

PASSPORT



Personal Directors' and Officers' Liability Insurance Policy

Imalia Pty Ltd
Suite 1802 Level 18
45 Clarence
Sydney NSW 2000
Tel: 1300 302 952
ABN 41 147 857 878 AFSL 451867

IMALIA.COM.AU



IMPORTANT INFORMATION

THIS POLICY

This Policy is an important document. The Policy wording and Schedule together set out the cover provided, the amount insured and the terms and conditions of your insurance. Please read it carefully and keep it in a safe place.

Imalia Pty Ltd, ABN 41 147 857 878, is a coverholder for certain Underwriters at Lloyd's and is referred to in the Policy as the "Coverholder". Imalia Pty Ltd has the authority to bind this Policy on their behalf.

CLAIMS MADE POLICY

This Policy is issued by Imalia Pty Ltd on a claims made and notified basis. This means that the Policy only covers Claims first made against you during the Period of Insurance and notified to Imalia Pty Ltd in writing during the Period of Insurance. The Policy does not provide cover for any Claims made against you during the Period of Insurance if at any time prior to the commencement of the Period of Insurance you were aware of facts which might give rise to those Claims being made against you.

Section 40 (3) of the Insurance Contracts Act 1984 (Cth) applies to this Policy. That sub-section provides that where the Assured (as defined in the Schedule) becomes aware, during the Period of Insurance of any occurrence or fact which might give rise to a Claim against them by some other person, then provided the Assured notifies Imalia Pty Ltd of the matter as soon as reasonably practicable after the Assured becomes aware of the occurrence or fact and before the Policy expires, the

Underwriters may not refuse to indemnify because a Claim resulting from the matter is not made against the Assured prior to the end of the Period of Insurance.

If the Assured fails to notify the relevant occurrences or facts to Imalia Pty Ltd before the expiry of the Policy, the Assured will not have the benefit of Section 40(3) of the Insurance Contracts Act 1984 (Cth) and Imalia Pty Ltd may refuse to pay any subsequent Claim. Further, if a Claim is actually made against the Assured during the Period of Insurance but is not notified to Imalia Pty Ltd until after the Policy has expired, Imalia Pty Ltd may refuse to pay or reduce its payment under the Policy if it has suffered financial prejudice as a result of late notification.

YOUR DUTY OF DISCLOSURE

Section 21 of the Insurance Contracts Act 1984 (Cth) provides that before you enter into a contract of insurance you have a duty 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 and insure the risk and, if so, upon what terms. You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of insurance.

Your duty, however, does not require disclosure of any 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 its business, ought to know; or
- Where compliance with your duty of disclosure is waived by the insurer.

NON-DISCLOSURE

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a Claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also cancel the contract from its beginning.

POLICY CANCELLATION

In the event of Policy cancellation by the insured, Imalia Pty Ltd's cancellation rates will apply as outlined in 7(d) General Conditions.

PRIVACY STATEMENT

Imalia Pty Ltd is bound by the National Privacy Principles and the obligations of the Privacy Act 1988 (as amended) (Cth) regarding the collection, use, disclosure and handling of personal information. We will protect the privacy of your personal information.

We collect personal information about you to enable us to provide you with relevant products and services, to assess your application for insurance and, if a contract is entered into, to enable us to provide, administer, and manage your Policy, and to investigate and handle and respond to any Claims under your Policy. We may disclose your information to third parties (who may be located overseas), such as certain Underwriters at Lloyd's including Reinsurers, professional advisers such as lawyers, accountants and other professional experts, claims adjusters, and others appointed by Imalia Pty Ltd or by certain Underwriters at Lloyd's to assist us and them in providing relevant products and services. We may also disclose your information to people listed as co-insured on your Policy and to your agents. By providing your personal information to us, you consent to us making these disclosures.

If you do not provide all or part of the information required, we may not be able to provide you with our products and services, consider your application for insurance, administer your Policy, assess or handle Claims under your Policy, or you may breach your Duty of Disclosure.

When you provide us with personal information about other individuals, we rely upon you to have made them aware of that disclosure and of the terms of the Imalia Pty Ltd Privacy Statement and to obtain their consent.

For a copy of the Imalia Pty Ltd Privacy Statement or to request access to your personal information, contact the Privacy Officer at Imalia Pty Ltd by email: help@imalia.com.au or by mail at the address shown on this Policy.

