(a) theft of property (other than Money in Transit) in the open air

(b) unexplained or inventory shortage or disappearance resulting from clerical or accounting errors, shortage in the supply or delivery of materials to or from the Insured

(c) (i) spontaneous combustion

(ii) spontaneous fermentation or heating or any process involving the direct application of heat

Provided the Perils Exclusions 6(c)(i) and 6(c)(ii) shall be limited to the item or items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation, heating or process involving the direct application of heat

7. physical loss, destruction or damage occasioned by or happening through:-

(a) (i) fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting, data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means involving the Property Insured by the Insured or any employee(s) of the Insured acting alone or in collusion with any other person(s)

- (ii) access by any person(s) other than the Insured or the Insured's employee(s) to the Insured's computer system via data communication media that terminate in the Insured's computer system

Provided that this exclusion shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of the Insured or theft of money whilst in transit.

- (b) (i) the cessation of work whether total or partial
  - (ii) the cessation, interruption or retarding of any process or operation
- as a result of strikes, labour disturbances or locked out workers

Provided that Perils Exclusions 7(b)(i) and 7(b)(ii) shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons

- (c) erosion, subsidence, earth movement or collapse resulting therefrom
- (d) kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt threat

Provided that this Exclusion 7(a) to (d) shall not apply to subsequent loss, destruction or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

- 8. any legal liability of whatsoever nature other than as herein provided
- 9. consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as herein provided in Section 2.

## Memoranda applicable to all Sections

Except to the extent that the Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

### Amount of Policy not reduced by loss

The insurance under each section and/or item of this Policy and the Indemnity Period shall be automatically reinstated in the event of any loss in consideration of the payment by the Insured of a pro rata additional premium calculated on the amount of the loss settlement at the rate(s) agreed for the Period of Insurance.

### Event

Only for the purpose of the application of any deductible: all loss destruction or damage resulting from earthquake occurring during each period of 72 consecutive hours shall be considered as one event whether such earthquake is continuous or sporadic in its sweep and/or scope and the loss, destruction or damage was due to the same seismological conditions. Each event shall be deemed to have commenced on the first happening of any such loss, destruction or damage not within the period of any previous event.

### Subrogation waiver

The Insurer(s) agree(s) to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:-

- (a) any corporation or organisation (including their directors, officers, employees or servants) owned or controlled by any Insured named herein or subsidiary to any Insured named herein or any co-owner of the property insured hereunder;
- (b) any Insured named or described by the Policy (including its directors, officers, employees or servants).

### Adjustment of premium

- (a) The premium shown is provisional and is calculated on the Declared Values of:-
  - (i) Property Insured
  - (ii) Gross Profit and Insured Payroll,on the day of commencement of each Period of Insurance.
- (b) The Insured undertakes to declare to the Insurer(s) within a reasonable time after the day of expiry of the Period of Insurance.
  - (i) the value of property insured on the day of expiry of the Period of Insurance. For purpose of this declaration stock-in-trade and merchandise shall be taken at its average value during the Period of Insurance.
  - (ii) the amount of the Gross Profit earned and Payroll paid, in accordance with the cover afforded in the respective items of Section 2, in the course of the Business during the accounting period of 12 months most nearly concurrent with the Period of Insurance.
- (c) The provisional premium shall be adjusted by payment to the Insurer(s) of an additional premium or by allowance to the Insured of a return premium, as the case may be, calculated at the agreed rate on:
  - (i) Fifty (50) per cent of the difference between property declared in accordance with Clauses (a)(i) and (b)(i).
  - (ii) The full agreed rate hereunder on the difference between the amounts declared under (a)(ii) and (b)(ii).
- (d) It is agreed to make allowance for any abnormal fluctuation in values and to charge a premium commensurate with the risk, such premium to be agreed between the parties to this agreement.
- (e) The Declaration of Values at the expiry of the Period of Insurance declared in accordance with this memorandum shall not be reduced as the result of loss, destruction or damage in respect of which a claim has been paid or is payable under this Policy.

## Conditions - Applicable to all Sections

### 1. Misdescription And Non-Disclosure

If the Insured -

- (i) failed to disclose any matter which the Insured was under a duty to disclose to the Insurer(s); or
- (ii) made a misrepresentation to the Insurer(s) before this Policy was entered into

and if the Insurer(s) would not have entered into this Policy for the same premium and on the same terms and Conditions expressed in this Policy but for the failure to disclose or the misrepresentation.

then -

- (a) the liability of the Insurer(s) in respect of any claim will be reduced to an amount to place the Insurer(s) in the same position in which the Insurer(s) would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
- (b) if the non-disclosure or misrepresentation was fraudulent, the Insurer(s) may avoid this Policy.

