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Introduction

Please read the policy wording and the **Policy** carefully to ensure that it meets Your requirements.

Underwriters will provide insurance in accordance with the terms of this **Policy**. In this section “We”, “Our” or “Us” means the **Underwriters**. “You”, “Your”, “Yours” means the **Insured**.

General Insurance Code of Practice

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

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

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

About the Insurers

The **Underwriters** of this product are Certain Underwriters at Lloyd’s, of whose definitive numbers and the proportions underwritten by them, will be supplied on application. In consideration of the premium specified in the **Schedule**, the said underwriters are hereby bound, severally and not jointly, each for his own part and not one for another, their executors and administrators, to insure in accordance with the terms and conditions contained in the **Policy** or any endorsement.

About Arch Underwriting at Lloyd's (Australia) Pty Ltd

Arch Underwriting at Lloyd's (Australia) Pty Ltd ABN 27 139 250 605 AFSL 42674 (“Arch”) is an Australian Financial Services Licensee authorised to deal in and provide general advice on general insurance products. Arch has been authorised by the **Underwriters** to act on their behalf to deal in and provide general advice and handle and settle claims in relation to this insurance.

Arch has a binding authority which means it can enter into, vary or cancel this insurance and handle and settle claims without reference to the **Underwriters** provided it acts within the binding authority. When providing these services, Arch acts for the **Underwriters** and does not act on the **Insured’s** behalf.

Arch can be contacted as follows:

*Arch Underwriting at Lloyd's (Australia) Pty Ltd,
Level 10, 155 Clarence Street
Sydney, NSW, 2000*

or by telephone at (02) 8284 8400

About the Policy

Our contract with You.

This policy is a contract of insurance between You and Us and contains all information relating to the cover we provide You. The **Policy** consists of:

- (a) This policy wording which tells You what is covered and sets out the claims procedure, exclusions and other terms and conditions of cover;
- (b) Your most current **Schedule** issued by Us. The **Schedule** is a separate document unique to You, which outlines the insurance We have provided to You. It includes any changes, exclusions, terms and conditions made to suit Your individual circumstances and may amend this policy wording;
- (c) any Endorsements;

- (d) any other document We tell You forms part of the policy which may vary or modify the above documents.

These documents should be read together as they form the **Policy** entered between You and Us.

Privacy Statement

Unless the context otherwise provides, in this section “We”, “Our” or “Us” means the **Underwriters** and Arch. “You”, “Your”, “Yours” means the **Insured**.

Personal information is essentially any information or any opinion about an identified individual, or an individual who is reasonably identifiable. See the Privacy Act 1988 (Cth) as amended by the Privacy Amendment (Notifiable Data Breaches) Act 2017 (Cth) for full details of what constitutes personal information.

This privacy notice details how We collect, disclose and handle personal information.

Why We collect Your personal information

WE collect personal information (including sensitive information) so We can:

- identify You and conduct necessary checks;
- determine what service or products We can provide to You e.g. offer Our insurance products;
- issue, manage and administer services and products provided to You or others, including claims investigation, handling and settlement; and
- improve Our services and products, e.g. training and development of Our representatives, product and service research and data analysis and business strategy development.

What happens if You don't give Us Your personal information?

If You choose not to provide Us with the information We have requested, We may not be able to provide You with Our services or products or properly manage and administer services and products provided to You or others.

How We collect Your personal information

Collection can take place through websites (from data input directly or through cookies and other web analytic tools), email, by telephone or in writing. We collect it directly from You unless You have consented to collection from someone other than You, it is unreasonable or impracticable for Us to do so or the law permits Us to.

If You provide Us with personal information about another person You must only do so with their consent and You agree to make them aware of this privacy notice.

Who We disclose Your personal information to

We share Your personal information with third parties for the collection purposes noted above.

The third parties include: Our related companies and Our representatives who provide services for Us, other insurers and reinsurers; Our claim management partner(s); Your agents; Our legal, accounting and other professional advisers; data warehouses and consultants; investigators, loss assessors and adjusters; other parties We may be able to claim or recover against; anyone We appoint to review and handle complaints or disputes; and any other parties where permitted or required by law.

We may need to disclose information to persons located overseas who will most likely be located in the United Kingdom. Who they are may change from time to time. You can contact Us for details or refer to Our Privacy Policy available at Our website. In some cases We may not be able to take reasonable steps to ensure they do not breach the Privacy Act and they may not be subject to the same level of protection or obligations that are offered by the Act.

By proceeding to acquire Our services and products You agree that You cannot seek redress under the Act or against Us (to the extent permitted by law) and may not be able to seek redress overseas.

Accuracy of and access to Your personal information

We will take reasonable steps to ensure that the personal information You provide is accurate, complete and up to date, whenever it is used, collected or disclosed. You are entitled to access Your personal information if You wish and request correction if required. We may request reasonable costs from You to cover the expenses We incur retrieving this information.

Notifiable Data Breach

If We identify a breach or suspected breach of Your personal information We will make an assessment expeditiously and within 30 days to determine if a breach has occurred that is likely to cause You serious harm, known as an "eligible data breach". If an eligible data breach is identified We will notify You and the Australian Information Commissioner of the breach as soon as practicable. We will also provide You with recommendations of the steps YOU should take in response to the breach. When making contact with You, We will use the usual method of communication. If We cannot contact You, We will place a notice on Our website.