GENERAL INSURANCE CODE OF PRACTICE

Imalia Pty Ltd and Underwriters at Lloyd's proudly support the General Insurance Code of Practice. The purpose of the Code is to:

- promote more informed relations between insurers and their customers;
- develop and improve customer confidence in the insurance industry;
- provide suitable mechanisms for the resolution of complaints and disputes; and
- commit insurers to rely upon higher standards of customer service.

ABOUT LLOYD'S

Lloyd's is the world's specialist insurance and reinsurance market, bringing together an outstanding concentration of underwriting expertise and talent. In Australia, Lloyd's is proud to be a member of the Insurance Council of Australia.

Lloyd's has adopted the General Insurance Code of Practice subject to certain specific qualifications. You can obtain a copy of the code at www.codeofpractice.com.au.

Our aim is to provide the highest service to our Australian policyholders and. To this end. We have developed the following procedures for the fair handling of complaints from Lloyd's policyholders.

How can we help you?

There are established procedures for dealing with complaints and disputes regarding your policy or claim. Policyholders may be able to take advantage of the complaints services.

Stage 1

1. We will respond to complaints within 15 business days provided we have all necessary information and have completed any investigation required.
2. In cases where further information, assessment or investigation is required we will let you know as soon as reasonably practicable within the 15 business day timeframe and agree reasonable alternative time frames. If we cannot agree, we will treat your complaint as a dispute and we will advise you of your right to take your complaint to Stage Two of the complaints process.
3. We will keep you informed of the progress of our response to the complaint at least every ten business days, unless you agree otherwise.
4. When we respond to your complaint, we will respond in writing and will tell you our decision in relation to the complaint and the reasons for our decision.

Stage 2

In the unlikely event that this does not resolve the matter for you are not satisfied with the way your complaint has been dealt with, you should contact:

Lloyd's Australia Limited
Level 9, 1 O'Connell Street
Sydney NSW 2000
T: (02) 8298 0783
E: ldraustralia@lloyds.com

We will usually require the following information:

- Name, address and telephone number of the policyholder;
- Details of the policy concerned (policy and/or claim reference numbers etc);
- Details of the insurance intermediary through whom the policy was obtained;
- Reasons why you are dissatisfied;
- Copies of any supporting documentation you believe may assist us in addressing your dispute appropriately.

Following receipt of your complaint, you will be advised whether your matter will be handled by Lloyd's Australia or the Lloyd's Complaints team in the UK, or what other avenues are available to you:

- Where your complaint is eligible for referral to the Australian Financial Claims Authority (AFCA), your complaint will generally be reviewed by a person at Lloyd's Australia with appropriate authority to deal with your dispute.
- Where your complaint is not eligible for referral to AFCA, Lloyd's Australia will refer your complaint to the Lloyd's Complaints team in the UK if it falls within the jurisdiction of the UK Financial Ombudsmen. They will review your complaint and liaise directly with you.
- For all other matters you will be advised of what other avenues may be available to you.

How long will the Stage 2 process take?

Your complaint will be acknowledged in writing within 5 business days of receipt, and you will be kept informed of the progress of our review of your complaint at least every 10 business days.

The length of time required to resolve a particular dispute will depend on the individual issues raised, however in most cases you will receive a full written response to your complaint within 15 business days of receive, provided we have received all necessary information and have completed any investigation required.

EXTERNAL DISPUTE RESOLUTION

If your complaint is not resolved in a manner satisfactory to you or we do not resolve your complaint within 45 calendar days of receiving it at Stage 1, you may refer the matter to AFCA as follows:

AFCA can be contacted by:

Post: GPO Box 3, Melbourne VIC 3001

Phone: 1800 931 678

Email: info@afca.org.au

More information can be found on their website www.afca.org.au

AFCA is an independent body that operates nationally in Australia and aim to resolve disputes between you and your insurer. AFCA provides fair and independent financial services complaint resolution that is free to consumers. Your dispute must be referred to AFCA within 2 years of the date of our final decision.

Determinations made by AFCA are binding on us.

Customers not eligible for referral to AFCA, may be eligible for referral to the UK Financial Ombudsman Service. Such referral must occur within 6 months of the final decision by the Complaints team at Lloyd's. Further details will be provided with their final decision to you.

How much will this procedure cost you?

This service is free of charge to policyholders.

HOW TO MAKE A CLAIM

It is our aim to give You peace of mind by providing an efficient, effective and helpful claims service.