### 2. Alteration

The Insurer(s) shall not be liable for loss, destruction of or damage to any property insured hereunder caused or contributed to by any alteration after the commencement of this Policy -

- (a) by removal of such property from the Premises other than as provided under the terms of Property Exclusion 1;
- (b) in the trade or processes of manufacture carried on at the Premises or whereby the nature of the occupation or other circumstances affecting the Premises and/or the Insured's property therein contained shall be changed in such a way as to increase the risk of loss, destruction or damage;
- (c) whereby any premises containing any property insured hereunder shall become unoccupied, and so remain for a period of more than thirty days; or
- (d) whereby the Insured's interest ceases except by will or the operation of law,

Provided that any such alteration, upon coming to the knowledge of the Insured's officer responsible for insurance, shall be immediately notified to the Insurer(s) and, if agreed to by the Insurer(s) in writing, an appropriate additional premium paid if required.

### 3. Sprinkler installations - applicable to owned premises or installations for which the insured is responsible

The Insured warrants that in such of the Premises as are protected or as are required by law to be protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the Premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

The Insured further warrants that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS 1851 Part 3 Automatic Sprinkler Installation by the installing engineers or firm, failing this, by a person or organisation who must be approved by the Insurer(s) to carry out such maintenance.

Notice of all alterations and additions to the automatic sprinkler installation shall be given by the Insured to the Insurer(s) as soon as reasonably practicable.

### 4. Other insurance

The Insured shall give written notice as soon as practicable to the Insurer(s) of any other insurance or insurances effected covering the Property Insured.



## 5. Cancellation

- (a) This Policy may be cancelled at any time at the request of the Insured, in which case the Insurer(s) will retain the customary short-period rate for the time this Policy has been in force.
- (b) The Insurer(s) may also cancel this Policy by giving the Insured written notice to that effect where -
  - (i) the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
  - (ii) the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
  - (iii) the person who was the Insured at the time when this Policy was entered into made a misrepresentation to the Insurer(s) during the negotiations for this Policy but before it was entered into;
  - (iv) the Insured or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the Premium;
  - (v) the Insured has made a fraudulent claim under this Policy or any other Policy of insurance (whether with the Insurer(s) or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
  - (vi) the Insured failed to notify the Insurer(s) of any specific act or omission where such notification is required under the terms of this Policy; or
  - (vii) the Insured acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the Insurer(s) to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
- (c) The Insurer(s) notice of cancellation takes effect at the earlier of the following times:
  - (i) the time when another policy of insurance between the Insured and the Insurer(s) or some other insurer, being a policy that is intended by the Insured to replace this Policy, is entered into; or
  - (ii) 4.00 p.m. on the thirtieth business day after the day on which notice was given to the Insured.

In the event that the Insurer(s) cancel(s) this Policy, the Insurer(s) will repay to the Insured a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

## 6. Notification of claims

On the happening of any loss, destruction or damage, the Insured shall forthwith give notice thereof in writing to the Insurer(s) and shall (within thirty (30) days after such loss, destruction or damage or such further time as the Insurer(s) may in writing allow), at the Insured's own expense, deliver to the Insurer(s) a claim, in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged and of the amount of loss, destruction or damage thereto, having regard to their value at the time of the loss, destruction or damage, together with details of any other insurances on any property hereby insured.

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business to avoid or diminish the loss and shall also deliver to the Insurer(s) a statement in writing of any claim certified by the Insured's auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

No claim under this Policy shall be payable unless the Insured has complied with the terms of this condition.

## 7. Fraud

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the wilful act or with the connivance of the Insured, the Insurer(s), without prejudice to any other right(s) the Insurer(s) might have under this Policy, shall be entitled to refuse to pay such claim.

## 8. Reinstatement

If the Insurer(s) elect(s) or become(s) bound to reinstate or replace any property, the Insured shall at the Insured's own expense produce and deliver to the Insurer(s) all such plans, documents and information as the Insurer(s) may reasonably require. The Insurer(s) shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend more than the applicable Limit of Liability.