More information, access, correction or complaints

For more information about Our privacy practices including how We collect, use or disclose information, how to access or seek correction of Your information, how to complain about a breach of the Australian Privacy Principles and how such a complaint will be handled, please refer to Our Privacy Policy. It is available at Our website www.archinsurance.com.au or by contacting Us on (02) 8284 8400 EST 9am-5pm, Monday-Friday.

Your Choices

By providing Us with personal information, You and any person You provide personal information for, consent to this use and these disclosures unless You tell Us otherwise. If You wish to withdraw Your consent, including for things such as receiving information on products and offers by Us or persons We have an association with, please contact Us.

IMPORTANT NOTICES UNDER THE INSURANCE CONTRACTS ACT 1984 (CTH)

In this section “We”, “Our” or “Us” means the **Underwriters**. “You”, “Your”, “Yours” means the **Insured**.

Your Duty of Disclosure

Before You enter into an insurance contract with an insurer, You have a duty, under the Insurance Contracts Act 1984 (Cth), 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, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of any matter:

- that diminishes the risk to be undertaken by the insurer;
- that is common knowledge;
- that we know or should know in our business as an insurer; or
- that we waive your duty to tell us about.

Non-Disclosure

If You fail to comply with your duty of disclosure, We may cancel Your **Policy** or reduce Our liability under the **Policy** in respect of a claim to the extent We have been prejudiced by Your failure to comply, or both. If Your non-disclosure is fraudulent, We may refuse to pay a claim and treat the **Policy** as if it never existed.

Your duty of disclosure also applies when You amend or vary the **Policy** in any way and continues after the proposal form is completed until the **Policy** commences.

Average Provision and Allocation of Loss Between the Insured and Underwriters

One of the **Policy** terms provides that if the **Insured** incur loss covered by the **Policy** with other loss that is not covered by the **Policy**, or if a claim is made against the **Insured** and it is impossible to identify whether loss is attributable exclusively or primarily to a covered cause, or the claim against the **Insured**, as appropriate, then the **Insured** together with **Underwriters** shall use their best efforts to agree a fair and proper allocation of the loss between **Underwriters** and the **Insured**. Please refer to the **Policy** wording for full details.

The **Policy** may also provide that, where the amount required to dispose of a claim exceeds the limit of the sum insured in the **Policy**, **Underwriters** shall be liable only for a part of the total costs and expenses which shall be the same proportion of the total expenses as the **Policy** limit bears to the total amount required to dispose of the claim.

Unusual Terms – No cover for Personal Injury to Contractors, Subcontractors or Labour Hire Personnel

Exclusion 5.15 of this **Policy** excludes cover for **Claims** in respect of **Personal Injury** to any **Contractor, Subcontractor or Labour Hire Personnel**, being individuals who have been engaged by the **Insured** to carry out the **Insured’s Business**.

However, this exclusion is not intended to apply to persons for whom the **Insured** is a customer or client to whom said persons are providing work or services as part of that person’s own business activities.

Unusual Terms – Sanction Limitation and Exclusion Clause

Please note General Condition 7.11, which prevents **Underwriters** from providing cover, benefits or paying claims where that would expose Underwriters to sanctions, prohibitions or restrictions.

Broadform Public and Products Liability

Underwriters have agreed to enter into a **Policy** with the **Named Insured**, subject to payment of the **Premium** stated in the **Schedule**.

This policy wording contains the terms and conditions of the **Policy** as follows:

1. Insuring Clauses

Section A – Public liability

Underwriters will pay to or on behalf of the **Insured** all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

- (a) **Personal Injury**,
- (b) **Damage to Property**,
- (c) **Advertising Injury**

happening during the **Period of Insurance** within the **Territorial Limits** as a result of an **Occurrence** and in connection with the **Insured's Business**.

Section B – Products liability

Underwriters will pay to or on behalf of the **Insured** all sums which the **Insured** shall become legally liable to pay as **Compensation** in respect of:

- (a) **Personal Injury**,
- (b) **Damage to Property**,
- (c) **Advertising Injury**

happening during the **Period of Insurance** within the **Territorial Limits** as a result of an **Occurrence** and caused by or arising from the **Insured's Products**.

2. Limits of Liability

Unless otherwise stated in this **Policy**, **Underwriters'**

- 2.1** liability to indemnify the **Insured** will not exceed the **Limit of Liability** in respect of any one **Occurrence**; and
- 2.2** maximum liability in respect of 'Section B – Products liability' for all **Occurrences** during the **Period of Insurance** will not exceed the **Limit of Liability**.

The applicable **Limit of Liability** is over and above the **Deductible** payable by the **Insured**.

3. Deductible

The **Deductible** applies to:

- 3.1.** each **Occurrence** and/or payment in respect of 'Defence costs and supplementary payments'; and
- 3.2.** is payable by the **Insured** at such time required by **Underwriters**.

If more than one **Deductible** applies to any **Occurrence** then the highest **Deductible** will apply.