You must notify Imalia within thirty (30) days of an event that is likely to give rise to a claim by visiting their website at www.imalia.com.au and follow the prompt to "How to make a claim". Alternatively, You can contact Imalia by;

Phone: 1300 302 952

Email: help@imalia.co.au

Post: Imalia Pty Ltd
Suite 1802
45 Clarence Street
Sydney NSW 2000

Office hours are 09.00 to 17.00 (EST) Monday to Friday excluding bank holidays.

If it is not possible to notify Imalia within that time, You must notify them as soon as reasonably possible.

AUSTRALIA TERRORISM INSURANCE ACT 2003 NOTICE (NMA2984)

The Underwriters have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism Exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any “eligible terrorism loss” resulting from a “terrorist act” which is a “declared terrorist incident” as defined in ATIA. The Terrorism Exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a “declared terrorist incident”.

All other terms, conditions, insured coverage and Exclusions of this Insurance including applicable limits and deductibles remain unchanged.

If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a “reduction percentage” as defined in ATIA which results in a cap on the Underwriter’s liability for payment for “eligible terrorism losses”.

In consideration of the payment of the premium set forth in Item 5 of the Schedule and in reliance on the statements made and information contained within the Proposal Form and subject to the terms, conditions and limitations of this Policy and after the exhaustion of all other indemnification available to the Assured from any other source including any other policy of insurance, the Underwriters will:

1. INSURING CLAUSE

pay on behalf of the Assured all Loss arising from any Claim first made against them during the Period of Insurance and notified to the Underwriters during the Period of Insurance for any Wrongful Act committed by them solely in their capacity as a Director or Officer.

2. DEFINITIONS

All Definitions within this Policy shall have the same meaning whether expressed in the singular or the plural.

- a) Assured means: the Director or Officer named in Item 1 of the Schedule.
- b) Claim means: a written or oral notice received by the Assured of a demand from any party for monetary compensation or other relief, including but not limited to non pecuniary relief in respect of any actual or alleged Wrongful Act.
- c) Company means:
any entity which is legally incorporated with limited liability and any Subsidiary, other than the following:
 - i. such entities which are incorporated and/or domiciled and/or registered in the United States of America;
 - ii. partnerships, limited liability partnerships and general partnerships;
 - iii. any Exchange Traded Entity.

- d) Defence Costs means:
 - i. reasonable costs, fees and charges and expenses incurred in the investigation, defence, settlement of or Appeal from a Claim or circumstances notified with the prior and written consent of the Underwriters (such consent is not to be unreasonably withheld),
 - ii. the premium paid for financial or insurance instruments or bonds which are a condition of instituting an appeal to an award of civil damages against the Assured (but not any obligation to procure or provide such instruments or bonds).

Defence Costs does not mean remuneration payable to the Assured which includes salaries, wages, travel or accommodation expenses.

- e) Director or Officer means:
 - i. the Assured while serving as a director or officer of a Company or a superannuation trustee of any Employee benefit plan or superannuation fund of a Company.
 - ii. in the event of the bankruptcy or death or incapacity of the Assured, his or her estate and heirs and legal representatives, but only in respect of any Claim against the Assured otherwise covered under this Policy.

Director or Officer does not mean any external auditor, liquidator, administrator, receiver, administrative receiver, legal, or other professional adviser of a Company.

- f) Employee means:
any natural person who was, or is, or may hereafter be acting under a contract of service or apprenticeship with a Company.

Employee does not mean any consultant or sub-contractor or independent professional adviser or agent or Director or Officer or any natural person providing services to any entity except a Company.