## 9. Insurer(s) rights

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Policy the Insurer(s) and every person authorised by the Insurer(s) may, without thereby incurring any liability, and without diminishing the right of the Insurer(s) to rely upon any Conditions of this Policy, enter, take or keep possession of any building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to the Insurer(s) any of the property hereby insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

This condition shall be evidence of the leave and licence of the Insured to the Insurer(s) so to do. If the Insured or any one acting on the Insured's behalf shall not comply with the requirements of the Insurer(s) or shall hinder or obstruct the Insurer(s) in doing any of the abovementioned acts, then all benefits under this Policy shall be forfeited. The Insured shall not in any case be entitled to abandon any property to the Insurer(s) whether taken possession of by the Insurer(s) or not.

## 10. Subrogation

- (a) Any person claiming under this Policy shall at the request and at the expense of the Insurer(s) do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Insurer(s) for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the Insurer(s) shall be or would become entitled or subrogated upon the Insurer(s) paying for or making good any destruction or damage under this Policy.
- (b) If the Insurer(s) make(s) any recovery as a result of such action, the Insured may only recover from the Insurer(s) any amount by which the amount recovered by the Insurer(s) exceeded the amount paid to the Insured by the Insurer(s) in relation to the loss.

## 11. Precautions to prevent loss

The Insured shall take all reasonable precautions to prevent loss, destruction or damage to the property insured by this Policy.

## 12. Insured's action after theft or damage

The Insured shall, upon becoming aware of any loss by theft or of any wilful or malicious damage which may give rise to a claim under this Policy, take all practicable steps to trace and recover any missing property and to discover by whom the property was stolen or damaged.

## 13. Termination of cover under Section 2

Notwithstanding anything contained herein to the contrary, if during any period in respect of which the Policy is in force:

- (a) the Insured ceases to carry on a Business or any part of the Business is disposed of, permanently discontinued or the Insured's interest in the Business or such part thereof ceases otherwise than by death; or
- (b) the Insured (being a corporation) is placed in liquidation (or provisional liquidation), is placed under Official Management, enters into a Scheme of Arrangement, has Receivers and/or Managers appointed over its assets or undertaking(s); or
- (c) the Insured (being a natural person) becomes a bankrupt or enters into a scheme of arrangement or compromise or composition with creditors;

then the insurance cover provided under Section 2 of this Policy in respect of such Business or Insured shall automatically and forthwith cease.

In the event of the Indemnity Period having begun to run in respect of any claim relating to such Business or part thereof, the Indemnity Period shall thereupon be at an end, unless its continuance be admitted by memorandum signed for or on behalf of the Insurer(s).

#### 14. Observance of Terms and Conditions

The due observance and fulfilment of these Conditions and the other terms of this Policy by the Insured, insofar as the same are capable of being construed as such, are conditions precedent to any liability of the Insurer(s) to make any payment under this Policy.

#### 15. Progress Payments

Provided that liability has been admitted progress payments on account of any claim may be made to the Insured at such intervals and for such amounts as may be agreed upon production of a report by the Loss Adjuster (if appointed) provided such payment(s) shall be deducted from the amount finally determined upon adjustment of the claim.

#### 16. Headings

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

## Endorsements

Notwithstanding anything contained herein to the contrary it is hereby agreed and declared that the following endorsements are made to the policy:

### Definitions

#### **Accidental Damage**

For the purpose of this policy, the term "Accidental Damage" mentioned under sub-limits of liability and/or deductibles shall mean physical loss, destruction of or damage to the Property Insured (subject to the Exclusions Applicable to Sections 1 and 2) arising out of any one source or original cause other than:

fire, lightning, thunderbolt, earthquake, subterranean fire and/or volcanic eruption, aircraft and/or other aerial devices and/or articles dropped or falling therefrom and/or impact by space debris, sonic boom, explosion, implosion or collapse, smoke and/or steam, spontaneous fermentation or heating, spontaneous combustion, subsidence, earth movement or collapse resulting therefrom or landslip, flood, water from or action by the sea, tsunami, tidal wave or high water, storm, tempest, wind, hail and/or rainwater, water and/or other substance discharged, overflowing and/or leaking from apparatus, appliances, pipes, sprinkler and/or any other system(s), the acts of persons taking part in riots or civil commotions or the acts of strikers or locked out workers or persons taking part in labour disturbances, the acts of malicious persons, the acts of any lawfully constituted authority in connection with any of the aforementioned events, impact by any waterborne craft, land vehicles or animals, burglary, theft, loss of money, fraudulent or dishonest acts, fusion, or any other event or circumstance which is more specifically mentioned under any other Sub Limit of Liability and/or Deductible.