4. Defence Costs and Supplementary Payments

With respect to claims for which cover is available under this **Policy**, **Underwriters** will defend, in the **Insured's** name and on the **Insured's** behalf, any **Claim** or suit against the **Insured** seeking **Compensation** on account of **Personal Injury** or **Damage to Property** or **Advertising Injury**, even if the **Claim** or suit or any allegations thereof are groundless, false or fraudulent, and pay:

- 4.1. all costs and expenses incurred by **Underwriters** and/or by the **Insured** with **Underwriters** written consent;
- 4.2. all interest accruing on **Underwriters** portion of any judgment until **Underwriters** have paid, tendered or deposited in court that part of such judgment which does not exceed the **Limit of Liability**;
- 4.3. premium on appeal bonds or security for costs required in any suit, and premium on bonds to release attachments in any suit, for an amount not exceeding the applicable **Limit of Liability**, but **Underwriters** shall have no obligation to apply for or furnish any such bond or security;
- 4.4. expenses incurred by the **Insured** for rendering of first aid or other medical service to others at the time of any **Personal Injury** (other than the payment of any medical expense by **Underwriters** which **Underwriters** are prevented from paying by law);
- 4.5. temporary protection of property, including temporary repairs or protection of property of others that has been damaged as a result of an **Occurrence** which is the subject of indemnity under this **Policy**;
- 4.6. all costs incurred by the **Insured** with **Underwriters** written consent for legal representation at any coronial inquest or inquiry, court or tribunal, royal commission or government inquiry, or any inquiry or hearing of a disciplinary nature held before a legally constituted inquiry board, committee, or authority; and
- 4.7. up to \$25,000 in respect of each **Occurrence** for reasonable professional fees or costs incurred by the **Named Insured** for the preparation of a claim under this **Policy**.

The 'Defence Costs and Supplementary Payments' referred to in items 4.1 to 4.7 above are payable subject to the following conditions:

- 4.8. **Underwriters** are not obliged to pay any 'Defence Costs and Supplementary Payments' or to defend any suit after **Underwriters** liability under this **Policy** to indemnify the **Insured** has been exhausted;
- 4.9. If a payment exceeding **Underwriters'** liability under this **Policy** to indemnify the **Insured** has to be made to dispose of a **Claim**, **Underwriters** liability in respect of 'Defence costs and supplementary payments' is limited to the proportion that **Underwriters** liability to indemnify the **Insured** under this **Policy** bears to that payment;
- 4.10. In the event of a **Claim** being made against the **Insured** in any court or before any other legally constituted body in the United States of America, Canada or their respective protectorates and territories, the total amount payable in respect of the **Claim** by **Underwriters** under this **Policy** including 'Defence Costs and Supplementary Payments' will not exceed the **Limit of Liability**;
- 4.11. In jurisdictions where **Underwriters** are not legally permitted to, or cannot for any other reason, defend any **Claim** or suit against the **Insured**, **Underwriters** will reimburse the **Insured** for the expense of such defence provided that such expenses are reasonably incurred by the **Insured** with the **Underwriters'** written consent; and
- 4.12. In respect of circumstances where the **Underwriters'** prior written consent cannot reasonably be obtained before any costs and/or expenses specified in items 4.1 and 4.6 above are incurred by the **Insured**, then **Underwriters** will give consideration to retrospective approval for any such reasonable costs and/or expenses necessarily incurred.

5. Exclusions

Exclusions applicable to Section A – Public liability

Underwriters shall not be liable to pay or indemnify the **Insured** for any loss or **Claim** made under Section A of this **Policy** which arises directly or indirectly from, or in connection with:

5.1. Aircraft, Watercraft and Hovercraft

- (a) the operation, ownership, possession or use by or on behalf of the **Insured** of any **Aircraft** or **Hovercraft**; or
- (b) the operation, ownership, possession or use by or on behalf of the **Insured** of any **Watercraft** exceeding fifteen (15) metres in length, while such **Watercraft** is on, in or underwater.

However this exclusion 5.1 does not apply to **Claims** for **Personal Injury** or **Damage to Property** arising out of:

- i. **Watercraft** used in operations carried out by an independent contractor for whose conduct the **Insured** is legally liable; or
- ii. **Watercraft** and **Hovercraft** owned and operated by others and used by the **Insured** for the purposes of business entertainment only.

5.2. Defective work

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

5.3. Demolition and contract works

any demolition, additions alterations to or refurbishment of pre- existing buildings or structures.

However this exclusion 5.3 does not apply to liability arising from demolition, additions alterations to or refurbishment to property occupied by the **Insured** subject to **Underwriters'** maximum liability being \$250,000 for each and every **Occurrence** or as otherwise stated in the **Schedule**.

5.4. Products liability

loss or liability which is indemnifiable under 'Section B – Products liability'

However this exclusion 5.4 does not apply to **Personal Injury** or **Damage to Property** caused by food or beverages sold or supplied by the **Insured** to the **Insured's** employees or visitors for consumption on the **Insured's** premises.

5.5. Property in the Insured's care, custody or control

Damage to Property owned by the **Insured** or property in the **Insured's** care, custody or control other than:

- (a) premises tenanted, leased or hired by the **Insured**;
- (b) **Vehicles** (other than **Vehicles** owned or used by or on behalf of the **Insured**) in the **Insured's** care, custody or control but only while such **Vehicles** are in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;
- (c) clothing and personal effects of the **Insured's** directors, employees and visitors; or
- (d) property not owned by the **Insured** (and not being property referred to in items 5.5(a), 5.5(b) and 5.5(c) but temporarily in the **Insured's** care, custody or control, subject to **Underwriters** maximum liability for such property damage being \$500,000 for each and every **Occurrence**, or as otherwise stated in the **Schedule**, whichever is greater.

However this **Policy** does not cover liability arising out of or in any way connected with physical damage to, destruction of or loss of that part of any property upon which the **Insured** is or has been working.