- g) Employment Wrongful Act means any actual or alleged:
- i. discrimination or harassment of an Employee or of a prospective Employee; or
 - ii. wrongful dismissal, discharge or termination, either actual or constructive, of the employment of an Employee, or the demotion or the refusal to promote an Employee, or the refusal to employ a natural person as an Employee; or
 - iii. retaliatory action taken against an Employee proven to have arisen from that Employee exercising or attempting to exercise of his or her rights according to applicable law; or
 - iv. misleading representation or advertising relating to employment; or
 - v. employment related: denial of natural justice, invasion of privacy, defamation, wrongful infliction of emotional distress, discrimination on any legally prohibited basis.
- h) Exchange Traded Entity means:
any entity who's Securities are publicly traded (wholly or in part) on a stock exchange in any jurisdiction.
- i) Inquiry means:
a formal administrative or formal regulatory investigation or examination by a governmental, regulatory, selfregulatory, professional, trade, statutory or official body or institution, including a Royal Commission, commission of inquiry, judicial body that is empowered by law to investigate the affairs of an Assured in his/her insured capacity. Coverage does not apply with respect to routine investigations, inspection, compliance or similar reviews of an Assured conducted by any professional, statutory, self-regulatory or official body.
- j) Loss means:
- i. such sums as the Assured becomes legally liable to pay as a result of any judgment or order or award or settlement agreement reached in respect of a Claim.
 - ii. punitive, exemplary or aggravated damages, civil fines or pecuniary penalties awarded in a court of law other than where calculated by the multiplication of a lesser damages sum; or where the Insurer is legally prohibited from paying such damages or fines or penalties in the jurisdiction in which the Claim is determined.
 - iii. Defence Costs.
- Loss does not mean:
- iv. taxes or unemployment insurance contributions or superannuation plan contributions or salaries or wages, benefits, remuneration, sums payable pursuant to a financial support direction or superannuation fund contribution notice issued by any relevant regulatory authority;
 - v. any amount deemed uninsurable under law; vi. any expenses of any Assured other than Defence Costs; vii. fines or penalties which are uninsurable at law.
- k) Period of Insurance means: the period stated in Item 2 of the Schedule.
- l) Policy means:

the Proposal Form, this wording, the Schedule and all Endorsements appended thereto.
- m) Pollution means:

any actual or alleged or threatened discharge or release or escape or dispersal or disposal of pollutants or contamination of whatever kind or any direction or request that an Assured test for or monitor or clean up or remove or contain or treat or detoxify or neutralise or assess any pollutants.
- n) Proposal Form means:
the written application for this Policy and any policy of which this Policy is a renewal as submitted to and accepted by the Underwriters and any written information submitted to and accepted by the Underwriters in connection with this Policy, all of which shall be deemed to form part of this Policy. The Proposal Form shall be the basis of this contract of insurance.

- o) Schedule means:
the document so-entitled which is appended to this Policy.
- p) Securities means:
any form of security providing an equity interest in a Company or a debt of a Company.
- q) Subsidiary means:
any company in which a Company either directly or indirectly:
 - i. holds the majority of the voting rights; or
 - ii. holds more than half of the issued share capital; or
 - iii. has the right to remove or to appoint a majority of the board of directors.
- r) Underwriters means:
Certain Lloyd's Underwriters and any other participating insurance companies.
- s) United States of America means:
the United States of America and its respective states, localities, overseas territories and possessions.
- t) United States Claim means any:
 - i. Claim brought in the jurisdiction and courts of the United States of America; or
 - ii. actual or attempted enforcement or upholding against the Assured by any court or arbitrator or tribunal outside the United States of America of any damages or compensatory or monetary awards or judgments or orders or settlements or costs or expenses made within the United States of America.
- u) Wrongful Act means:
 - i. any actual or alleged or proposed act, error, misstatement, misleading statement, omission, neglect, libel, slander, breach of duty, breach of trust or breach of warranty of authority committed or attempted, or allegedly committed or attempted, by the Assured solely in the performance of their duties as Directors or Officers; or
 - ii. any Employment Wrongful Act.
 - iii. with respect to any Subsidiary, Wrongful Act only means Wrongful Acts committed or allegedly committed between the dates that any company falls within Definition q) i. to iii. inclusive.

3. LIMITS OF LIABILITY

- a) The Underwriters' aggregate limit of liability for all Loss in respect of all Claims shall be the amount specified in Item 3 of the Schedule.
- b) All Claims or series of Claims or Loss or series of Losses arising from or attributable to or which are causally connected with a single fact or circumstance or Wrongful Act or any related series of facts or circumstances or Wrongful Acts shall be considered as a single Claim.
- c) Except as otherwise stated herein, if a Claim is made that gives rise to coverage both under this Policy and under any other Directors' and Officers' Liability Insurance issued by the Underwriters, the Underwriters' maximum aggregate limit of liability under all such policies combined for all Loss in respect of that Claim shall not exceed the largest single available aggregate limit of liability of any of those policies, including this Policy, as is in effect at the time such Claim is deemed to have been made.
- d) Any cover provided by section 4. Extensions a) – d) shall form part of and not be in addition to the aggregate limit of liability specified in Item 3 of the Schedule.