#### **Burglary and Theft**

"Burglary and Theft" shall mean loss of or damage to the property insured by this section as the result of:

- (i) theft with or without actual forcible and violent entry or
- (ii) theft or any attempt thereat by a person feloniously concealed on any premises

"Burglary" shall mean loss of or damage to the property insured by this section as the result of:

- (i) theft with evidence of actual forcible and violent entry or
- (ii) theft or any attempt thereat by a person feloniously concealed on any premises
- (iii) theft consequent upon threat of violence or violent intimidation.

### Section 1 – Material Damage

#### **Liability to Make Enquiries**

This Policy extends to include costs and expenses incurred by the Insured in respect of any legal liability to make enquiries consequent upon physical loss, destruction or damage insured by this Policy. Provided that the liability of the Insurer(s) under this extension shall not exceed the amount of any Sub-Limit stated in the Schedule under the heading "Liability to Make Enquiries".

#### **Exploratory Costs**

This Policy extends to include exploratory costs necessarily and reasonably incurred by the Insured to prevent imminent damage or diminish damage to Property Insured by any peril insured against by this Policy.

#### **Personal Property of Directors and Employees**

The wording of clause (g) of the Indemnity is amended to read:

- (g) Damage to personal property, tools and effects (including money) of directors, partners, executives and employees of the Insured whilst engaged on the business of the Insured anywhere in the Commonwealth of Australia and damage to personal effects of visitors, welfare and social clubs of the Insured (including Money) whilst on premises owned, occupied, or used by the Insured.

#### **Unpacking Expenses**

This Policy extends to include costs and expenses incurred by the Insured in taking inventory (including unpacking, repacking and restocking) to identify, quantify and value any property physically lost, destroyed or damaged by any peril insured against by this Section including examination of property not belonging to but in the care, custody or control of the Insured. Provided that the liability of the Insurer(s) under this extension shall not exceed the amount of any Sub-Limit stated in the Schedule under the heading "Unpacking Expenses".

#### **Expediting Expenses**

This Policy extends to include costs and expenses incurred by the Insured for express carriage rates and extra payments for overtime, night, Sunday or holiday working incurred in connection with the repair or reinstatement of the Property Insured directly or indirectly arising from an event insured by this Policy. Provided that the liability of the Insurer(s) under this extension shall not exceed the amount of any Sub-Limit stated in the Schedule under the heading "Expediting Expenses".

#### **Cost of Clearing Blocked Drains, Pipes**

This Policy extends to include additional costs necessarily and reasonably incurred by the Insured in the clearance of blocked pipes, drains, gutters, sewers, filters, pumping equipment and the like during the Period of Insurance, including exploratory costs, at or in the vicinity of the Premises used by the Insured, consequent upon damage recoverable hereunder, provided that this extension shall not cover normal maintenance costs. Provided further that the liability of the Insurer(s) under this extension shall not exceed the amount of any Sub-Limit stated in the Schedule.

#### **Destruction of Sound Property**

In the event of partial damage to the property insured hereunder, the destruction of sound property necessary for the replacement and/or reinstatement and/or restoration of the property insured is allowed and the cost of such destruction or demolition and repairing or replacement thereof is included in this Policy.

#### **Customs Excise and Other Duties**

This Policy extends to include the Insured's liability for customs, excise and other duties, which the Insured becomes liable to pay in the event of loss, destruction or damage to Property Insured. Provided that the liability of the Insurer(s) under this extension shall not exceed the amount of any Sub-Limit stated in the Schedule.

#### **Liability for Duty**

This Policy extends to include the Insured's liability for customs, excise and other duties, which the Insured becomes liable to pay in the event of Damage to Property Insured.

#### **Money**

The definition of Money under The Property Insured extends to include travellers cheques, securities and negotiable instruments.

#### **Landscaping**

The Property Insured and Basis of Settlement (a) of Section 1 are extended to include landscaping, which term shall mean trees, shrubs, plants and lawns including rockwork, paving and ornamentation pertaining thereto, ornamental plants, shrubs and trees. Property Exclusions 7 and 8 shall not apply to the cover granted by this endorsement. It is agreed that the liability of the

Insurer(s) shall not exceed the amount of any sub-limit stated in the schedule of the policy against "Landscaping" for any one loss or series of losses arising out of any one event or occurrence.

#### **Designation**

The following sentence is added to the first paragraph of Basis of Settlement (a):

For the purpose of ascertaining the classification under which any property is insured, the Insurer(s) agree to accept the designation applied to such property by the Insured.

#### **Personal Property**

Clause (h) of the basis of settlement under Section 1 is amended to read:

- (h) On personal property, tools and effects of the Insured's directors, employees and of visitors to the Insured's premises; the replacement cost at the time and place of replacement.