5.6. Vehicles

the use of a **Vehicle** owned by, or in the physical or legal control of the **Insured** which is registered, required by law to be registered, or in respect of which insurance is required by virtue of any legislation which applies to its use (whether or not such insurance is effected).

However this exclusion shall not apply to:

- (a) liability directly or indirectly caused by or arising from the use of a **Vehicle** (other than a **Vehicle** owned or used by or on behalf of the **Insured**) whilst that **Vehicle** is in a car park owned or operated by the **Insured** other than for income or reward as a car park operator;
- (b) **Personal Injury** or **Damage to Property** occurring during the loading or unloading of a **Vehicle** caused by or arising from the collection or delivery of any goods from or to the **Vehicle** where such **Personal Injury** or **Damage to Property** occurs beyond the limits of any carriageway or thoroughfare, and where applicable legislation does not require insurance against such liability;
- (c) **Personal Injury** or **Damage to Property** caused by the use of any tool, plant or equipment forming part of or attached to or used in connection with any **Vehicle** and where applicable legislation does not require insurance against such liability; or
- (d) **Personal Injury** where the insurance required by virtue of any legislation does not provide indemnity, and the lack of indemnity is not due to a breach of legislation relating to **Vehicles**.

Exclusions applicable to Section B – Products liability

Underwriters shall not be liable to pay or indemnify the **Insured** for any loss or **Claim** made under Section B of this **Policy** which arises directly or indirectly from, or in connection with:

5.7. Aircraft products

any **Product** that is an **Aircraft** or is incorporated in an **Aircraft** with the **Insured's** knowledge and which affects the flying capabilities of an **Aircraft**.

5.8. Product recall or replacement

the cost of recalling, withdrawing, replacing or repairing **Products**, or of making any refund on the price paid for **Products**; however this exclusion shall not apply to liability for physical damage to or destruction of **Products** caused by other **Products** if they were physically independent at the time of such physical damage or destruction.

5.9. Public liability

loss or liability indemnifiable under 'Section A – Public liability'.

General Exclusions (applicable to both Sections A and B)

Underwriters shall not be liable to pay or indemnify the **Insured** for any loss or **Claim** made under this **Policy** which arises directly or indirectly from, or in connection with:

5.10. Advertising injury

Advertising Injury directly or indirectly caused by, or arising from:

- (a) failure of performance of any contract, however this exclusion does not apply to **Claims** for unauthorised appropriation of ideas based upon breach of an implied contract;
- (b) infringement of trade mark, service mark or trade name, however this exclusion shall not apply to titles or slogans;
- (c) incorrect description of any good or **Product**; or
- (d) mistake in advertised price.

5.11. Asbestos

inhalation of, or fears of the consequences of exposure to, or inhalation of, asbestos, asbestos fibres or derivatives of asbestos, nor that part of any loss, cost or expense for the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or any derivatives of asbestos.

5.12. Cyber loss and Data exclusion

any loss, damage, liability, claim, fines penalties, cost or expense of any nature directly or indirectly caused by contributed to, resulting from, arising out of or in connection with:

- (a) any **Cyber Act** or **Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**; or
- (b) any loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **Data** including any amount pertaining to the value of such **Data**

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

5.13. Defamation

the publication or utterance of any written or spoken defamation:

- (a) made prior to the commencement of the **Period of Insurance**;
- (b) made at the direction of the **Insured** with knowledge of the falsity thereof; or
- (c) where the occupation or business of the **Insured** is advertising, broadcasting, publishing or telecasting.

5.14. Employers liability

- (a) for in respect of which the **Insured** is or would be entitled to indemnity under any fund, scheme, contract of insurance or self insurance pursuant to or required by any legislation relating to workers' compensation whether or not such insurance has been effected; or
- (b) imposed by the provisions of any industrial award or agreement or determination where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or
- (c) **Employment Practices**.

5.15. Injury to Contractors, Subcontractors or Labour Hire Personnel

Personal Injury to:

- (a) any **Contractor** or **Subcontractor** (or employee of any **Contractor** or **Subcontractor**); and/or
- (b) any **Labour Hire Personnel**

but only whilst said person is acting in their capacity as such.

5.16. Liability under agreement

or assumed under a contract or agreement that requires the **Named Insured** to:

- (a) effect insurance over property; or
- (b) accept liability regardless of fault; however this exclusion 5.16(b) does not apply where:
 - (i) that liability would otherwise exist at law in the absence of the contract or agreement; or
 - (ii) the contract is an **Incidental Contract** and liability does not arise due to an obligation to insure rented, leased or hired property or an obligation to indemnify a landlord irrespective of fault.

5.17. Loss of Use

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

- (a) delay in or lack of performance by or on behalf of the **Insured** of any contract or agreement;
- (b) the failure of **Products** or work performed by or on behalf of the **Insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **Insured**.

However this exclusion 5.17(b) does not apply to loss of use of other tangible property resulting from the sudden and accidental physical damage to or destruction of **Products** or work performed by or on behalf of the **Insured** after such **Product** or work has been put to their intended use by any person or organisation other than the **Insured**.

5.18. Fines, Penalties and Punitive Damages

any punitive, aggravated, multiple, exemplary or liquidated damages, or fines or penalties imposed by law or any investigation or defence costs arising as a consequence thereof.

5.19. Pollution

- (a) the discharge, dispersal, release, seepage, migration or escape of **Pollutants**, including the cost of testing, monitoring, treating, detoxifying, removing, neutralising or cleaning up **Pollutants**; or
- (b) for the cost of preventing the discharge, dispersal, release, seepage, migration or escape of **Pollutants**.