4. EXTENSIONS

Subject to section 3. Limits of Liability, the Underwriters will pay on behalf of the Assured as a Director or Officer:

a) Pollution Defence Costs

Defence Costs, incurred in their defence of criminal or regulatory proceedings in respect of Pollution and which results from any Wrongful Act giving rise to a Claim.

b) OH&S Defence Costs

Defence Costs reasonably incurred in their defence of criminal or regulatory proceedings in respect of any actual or alleged breach of any occupational health and safety laws or regulations giving rise to a Claim.

c) Fines & Penalties

civil fines and civil penalties, if and to the extent allowed by law, which the Assured as a Director or Officer is ordered to pay by law as a result of any Wrongful Act giving rise to a Claim, other than those which are otherwise recoverable from or payable by a Company, or it is proven are against public policy or in breach of the laws or rules or regulations to which the Underwriters or the Assured (in their capacity as a director or officer) or a Company are subject, to pay.

d) Inquiry Costs

costs and expenses incurred by the Assured (but not including remuneration, salaries, fees, wages, travel or accommodation expenses) in preparing for and attending an Inquiry, as and when they are incurred, provided that:

- i. such costs and expenses were incurred with the prior written consent of the Underwriters which consent shall not be unreasonably withheld; and
- ii. the notice requiring the Assured to attend the Inquiry is first served upon the Assured and reported to the Underwriters during the Period of Insurance.

The Underwriters agree to pay such reasonable costs and expenses arising out of an Inquiry whether or not there is an allegation of a Wrongful Act against the Assured.

5. EXCLUSIONS

The Underwriters shall not be liable for Loss in connection with any Claim based upon, consequent upon, by reason of, arising out of, arising from, directly or indirectly resulting from, attributable to, in any way involving, or in connection with:

- a) any legal or administrative or disciplinary, or regulatory proceedings which existed or were pending at the date stated in Item 4 of the Schedule, or any fact or circumstance or event in any way pertaining to such proceedings;
- b) the Assured:
 - i. gaining any personal profit or advantage or receiving any remuneration to which he or she was or is not legally entitled;
 - ii. committing any dishonest or fraudulent act or omission or any wilful violation of law or by-law or duty imposed by any such law, regulation or by-law;provided that this Exclusion shall only apply if such profit or advantage or remuneration or act or omission or wilful violation is established by admission or by a final and non-appealable adjudication in any proceeding, court or tribunal;
- c) circumstance notified or Claim made under any insurance policy which was in force prior to the Period of Insurance or circumstance or Claim which was known about by the Assured prior to the Period of Insurance;
- d) superannuation programme or Employee benefit plan;
- e) Pollution;
- f) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority;
- g) Terrorism (including, without limitation, contemporaneous or ensuing loss or damage or legal liability caused by fire and/or looting and/or theft);

The burden of proving that any Claim does not fall within this Terrorism Exclusion shall be upon the

Assured. For the purposes of this Exclusion, "Terrorism" means any act or acts of force or violence (whether threatened or actual) by any person or persons acting alone or on behalf of or in connection with any organisation, which is carried out for political, religious or ideological ends and is either directed towards the over-throwing or influencing of any Government de jure or de facto or to put the public or any part of the public in fear or jeopardy; breach of professional duty or professional services provided by or on behalf of the Assured and/or a Company to a third party;

- h)
- i) United States Claim;
- j) damage to or destruction of any tangible property including the loss of use thereof whether or not it is damaged or destroyed;
- k) bodily injury or sickness or disease or mental injury or mental anguish or death of any person provided that this Exclusion shall not apply to any Claim for an Employment Wrongful Act or for emotional distress in connection with a wrongful termination of employment or a Claim for discrimination or harassment by any Employee;
- l) Claim made by or on behalf of a Company or by or on behalf of any director or officer of a Company;
- m) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- n) offering of Securities of a Company;
- o) any Claim for any Wrongful Act committed by the Assured in their capacity as a director or officer of any Exchange Traded Entity.