#### **Goods Sold but Not Delivered**

The basis of settlement under Section 1 of the policy is extended to include the following clause:

On goods sold but not delivered for which the Insured is responsible and with regard to which, under the conditions of sale, the sale contract is by reason of the Damage cancelled either wholly or to the extent of the Damage; the contract price.

#### **Paintings, Works of Art, Antiques and Curios**

The basis of settlement in respect of paintings, works of art, antiques and curios, (providing none of these items form part of the stock in trade or merchandise of the Business is agreed to be:

The cost of restoring and repairing to a condition substantially the same as before the damage plus any reduction in market value caused by the damage. If restoration or repair is not possible, the market value immediately before the damage.

#### **Interests of Other Parties**

The term "insurable interest" in the memorandum to Section 1 headed Interests of Other Parties is amended to read "pecuniary or economic interest".

#### **Output Replacement**

If the interest insured under this Policy constitutes property which has a measurable output and which is capable of replacement with a new item or items which perform a similar function then such property shall be valued for insurance purposes as follows, and values for the settlement of any loss or damage in respect thereof shall be on the same basis:

- (a) If property lost, destroyed or damaged is to be replaced by an item or items which have the same or a lesser total output, then the insurable value thereof is the new installed cost of such replacement item or items as would give the same total output as the property destroyed or damaged;
- (b) If property lost, destroyed or damaged is to be replaced by an item or items which have a greater total output and the replacement value is no greater than the value insured of the property damaged or destroyed then no deduction shall be made from any claim for the improved output;
- (c) If property lost, destroyed or damaged is to be replaced by an item or items which have a greater total output and the replacement value is greater than the value insured of the property lost, damaged or destroyed then the insurable value thereof is the proportion of the new installed cost of the replacement item or items that the output of the property lost, damaged or destroyed bears to the output of the replacement item or items. The

difference between the insurable value so calculated and the new installed cost of the replacement item or items shall be borne by the Insured.

Provided that in the event of partial loss or damage where property is to be repaired the Insurer(s) shall pay the cost of restoration of the damaged property to a condition substantially the same but not better or more extensive than its condition when new and provided further that the liability of the Insurer(s) shall not exceed the sum representing the cost which the Insurer(s) could have been called upon to pay if such property had been wholly destroyed.

#### **Undamaged Foundations**

When Property Insured is damaged but its foundations are not destroyed and due to the exercising of statutory powers or delegated legislation or authority by any Government Department, Local Government or any other Statutory Authority reinstatement of the Property Insured is carried out upon another site or sites then the abandoned foundations will be considered as being destroyed.

Provided that if the presence of the abandoned foundations increases the sale value of the original site, then such increase shall be regarded as salvage and shall be payable to the Insurer(s) by the Insured upon completion of the sale or shall be deducted from the total amount otherwise payable by the Insurer(s) under the Policy, whichever shall occur later.

All differences relating to the amount of such increase in site sale value shall forthwith be referred to the decision of two Registered Valuers, one to be appointed by each of the parties to this contract of insurance. In the event that the two Valuers do not reach agreement, such differences shall be referred to the decision of a third Valuer appointed by the President of the Australian Institute of Valuers as an expert whose decision shall be binding. The term "foundations" shall be deemed to include services, such as but not limited to conduits, pipes, cables and wiring, which are built in to footings, foundations or concrete floor slabs.

#### **Undamaged Ancillary and/or Peripheral Equipment**

If plant and/or machinery is destroyed but its ancillary and/or peripheral equipment is not destroyed but upon replacement of the destroyed plant and/or machinery, the ancillary and/or peripheral equipment is rendered superfluous, then such equipment shall be deemed to be destroyed and its salvage value shall be payable to the Insurer(s) by the Insured upon completion of any sale or shall be deducted from the total amount otherwise payable by the Insurer(s) under the Policy, whichever shall occur later.

#### **Acquired Companies**

The wording of the memorandum under the heading "Acquired Companies" in "Memoranda to Section 1" of this Policy is amended to read as follows:

"This Policy extends to include property in Australia (to the extent that such property is not otherwise insured) belonging to companies and/or other entities purchased or otherwise acquired and/or over which the Insured acquires direct managerial control and/or responsibility to arrange insurance during the currency of this Policy. The Insured shall declare details of such acquisition or responsibility within a reasonable period following the date of acquisition of control and/or responsibility."