Provided that, with respect to any such liability which may be incurred anywhere other than the United States of America, Canada and their respective protectorates and territories exclusion 5.19(a) and 5.19(b) do not apply where such discharge, dispersal, release, seepage, migration or escape arises from a sudden, identifiable, unintended and unexpected event from the standpoint of the **Insured** which takes place in its entirety at a specific time and place.

5.20. Professional duty and treatment risk

any breach of duty owed in a professional capacity by the **Insured** including consultation or advice provided for a fee.

However this exclusion shall not apply to liability that arises from the rendering of or failure to render medical assistance by a person engaged or employed by the **Insured** to provide first aid or other medical services at the **Insured's** premises.

5.21. Radioactive contamination

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel, weapon or waste from the combustion or fission of nuclear fuel; or
- (b) the radioactive, toxic, explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

However this exclusion 5.21 shall not apply to liability arising from radio-isotopes, radium or radium compounds when used away from the place where such are made or produced and when used exclusively incidental to ordinary industrial, educational, medical or research pursuits.

5.22. Sexual Molestation

any sexual assault, abuse or molestation or attempt thereof committed or alleged to have been committed by the **Insured**.

5.23. Terrorism

any **Act of Terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the **Personal Injury** or **Damage to Property**.

5.24. Tobacco

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

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

5.25. War

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

6. Claims Conditions

6.1. Notification

- (a) The **Insured** must, as soon as reasonably practicable, upon becoming aware of the same, give **Underwriters** notice in writing of any:
 - (i) **Claim** or demand made against the **Insured**; or
 - (ii) circumstances which may give rise to a **Claim**; or
 - (iii) **Occurrences**;
 which may give rise to a liability insured under this **Policy**.

Upon giving such notice, the **Insured** must give to **Underwriters** all such documents and information as **Underwriters** may reasonably require for the purpose of deciding whether the **Insured** is entitled to be covered under this **Policy** or for the purpose of defending any **Claim** or demand. The documents and information must be given as soon as reasonably practicable and after they are requested by **Underwriters**.

- (b) All notifications to **Underwriters** will be deemed given if notified in writing to:-

Arch Underwriting at Lloyd's (Australia) Pty Ltd
Suite 11.02, Level 11,
360 Collins Street, Melbourne VIC 3000
or by email at claims@archinsurance.com.au

6.2. Consent to Settlements

The **Insured** must not, without **Underwriters'** prior written consent, make any admission, offer, promise or payment in connection with any **Occurrence** or loss.

Underwriters will be entitled to reduce all sums payable in respect of a **Claim** under the **Policy** to account for any prejudice incurred by **Underwriters** as a result of any unauthorised admission, offer, promise or payment by the **Insured** in connection with any **Occurrence** or loss.

6.3. Underwriters' Right to Defend

In respect of any **Occurrence** or loss covered under this **Policy**, **Underwriters** have the right, if they so elect, to defend any suit against the **Insured** seeking **Compensation** or reimbursement of expenses for an **Occurrence** or loss and to bring any cross claim in the name of the **Insured** even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any **Claim** or suit as they deem expedient.

However **Underwriters** are not obligated to pay any **Claim** or judgment or to defend any suit after **Underwriters** liability under this **Policy** in respect of the **Claim** has been exhausted.

6.4. Mitigation and Cooperation

- (a) In the event of an **Occurrence** or loss, or if an **Occurrence** or loss appears reasonably likely to take place, the **Insured** must, as soon as reasonably practicable, take all responsible steps to prevent or minimise **Personal Injury, Damage to Property, Advertising Injury** and/or any other loss or expense;
- (b) The **Insured** must co-operate with **Underwriters** and comply with the terms and conditions of this **Policy** and assist as necessary in enforcing any right to contribution or indemnity from any person, corporation or organisation.
- (c) The **Insured** shall take all reasonable steps to preserve all property, any **Product**, appliance and plant and all other things which may assist in the investigation or defence of a **Claim** or in the exercise of rights of subrogation, and so far as may be reasonably practicable, no alteration or repair is to be effected without the consent of **Underwriters**, until **Underwriters** have had an opportunity of inspection.

6.5. Fraudulent Claims

If any **Claim** under this **Policy** shall be in any respect fraudulent or if any fraudulent means or devices are used by the **Insured** or anyone acting on the **Insured's** behalf to obtain any benefit under this **Policy**, **Underwriters** shall be entitled to refuse to pay such **Claim**.

6.6. Subrogation Rights

In the event of any payment under this **Policy**, **Underwriters** will be subrogated to all the **Insured's** rights of recovery against any person or organisation and the **Insured** shall execute and deliver any appropriate instruments and papers and do whatever else is necessary to secure such rights. Any amount so recovered shall be applied in accordance with the provisions of section 67 of the Insurance Contracts Act 1984 (Cth).

Underwriters agree to waive all rights of subrogation under this **Policy** against each of the parties described as an **Insured**. However, where an **Insured** is protected from liability insured against hereunder by any other policy of insurance or indemnity, **Underwriters'** subrogation right is not waived to the extent and up to the amount of cover provided by such other policy of insurance or indemnity.