6. CLAIMS CONDITIONS

a) Claims notification

As a condition precedent to the liability of the Underwriters under this Policy, the Assured is required to:

- i. give notice of any Claim to the Underwriters as soon as is reasonably practicable and in any event within 14 days after the end of the Period of Insurance. Any notice of a Claim must be given in writing by post or by facsimile or email to the address specified in Item 7 of the Schedule and shall include full details including, but not limited to, dates, locations and the names of persons involved;
- ii. at their own cost, provide the Underwriters in a timely fashion with all information and assistance they reasonably require to allow them to investigate, defend, or resolve any Claim and to exercise any subrogation rights;
- iii. furnish the Underwriters in a timely fashion with copies of all papers in connection with any Claim or circumstance notified;

b) Related Claims

All Claims based upon, related to or arising from or in consequence of the same or related facts or circumstances or Wrongful Acts shall for the purposes of this Policy be treated as one Claim made when the earliest of the Claims was notified.

c) Defence Costs, settlement and allocation

- i. The Underwriters have the right but not the obligation to control the defence and settlement of any Claim and the appointment of lawyers to represent the Assured.
- ii. The Assured shall not make any admission or give any offer or settlement or promise or indemnity to any party without the prior and written consent of the Underwriters (the consent of the Underwriters is not to be unreasonably withheld or delayed).

- iii. The Assured must contest any Claim at trial unless mutually agreed by the Underwriters and legal counsel that the Claim should not be contested;
- iv. Defence Costs which are advanced on behalf of the Assured prior to the resolution of a Claim shall be repayable by the Assured to the Underwriters in the event that the Claim is ultimately determined not to be covered under this Policy. The element of prior written consent necessary as a pre-condition to payment of Defence Costs shall not constitute a waiver of the right to claim re-payment of Defence Costs to which the Assured is not entitled.
- v. If the Assured refuses to consent to any settlement recommended by the Underwriters or their legal representatives and elects to contest or to continue defence of a Claim, then the liability of the Underwriters for such Claim shall not exceed the amount for which the Claim could have been settled up to the date of such refusal;
- vi. In the event that any Claim under this Policy gives rise both to Loss which is covered under this Policy and losses which are not so covered, the Underwriters and the Assured shall negotiate in good faith to agree a fair and proper basis for allocation taking into consideration the relative legal exposures of the various parties and that, in the event that the Underwriters and the Assured cannot agree on allocation, they shall submit the dispute to a mutually agreed upon legal counsel to determine an expeditious and fair and proper basis for allocation having regard to the relative legal exposures of the various parties. If legal counsel cannot be mutually agreed upon, then legal counsel is to be selected by the President of the Law Society for the State or Territory out of which this Policy was issued. The parties will be bound by the legal counsel's determination as to the fair and proper allocation. The costs of obtaining the determination will be shared by the Assured and the Underwriters.
- vii. The Assured agrees that in the event of a Claim, the Assured will do nothing that may prejudice the Underwriter's position or their potential or actual rights of recovery.
- viii. The Underwriters will have no obligation to pay Loss, including Defence Costs, or to defend or continue to defend any Claim after the applicable Limit of Liability with respect to such Claim has been exhausted by payment of Loss or it is determined that coverage is not available under this Policy.

d) Priority of payments

The Underwriters may pay Defence Costs and/or Loss as it becomes due under this Policy without regard to the potential for other future actual or potential payment obligations under the Policy.

e) Presumptive indemnification

If the Assured is unable to obtain satisfaction of a right to payment or indemnity against a Company for Loss arising out of a Claim solely by reason of the insolvency of the Company, then the Underwriters will provide such payment or indemnity against Loss to the extent that the Company could have granted it as legally permitted or required by law in the absence of such insolvency.

f) Subrogation

- i. All rights of recovery of the Assured or a Company shall be protected and maintained and subrogated to the Underwriters after the Underwriters have made any payment under this Policy and the Underwriters' rights will rank prior to uninsured losses in any recovery.
- ii. The Assured shall execute all papers reasonably required and shall take all reasonable steps that may be necessary to secure any and all subrogation rights of the Underwriters including but not limited to an action against the Assured's Company for non payment of indemnity to the Assured by the Assured's Company.