The liability of the Insurer(s) under this endorsement, in respect of any one loss or series of losses arising out of any one event or occurrence at any one premises, shall be limited to ten per cent (10%) of the Combined Section 1 and 2 Limit of Liability or \$5,000,000, whichever is the lesser.

#### **Labels**

In the event of damage affecting labels, containers or wrappings, the Insurer(s) shall not be liable for more than an amount sufficient to pay the cost of new labels, containers or wrappings, and the cost of reconditioning the goods, but in no case shall the Insurer(s) be liable for more than the insured value of the damaged merchandise.

**Heritage Property**

The following paragraph is inserted after paragraph (i) of the Basis of Settlement Clause:

- (j) in the case of a building with architectural features, specific finish and/or structural material possessing an ornamental, architectural, cultural or historical character or for which the original materials are not available, the first paragraph of Basis of Settlement (a) shall be deemed to be amended to read: the cost necessary to replace, repair, rebuild or restore the building to a reasonably equivalent appearance, capacity and functionality, using the original design and suitably equivalent materials.

**Religious Items**

Where specifically noted as a sub limit in the Policy Schedule, this Policy extends to include Physical Loss, Destruction or Damage to Religious Items. Religious Items shall mean, items used in the carrying out of The Insured's religious services, including but not limited to sacred ornaments, icons, candlesticks, vases, alms dishes, vessels, altar cloths, frontals, vestments, religious texts, prayer books and prayer mats. Provided that the liability of the Insurer(s) under this extension shall not exceed \$100,000 in total for any one claim.

## Section 2 – Consequential Loss

**Accounts Receivable**

The Insurance under this item is limited to the loss sustained by the Insured in respect of all outstanding debit balances provided the Insured is unable to effect collection thereof as the direct result of damage to records of accounts receivable by a peril not excluded by this Policy.

In addition, the Insurer(s) will pay:

- (a) Interest charges at ruling bank rates on any loan to offset impaired collection pending repayment of such amounts rendered uncollectible in consequence of the damage;
- (b) Interest lost by the Insured in consequence of such impaired collection;
- (c) Additional expenditure necessarily and reasonably incurred in tracing and establishing the amounts of accounts receivable;
- (d) Collection expenses in excess of normal collection costs, incurred in consequence of the damage.

Where there is proof that a loss covered by this Policy has occurred, but the Insured cannot accurately establish the total amount of accounts receivable outstanding at the date of damage such amount shall be computed as follows:

- (i) Determine the total amount of accounts receivable outstanding on the last working day of the fiscal month which ended twelve months before the beginning of the month in which the Damage occurs;
- (ii) Calculate the average increase or decrease in the monthly total amounts of accounts receivable outstanding on the last working day of each of the twelve months immediately preceding the month in which Damage occurs;
- (iii) The amount determined under Sub-Clause 2.2.5(i), increased or decreased by the percentage calculated in accordance with Sub-Clause 2.2.5(ii), shall be deemed to be the total amount of accounts receivable outstanding at the time and date of the Damage;



- (iv) The amount determined under Sub-Clause 2.2.5(iii), shall be adjusted as may be necessary to provide for any demonstrable variance from the amount so determined occurring before but during the month in which the Damage occurs; due consideration also being given to normal monthly trends in receipts.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the Insured, and an equitable amount to provide for doubtful debts.

Provided that the liability of the Insurer(s) shall not exceed any Sub-Limit stated in the Schedule under the heading "Accounts Receivable".

#### **Severance Pay**

The insurance under this item is limited to such further additional expenditure beyond that recoverable under Clause (a) of Item no. 3 as the Insured is obligated or has agreed to pay under industrial awards, determinations, decisions or agreements for severance pay and/or in lieu of notice to employees whose services are terminated during the Indemnity Period in consequence of the damage.

#### **Government Incentives**

The definition of "Turnover" is extended to include financial incentives or concessions granted to the Insured by any Australian or State Government Department in recognition of specific performance in the development of market opportunities or employment of disadvantaged persons.

#### **Amended Payroll Definition**

The definition of Payroll in Section 2 of the policy is amended to read:

The remuneration (including but not limited to pay-roll tax, fringe benefits tax, bonuses, holiday pay, sick pay, long service leave, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) paid to all employees of the Insured."