6.7. Allocation

- (a) If a **Claim** covered by this **Policy** includes a loss or liability which is not covered by this **Policy**, the **Insured** and **Underwriters** shall use their best efforts to agree upon a fair and proper allocation between the covered and uncovered loss or liability.
- (b) If the **Insured** and **Underwriters** cannot agree on an allocation of loss or liability, they may agree to submit the dispute to arbitration. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by **Underwriters**, and a third independent arbitrator selected by the first two arbitrators.
- (c) Any arbitrated or judicially determined allocation of loss or liability shall be applied retrospectively to all loss or liability relating to any **Claim** under this **Policy**. Any allocation or advancement on account of any **Claim** under this **Policy** shall not apply to or create any presumption with respect to the final allocation of loss or liability.

6.8. Other Insurance

In the event of the **Insured** being indemnified under any other insurance effected by or on behalf of the **Insured** (not being insurance specifically effected as insurance excess of this **Policy**) in respect of a **Claim** for which indemnity would be available under this **Policy**, subject to the Insurance Contracts Act 1984 (Cth), this **Policy** attaches as an excess layer over and above such other insurance.

In the event of any **Claim** being made under this **Policy**, the **Insured** must notify and give details to **Underwriters** of any other insurance contract or policies insuring the same risk as insured under this **Policy**.

6.9. Goods and Services Tax

As part of the **Premium**, **Underwriters** will charge the **Named Insured** an amount on account of GST.

The **Named Insured** must inform **Underwriters** of the extent to which there is an entitlement to an input tax credit for that GST amount each time that it notifies a **Claim** under this **Policy**. No payment will be made to the **Named Insured** for any GST liability that it may incur on the settlement of a **Claim** if it does not inform **Underwriters** of its entitlement or correct entitlement to an input tax credit.

Despite the other terms of this **Policy**, the **Underwriters'** liability to the **Named Insured** will be calculated taking into account any input tax credit to which the **Named Insured** is entitled for any acquisition which is relevant to the **Claim**, or to which it would have been entitled had it made a relevant acquisition.

'GST', 'input tax credit', 'acquisition' and 'supply' have the meaning given in A New Tax System (Goods and Services Tax) Act 1999.

7. General Conditions

The following Conditions apply to all Sections of the **Policy** and in the event of breach, **Underwriters** may be entitled, subject to the provisions of the Insurance Contracts Act 1984, to deny or reduce their liability under the **Policy**.

7.1 Adjustment

If the **Premium** for this **Policy** has been calculated on estimates provided by the **Named Insured** and the **Policy** is identified as subject to adjustment based on a minimum and/or deposit **Premium**, the **Named Insured** shall within a reasonable period after expiry of each **Period of Insurance** provide to **Underwriters** such information relating to the estimates as identified by the Underwriters as being required for the calculation of the **Premium** as **Underwriters** may reasonably require for such expired period and the **Premium** for such period shall be adjusted by **Underwriters** and the difference be paid by or allowed to the **Named Insured** subject to any minimum **Premium** applicable.

The **Named Insured** shall keep an accurate record containing all particulars relative to this and shall at all reasonable times, allow **Underwriters** to inspect such record.

7.2 Cancellation

The **Named Insured** may cancel this **Policy** by giving notice in writing to **Underwriters**. If such notice is given, the cancellation will take effect on the day the notice is received by **Underwriters**.

Underwriters may cancel this **Policy** in any of the circumstances set out in section 60 of the Insurance Contracts Act 1984 (Cth).

When cancelled by the **Named Insured**, a refund of **Premium** will be allowed at seventy percent (70%) pro rata of the **Premium** for the unexpired **Period of Insurance**, subject to any minimum and deposit **Premium** that may apply.

When the **Premium** is subject to adjustment, cancellation will not affect the obligation of the **Insured** to supply to **Underwriters** such information as is reasonably necessary to permit the **Premium** adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

If any **Claims** have been notified to **Underwriters** prior to the effective date of cancellation then no refund of **Premium** for the unexpired **Period of Insurance** will be provided.

7.3 Cross Liability

Each of the parties comprising the **Insured** is considered a separate legal entity and the word **Insured** applies to each party as if a separate **Policy** had been issued to each of the said parties, provided always that:

- (a) each of such parties shall be separately subject to the terms, conditions, exclusions and definitions of this **Policy**; and
- (b) nothing contained in this clause will operate to increase **Underwriters** liability under this **Policy**.

7.4 Currency

All amounts referred to in this **Policy** are in Australian Dollars.

If the **Insured** incurs liability to settle any **Claim** for an amount stated in the local currency of any country or territory outside the Commonwealth of Australia, where an award is made or a settlement is agreed upon, then, the amount payable by **Underwriters** shall be the value of such award or settlement together with costs awarded or payable to any claimant converted to Australian Dollars at the applicable currency rate of exchange on the date on which the payment is made, subject to the **Limit of Liability**.

7.5 Construction and Interpretation

- (a) Clause headings and the use of bold print are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) Unless the contrary intention appears in this **Policy**:
 - (i) words importing a gender include any other gender, and
 - (ii) words in the singular include the plural and words in the plural include the singular;
- (c) References to statutes include amendments and replacements thereof, regulations thereunder, and re-enactments or consolidations thereof.

7.6 Material Facts

Every change materially affecting the facts or circumstances existing at the commencement of the **Policy**, or at any subsequent renewal date, must be notified to **Underwriters** in writing as soon as reasonably practicable and after such change comes to the notice of the **Insured**.