7. GENERAL CONDITIONS

a) The parties insured hereby agree that:

- i. information provided to the Underwriters regarding the Assured will be processed by the Underwriters for the purpose of providing insurance and handling actual or potential Claims and it is understood and agreed that such processing may necessitate providing such information to third parties. By accepting the terms of this Policy, the Assured assents to any such provision of information;
- ii. the bankruptcy or insolvency of the Assured shall not relieve the Underwriters of their obligations or deprive the Underwriters of their rights under this Policy.

b) Law and Jurisdiction

This Policy shall be construed in accordance with the laws of Australia. In the event of any dispute arising out of or in connection with this Policy, each party agrees to submit to the jurisdiction of any Court of competent jurisdiction within Australia and to comply with all requirements necessary to enable such Court to properly hear the dispute and determine it.

c) Other Insurance

To the extent permitted by the Insurance Contracts Act 1984 (Cth), this Policy will cover Loss to the extent that the amount of such Loss is in excess of any indemnity or cover available to the Assured in respect of that Loss under any other policy of insurance entered into by the Assured. This provision will not apply to such other insurance which is written only as specific excess insurance over the limit of liability provided in this Policy.

d) Cancellation

This Policy may only be cancelled by the Underwriters if the Assured does not pay the premium when due. In the event of non-payment of premium, the Underwriters may cancel this Policy by delivering to the Assured or by mailing to the Assured by registered, certified or other first class mail, at the Assured's address as stated in Item 6 of the Schedule, written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The Period of Insurance terminates at the date and hour specified in such notice, or at the date and time of surrender. The Underwriters shall have the right to the premium pro-rated for that part of the Period of Insurance less a short term charge of twenty percent (20%) of the unexpired premium during which the Policy was in effect, unless there has been a Claim or circumstance notified under the Policy in which event the Underwriters shall be entitled to retain the entire premium.

e) Assignment

Assignment or transfer of any interest under this Policy shall not bind the Underwriters without their prior written consent.

f) Takeover or Merger or Acquisition

If during the Period of Insurance any Company is taken over or is merged with any other organisation or if any person or entity acquires more than fifty (50) percent of the voting share capital of any Company the coverage afforded by this Policy will continue in full force and effect until the end of the Period of Insurance with respect to Claims for Wrongful Acts committed or allegedly committed by the Assured before the effective date of such take over or merger or acquisition.

g) Action Against the Underwriters

Except as otherwise permitted by statute, no action shall be asserted against the Underwriters unless, as a condition precedent thereto, there has been full compliance with all terms of this Policy, nor until the Assured's liability for any Claim has been determined either by a final judgment in arbitral or judicial proceedings or by written agreement of the Assured, the claimant and the Underwriters.

h) Insurer's Liability Several Not Joint.

The liability of an insurer under this contract is several and not joint with any other insurer party to this contract. An insurer is liable only for the proportion of liability it has underwritten. Nor is an insurer otherwise to be responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise to be responsible for any liability of any other insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Policyholder & Market Assistance, at the above address.

i) Proportion of Liability

Unless there is “signing” (see below), the proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its “written line”.

Where this contract permits, written lines, or certain written lines, may be adjusted (“signed”). In that case a Declaration is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each insurer (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd’s syndicate, the total of the proportions underwritten by all the members of a Lloyd’s syndicate taken together) is referred to as a “signed line”. The signed lines shown in the Declaration will prevail over the written lines unless a proven error in calculation has occurred.

Although reference is made at various points in this clause to “this contract” in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

j) Confidentiality Clause

It is a condition of this Policy that the Assured and/or any persons on their behalf shall not disclose the existence of this Policy, the Limits of Liability, the nature of the liability indemnified, or the premium payable under it, or provide a copy of the Policy to any third party, except to the extent that they are required to by law or the Underwriters consent to such disclosure in writing.

k) Service of Suit Clause (Australia)

The Underwriters hereon agree that:

- i. In the event of a dispute arising under this Policy, the Underwriters, at the request of the Assured, will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.

- ii. Any summons notice or process to be served upon the Underwriters may be served upon;

Lloyd’s General Representative in Australia
Suite 2, Level 21 Angel Place
123 Pitt Street
Sydney NSW 2000

who has authority to accept service and to enter an appearance on the Underwriters’ behalf, and who is directed at the request of the Assured to give a written undertaking to the Assured that he will enter an appearance on the Underwriters’ behalf.

If a suit is instituted against any one of the Underwriters, all of the Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

l) General Insurance Code of Practice

This Certificate is Insurance Council of Australia’s General Insurance Code of Practice compliant, apart from any Claims adjusted outside Australia. Underwriters at Lloyd’s proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

Any enquiry or complaint relating to this Policy should be referred to the Coverholder shown above in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to the Lloyd’s Underwriters’ General Representative in Australia, Suite 2, Level 21, Angel Place, 123 Pitt Street, Sydney, NSW 2000, who will refer your dispute to the Complaints Department at Lloyd’s. Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.



I M A L I A