#### **Public Utilities**

Any loss resulting from interruption of or interference with the business in consequence of physical loss destruction or damage not excluded by this Policy to any of the following property situated wholly on land anywhere in Australia and owned by or under the control of any public utility company (including but not limited to government or statutory authorities) shall be deemed to be loss resulting from damage to Property used by the Insured at the Premises:

- (a) Electricity generation and/or supply facility but excluding any transmission cables, subterranean cables, undersea cables or cable supports or towers;
- (b) Gas supply facility but excluding any subterranean pipelines, undersea pipelines, wellhead, drilling or production rig;
- (c) Sewerage treatment or pumping facility;
- (d) Water supply facility but excluding any dam or catchment area facilities;
- (e) Telephone or telecommunication facilities or networks but excluding any satellites or spacecraft.

It shall not be a condition precedent to liability under this endorsement that payment shall be made or liability admitted for damage under Section 1 of the policy.

#### **Infectious Or Contagious Diseases, Vermin, Pests Or Defective Sanitary Arrangements, Injury, Illness Or Disease Caused By The Consumption Of Food Or Drink, Murder Or Suicide**

Any loss resulting from interruption of or interference with the Business from closure or evacuation of the whole or part of the Insured Premises by order of a competent public authority consequent upon:

- (a) human infectious or contagious disease occurring at the Premises;
- (b) vermin or pests or defects in the drains or other sanitary arrangements at the Premises;
- (c) injury, illness or disease directly caused by the consumption of food or drink provided on the Premises; or
- (d) murder or suicide occurring in or at the Premises.

Provided that Clause (a) above will not indemnify against loss resulting from interruption of or interference with the Business directly or indirectly arising from or in connection with:

- (i) Highly Pathogenic Avian Influenza in Humans; or
- (ii) any biosecurity emergency or human biosecurity emergency declared under the Biosecurity Act 2015 (Cth) its subsequent amendments or successor.

Provided that the liability of the Insurer(s) shall not exceed any Sub-Limit stated in the Schedule.

#### **Unspecified Suppliers / Customers Premises**

Loss resulting from interruption of or interference with the Business in consequence of damage to property at the premises anywhere in Australia, of any producer or merchant who directly provides goods or services to the Insured or acquires goods or services from the Insured shall be deemed to be loss resulting from damage to property used by the Insured at the Premises. Provided that the liability of the Insurer(s) under this endorsement shall not exceed the amount of any Sub-Limit stated in the Schedule.

For the purposes of this extension, the term "premises of a producer" refers to premises other than "Public Utilities" at which goods or services used by the Insured are produced, assembled or stored. The term "premises of a merchant" refers to premises to which the Insured provides goods or services.

#### **Exclusions**

##### **Theft of Property in the Open Air**

Property Exclusion 13 is deleted.

##### **War and Terrorism Exclusion**

It is hereby agreed and declared that Perils Exclusion 1. of this policy is deleted in full and replaced with the following:-

1. loss, destruction, damage, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or in connection with any of the following regard-less of any other cause or event contributing concurrently or in any other sequence to the loss
  - (a) war, invasion, acts of foreign enemies, hostilities or war like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - (b) any act of terrorism,

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.
- (c) confiscation, nationalisation, requisition or damage to property by or under the order of any government or public or local authority.

Furthermore any loss, destruction, damage, cost or expense of any nature directly or indirectly causes by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1(a) or 1(b) above is also excluded from this policy.

Notwithstanding 1(c) above the Insurer(s) will indemnify the Insured for loss, destruction, damage, cost or expense for the removal of sound property at the premises for the purpose of preventing or diminishing imminent damage by, or inhibiting spread of, fire or any other peril insured by this policy except for those events described in 1(a) or 1(b) above.

#### **Electronic Data Exclusion**

It is hereby agreed and declared that the following new Property exclusion is added to this policy

#### **18. Electronic data**

Provided that the Insurer will indemnify the Insured for any Damage to Electronic Data arising out of fire, lightning, thunderbolt, explosion, implosion, earthquake, subterranean fire, volcanic eruption, impact, aircraft and/or other aerial device and/or articles dropped therefrom, sonic boom, theft which is a consequence of theft of any computer and/or computer hardware and/or firmware and/or microchip and/or integrated circuit and/or similar device containing such Electronic Data, breakage of glass, the acts of persons taking part in riots or civil commotions or of strikers or of locked out workers or of persons taking part in labour disturbances which do not assume the proportions of or amount to an uprising, storm and/or tempest and/or rain-water and/or wind and/or hail, water and/or other liquids and/or substances discharged and/or overflowing and/or leaking from any apparatus and/or appliance and/or pipes at the premises.