7.7 Reasonable Care

The **Insured** at their own expense shall take all reasonable measures and care to:

- (a) maintain premises and plant in satisfactory condition;
- (b) comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;
- (c) prevent **Personal Injury, Damage to Property, and Advertising Injury** and/or any other loss, damage or expense; and
- (d) prevent the manufacture, sale or supply of defective **Products**.

7.8 Endorsements

Any endorsement does not affect or increase the **Limit of Liability** or any other term of this **Policy**, except to the extent specifically provided in the endorsement. For the avoidance of doubt, each endorsement is otherwise subject to the all the terms, conditions, exclusions, definitions and **Limits of Liability** of this **Policy**.

7.9 Payment of premium

The **Named Insured** must pay the **Premium** specified in the **Schedule** for the **Period of Insurance** to **Underwriters** by the due date. If the **Named Insured** does not pay the **Premium** by the due date, **Underwriters are** entitled to cancel this **Policy** in accordance with the Insurance Contracts Act 1984 (Cth).

7.10 Disputes Notice and Jurisdiction

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

- (a) if a dispute arises under this **Policy**, this **Policy** will be subject to Australian law and practice and the **Underwriters** will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (b) any summons notice or process to be served upon the **Underwriters** may be served upon:

*Lloyd's Underwriters' General Representative in Australia
Suite 1603
Level 16
1 Macquarie Place
Sydney NSW 2000*

who has authority to accept service on the **Underwriters'** behalf;

- (c) if a suit is instituted against any of the **Underwriters**, all **Underwriters** participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

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

*Arch Underwriting at Lloyd's (Australia) Pty Ltd
Suite 11.02, Level 11,
360 Collins Street, Melbourne VIC3000
or by email at: claims@archinsurance.com.au*

7.11 Sanction Limitation and Exclusion Clause

The **Underwriters** shall not be deemed to provide cover and the **Underwriters** shall not be liable to pay any claim or provide any benefit under the **Policy** to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **Underwriters** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

To be valid, this **Policy** must have attached to it the Certificate of Insurance signed by an authorised officer of Arch Underwriting at Lloyd's (Australia) Pty Ltd.

8. Definitions

For the purpose of determining the cover provided by this **Policy**:

- 8.1 Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the threat of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government which from its nature or context is done for, or in connection with political, religious, ideological, ethnic or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear.
- 8.2 Advertising Injury** means any unintentional:
- (a) written or spoken defamation;
 - (b) infringement of copyright or passing off of title or slogan;
 - (c) piracy, unfair competition, idea misappropriation or invasion of rights of privacy;
 - (d) breach of the misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, state or territory,
- committed or alleged to have been committed during the **Period of Insurance** in any advertisement, publicity article, broadcast, telecast or via an internet website, and caused by or arising out of the **Insured's** advertising activities.
- 8.3 Aircraft** means any craft or object designed to travel through air, atmosphere or space, other than unmanned inflatable balloons used for advertising or promotional purposes.
- 8.4 Business** means the business as described in the **Schedule** including:
- (a) any prior operations or activities which have ceased or have been disposed of where the Insured retains a legal liability;
 - (b) the ownership of premises and/or the tenancy thereof by the **Insured**;
 - (c) participation in any exhibition or conference by or on behalf of the **Insured**;
 - (d) first aid, medical, ambulance or fire fighting services;
 - (e) the provision of sponsorships by or on behalf of the **Insured**;
 - (f) private work undertaken by the **Insured's** employees for any of the **Insured's** directors, partners, proprietors, officers or executives; and
 - (g) the provision and/or management of any canteen, social and/or sporting clubs or educational, welfare and/or child care facilities by or on behalf of the **Insured**, which are primarily for the benefit of the **Insured's** employees.
- 8.5 Claim** means:
- (a) any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counter claim or third party notice issued against or served upon the **Insured**;
 - (b) the receipt by the **Insured** of any written or verbal notice of claim; or
 - (c) demand for **Compensation** made by a third party against the **Insured**.

- 8.6 Compensation** means monies paid or payable by judgment, award or settlement together with any liability on the **Insured's** part to pay legal costs and expenses (other than those referred to in 'Defence costs and supplementary payments') for:
- (a) **Personal Injury;**
 - (b) **Damage to Property;**
 - (c) **Advertising Injury.**
- 8.7 Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **Insured** or any other party.
- 8.8 Contractor or Subcontractor** means any person engaged by the **Insured** on a contract or sub-contract basis to carry out the **Business** of the **Insured**.
- 8.9 Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**
- 8.10 Cyber Incident** means:
- (a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
 - (b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
- 8.11 Damage to Property** means:
- (a) physical damage to, destruction of or loss of tangible property including the loss of use thereof at any time resulting therefrom; and/or
 - (b) loss of use of tangible property which has not been physically damaged, destroyed or lost, provided that such loss of use is caused by or arises out of physical damage of other tangible property.
- 8.12 Data** means information, facts concepts code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted, or stored by a **Computer System**.
- 8.13 Deductible** means the amount stated in the **Schedule** payable by the **Insured**.
- 8.14 Employment Practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of the **Insured's** employees.
- 8.15 Hovercraft** means any vessel, craft or thing made or intended to transport persons or property over land or water supported on a cushion of air.