For the purpose of this exclusion Electronic Data means 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 pro-grams and/or software and/or other coded instructions for such equipment

It is further agreed and declared that Basis of Settlement (e) of this policy is amended to read as follows:

- (e) On computer systems records which includes Electronic Data as defined in Property exclusion 18, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description, the Basis of Settlement shall be the cost of repairing, replacing, reproducing or restoring them, including the information contained on or in them, but excluding the value to the insured of that information. If repairs, replacement, reproduction or restoration is not required, the Basis of Settlement shall be the replacement cost of the materials as blank stationery

calculated at the time and place of the Damage, provided that replacement shall have been carried out with reasonable dispatch.

19. Communicable Disease Endorsement (LMA5393)

This policy, subject to all applicable terms, conditions and exclusions, covers losses attributable to direct physical loss or physical damage occurring during the period of insurance. Consequently and notwithstanding any other provision of this policy to the contrary, this policy does not insure any loss, damage, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

For the purposes of this endorsement, loss, damage, claim, cost, expense or other sum, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test:

- a. for a Communicable Disease, or
- b. any property insured hereunder that is affected by such Communicable Disease.

As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- I. 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- II. 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- III. 3.3. the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured hereunder.

This endorsement applies to all coverage extensions, additional coverages, exceptions to any exclusion and other coverage grant(s).

All other terms, conditions and exclusions of the policy remain the same.

## Memoranda to all Sections

### **Event**

The memorandum to Sections 1 and 2 under this heading is extended to include the following perils in addition to Earthquake:

- Storm and Tempest, Rainwater, Flood;
- Subterranean Fire, Volcanic Eruption.

### **Contractual Agreements**

Where in the ordinary course of business the Insured enters into a contractual agreement with another party, including but not limited to contractual agreements for the storage of goods and/or for the lease or occupation of any building or part thereof and such agreement provides in substance that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of loss, destruction or damage which may occur as a result of any peril or eventuality insured against by this Policy, this insurance shall not be prejudiced by the Insured agreeing to such provision. The Insured shall, upon becoming aware of such an agreement, inform the Insurer(s) as

soon as is reasonably practicable and the Insured shall pay a reasonable additional premium if required by the Insurer(s).

#### **Subrogation Waiver**

The wording of the memorandum to all Sections, headed "Subrogation Waiver", is amended to read:

The Insurer(s) agree(s) to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:

- (a) any Insured named or described by this policy (including its directors, partners, officers, employees or servants);
  
- (b) any corporation or organisation (including its directors, officers, partners, employees or servants) owned or controlled by any Insured named herein or subsidiary to any Insured named herein or any co-owner of the property insured hereunder.

Any party described in the memorandum to Section 1, headed "Interests of Other Parties", unless the Insured expressly agrees to the pursuit of recovery action against that party.

### Conditions Applicable to all Sections

#### **Sprinkler Installations**

The Insured warrants that in such of the Premises as are protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the Premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

The Insured further warrants that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS1851 (Part 3 – Automatic Sprinkler Installation) by the installing engineers or firm or, failing this, by a person or organisation who must be approved by the Insurer(s) to carry out such maintenance.

Notice of all alterations and additions to the automatic sprinkler installation shall be given by the Insured to the Insurer(s) as soon as reasonably practicable.

Where the sprinklered Premises are leased to a tenant and the lease provides that the tenant shall provide for maintenance of the installation, any failure to do so will not prejudice the rights of the Insured, provided that the Insured, upon becoming aware of the failure, shall either immediately provide for maintenance of the installation or immediately give notice in writing to the Insurer(s) and on demand pay such reasonable additional premium as the Insurer(s) may require.

Where the Insured or a tenant responsible to provide for maintenance of the installation enters into an agreement for maintenance with a contractor and such agreement provides in substance that the Insured or tenant shall indemnify and/or hold harmless and/or release from liability the contractor in respect of loss, destruction or damage which may occur as a result of any peril insured against by this Policy, the insurance hereby shall not be prejudiced by the Insured or the said tenant agreeing to such provision. The indemnity and/or hold harmless provision and/or release from liability shall be equally binding upon

the Insurer(s), who shall waive all rights of subrogation which may have otherwise existed against the tenant.

The Insured's officer responsible for insurance shall, upon becoming aware of such agreement, inform the Insurer(s) as soon as reasonably practicable and a reasonable additional premium will be paid if required by the Insurer(s).

**Hazardous Goods**

The storage of hazardous goods usual to trade and/or occupation is allowed.

**Breach of Conditions**

Any breach of a condition without the knowledge or consent of the Insurance Officer of the Insured shall not prejudice or invalidate this insurance provided that due diligence is exercised at all times by the Insured.