8.16 Incidental Contract means:

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

8.17 Insured means:

- (a) the **Named Insured**;
- (b) every past, present or future director, stockholder or shareholder, partner, proprietor, officer, executive, employee or volunteer of the **Named Insured**, including the spouse or any family member of any such person while accompanying such person on any commercial trip or function in connection with the **Business**, while such persons are acting for or on behalf of the **Named Insured** and/or within the scope of their duties in such capacities;
- (c) every principal in respect of the principal's liability arising out of:
 - (i) the performance by or on behalf of the **Named Insured** of any contract or agreement for the performance of work for such principal, but only to the extent required by such contract or agreement and in any event only for such coverage and **Limit of Liability** as is provided by this **Policy**;
 - (ii) any **Products** sold or supplied by the **Named Insured**, but only in respect of the **Named Insured's** own acts or omissions in connection with such **Products** and in any event only for such coverage and **Limit of Liability** as is provided by this **Policy**;
- (d) every person, corporation, organisation, joint venture company or partnership, to whom the **Named Insured** is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this **Policy** but only to the extent required by such contract or agreement and in any event only for such coverage and **Limit of Liability** as is provided by this **Policy**;
- (e) every officer, member, employee or voluntary helper of the **Named Insured's** canteen, social and/or sporting clubs, first aid, medical, ambulance or fire fighting services, charity or welfare work and/or child care facilities, while acting in their respective capacities as such; and
- (f) any director, partner, proprietor, officer or executive of the **Named Insured** in respect of private work undertaken by the **Named Insured's** employees for such person, and any employee whilst actually undertaking such work.

8.18 Labour Hire Personnel means any person engaged by the **Insured** to carry out the **Business** of the **Insured** whilst employed by an employment agency, placement agency, labour hire company or any other company or person whose business is or includes the supply and/or provision of labour.

8.19 Limit of Liability means the limit of liability stated in the **Schedule**.

8.20 Named Insured means the persons, organisations or entities named in the **Schedule**. The **Named Insured** includes:

- (a) subsidiary companies and any other organisation under the control of the **Named Insured**;
- (b) subsidiary and/or controlled corporations which are constituted or acquired by the **Named Insured** during the **Period of Insurance**; and
- (c) every subsidiary and/or controlled corporation and/or other organisation of the **Named Insured** which is divested during the **Period of Insurance**, but only in respect of **Claims** made against such

divested subsidiary or controlled corporation or organisation caused by or arising out of **Occurrences** which occurred prior to the date of divestment.

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

With respect to **Personal Injury** and/or **Damage to Property**, all events of a series consequent upon or attributable to one source or original cause shall be deemed to be one **Occurrence**.

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

8.22 Period of Insurance means the period stated in the **Schedule** and any extension thereof which may be agreed in writing between the **Insured** and **Underwriters**.

8.23 Personal Injury means:

- (a) bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury, including loss of consortium resulting therefrom;
- (b) the effects of false arrest, false imprisonment, wrongful detention, wrongful entry or wrongful eviction, malicious prosecution or humiliation;
- (c) the effects of unintentional libel, slander, defamation of character or invasion of privacy;
- (d) the effects of assault and battery not committed by or at the direction of the **Insured**, unless committed for the purpose of preventing or eliminating danger to persons or property; and
- (e) the effects of discrimination as a result of race, religion, sex, marital status, age, intellectual impairment, disability or otherwise (unless insurance thereof is prohibited by law), but only with respect to liability other than fines and penalties imposed by law.

8.24 Policy means:

- (a) the policy wording and the certificate of insurance and the **Schedule**, insuring clauses, extensions, conditions, definitions, exclusions and other terms contained herein; and
- (b) any endorsement attaching to and forming part of this **Policy** of Insurance either at inception or during the **Period of Insurance**.

8.25 Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material, including materials that are intended to be recycled, reconditioned or reclaimed.

8.26 Premium means the amount payable for this **Policy**. It includes all relevant government charges.

8.27 Products means any good, item or merchandise (after it has ceased to be in the possession or control of the **Insured**) manufactured, constructed, erected, assembled, installed, grown, extracted, produced or processed, treated, altered, modified, repaired, serviced, bottled, labelled, handled, sold, supplied, distributed, imported or exported, by or on behalf of the **Insured**, including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such **Products** and anything which by law the **Insured** is deemed to have manufactured in the course of the **Business**, including discontinued products.

8.28 Schedule means the schedule which **Underwriters** issue to the **Named Insured** confirming the details of the coverage provided under the **Policy**. A new **Schedule** is issued for each renewal.

8.29 Territorial Limits means:

- (a) anywhere in the world except the United States of America, Canada and their respective protectorates and territories;
- (b) the United States of America, Canada and their respective protectorates and territories if the **Personal Injury or Damage to Property** arises from business visits of the **Insured's** directors, partners, officers, executives or employees, who are non-resident in the United States of America or Canada, other than where such persons perform manual work.

8.30 Underwriters means Certain Underwriters at Lloyd's who have subscribed their name(s) to this **Policy**.

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

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

9. Complaints – Internal and External Complaints Procedure

In this section “we”, “our” or “us” means the **Underwriters**. “you”, “your”, “yours” means the **Insured**.

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

*The Complaints Manager,
Arch Underwriting at Lloyd’s (Australia) Pty Ltd,
Level 10, 155 Clarence Street
Sydney, NSW, 2000*

or telephoning us at (02) 8284 8400
or emailing us at complaints@archinsurance.com.au

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

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

*Lloyd’s Australia Limited
Email: ldraustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000*

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

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

*Telephone: 1800 931 678
Email: info@afca.org.au
Post: GPO Box 3 Melbourne VIC 3001
Website: www.afca.org.au*

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.