



## Construction Professionals

### Professional Indemnity Insurance

Wording Document

# Construction Professionals

## Professional Indemnity Insurance

### Important Information

Please read the following information

#### A. Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms. You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

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

#### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

#### B. Claims Made Policy

This policy provides Professional Indemnity insurance on a "Claims Made" basis. This means that the policy covers you for Claims made against you during the period of cover. It does not provide cover for:

- Claims arising from an event which occurred before the policy's "retroactive date" where such a date is specified in the schedule;
- Claims made after the period of cover expires (even where the event giving rise to the Claim occurred during the period of cover);
- Claims made, threatened or intimated before the period of cover commenced;
- Claims arising from facts or circumstances of which you first became aware before commencement of the policy and which you knew or ought reasonably to have known, had the potential to give rise to a Claim under the policy or any previous policy;
- Claims arising from circumstances noted on the proposal form or any previous proposal form.

### **C. Subrogation Agreements**

Where another person would be liable to compensate you for any loss or damage otherwise covered by the insurance, but you have agreed with that person either before or after the loss or damage occurred that you would not seek to recover any monies from that person, the Insurer will not cover you under the insurance for such loss or damage.

### **D. Average Provision**

Section 1.2 of the policy provides that if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, then Berkley Insurance Australia's liability for such Defence Costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim.

### **E. Privacy Statement**

Berkley Insurance Australia handles your personal information in a responsible manner and in accordance with the Privacy Act 1988 (Cth).

#### **Consent**

By requesting us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure of personal information you have provided to us for the purposes set out in our Privacy Policy.

#### **How we collect your personal information**

Generally we collect personal information from you or your agents. Personal information may also be collected by us from our agents and service providers; other insurers and insurance reference bureaus; third parties who may claim under your policies; service providers who assist us in investigating, processing and settling claims; third parties who may be arranging cover for a group that you are part of; statutory, regulatory and law enforcement bodies and from publicly available sources.

#### **Why we collect personal information**

The personal information we collect enables us to provide our products and services. This may include processing and settling claims; offering products and services that may be of interest to you and conducting market research for products and services that may be relevant to you.

You can choose not to receive product or service offering from us by calling (02) 92758500 Eastern Standard Time 9am to 5pm Monday to Friday inclusive. For further information, you can access our Privacy Policy at [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

#### **Who we disclose your personal information to**

Your personal information may be disclosed to other parties with whom we have business arrangements for purposes set out in the paragraph above. These parties may include insurers, intermediaries, reinsurers, related companies, our advisers and parties involved in claims assessment, processing, investigation and settlement. Where required by law, we may also disclose information to government, law enforcement, dispute resolution and statutory or regulatory bodies.

#### **Personal information about others**

Where you provide personal information about others, you represent to us that you have made them aware that you will do so, the types of third parties we may disclose it to together with the purposes we and our third parties use it for, how they can access such information and how complaints can be made

Where you provide sensitive information about others, you represent to us that you have obtained their consent. If you have not, and will not do so, you must tell us before you provide the sensitive information.

#### **Overseas Disclosure**

Your personal information may be disclosed to other companies in the Berkley group, reinsurers and service providers that may be located in Australia and overseas. The countries this information may be disclosed may vary from time to time but may include the United States of America and other countries where the Berkley group has a presence.

Any information disclosed may only be used for the purposes detailed above

#### **Accessing your personal information and dealing with complaints**

You may request access to the personal information we hold about you by calling us at any time.

Our Privacy Policy details how you can make a complaint about a breach of the privacy principles as set out in the *Privacy Act 1988 (Cth)* and our complaints process.

Our Privacy Policy is available at [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

#### **F. Contact Details**

Berkley Insurance Australia

Level 7, 321 Kent Street

SYDNEY NSW 2000

Ph: 02 9275 8500

Fax: 02 9261 2773

Email: [australia@berkleyinaus.com.au](mailto:australia@berkleyinaus.com.au)

Web site: [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

## **Construction Industry**

### Professional Indemnity Insurance

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# Construction Industry

## Professional Indemnity Insurance

This is a claims made and notified insurance policy.

### Section 1. Insuring Clauses

#### 1.1 Insuring Clause

We will indemnify the Insured, up to the Indemnity Limit, against civil liability for compensation including the claimant's legal costs and expenses arising from any Claim first made against the Insured during the Policy Period arising out of the conduct of the Professional Business.

#### 1.2 Defence Costs

We will also indemnify the Insured for Defence Costs where such costs have been incurred with Our prior written consent (such consent not to be unreasonably withheld or unreasonably delayed).

If the Schedule states that the Defence Costs are “inclusive” then Defence Costs are part of the Indemnity Limit and will not be payable in addition to the Indemnity Limit.

If the Schedule states that the Defence Costs are “in addition” then Defence Costs are payable in addition to the Indemnity Limit, PROVIDED ALWAYS THAT if the Insured's liability for any Claim is for an amount in excess of the amount of the Indemnity Limit, then Our liability for such Defence Costs will be in the same proportion as the Indemnity Limit bears to the sum required to dispose of that Claim including the claimant's legal costs and expenses.

## Section 2. Automatic Extensions

We will provide the following cover, PROVIDED ALWAYS THAT:

- a) the cover provided by each Automatic Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and
- b) the inclusion of any Automatic Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

### 2.1 Competition and Consumer Act and other legislation

Insuring Clause 1.1 provides cover for any Claim which arises out of conduct in contravention of the Competition and Consumer Act 2010 (Cth), Australian Securities and Investments Commission Act 2001 (Cth), Corporations Act 2001 (Cth), National Consumer Credit Protection Act 2009 (Cth) or any State or Territory Fair Trading Act but only where such conduct:

2.1.1 constitutes a contravention of such statute because it:

- a) is misleading or deceptive or likely to mislead or deceive;
- b) is the making of a false or misleading representation;
- c) is unconscionable;
- d) is in breach of a warranty implied into a contract for the provision of services by any of the above Acts; and

2.1.2 is not intentional.

The cover provided by this extension is not subject to Exclusion 4.22.

### 2.2 Loss of or Damage to Documents

We will indemnify the Insured for reasonable and necessary costs and expenses incurred by the Insured (although not the Insured's own time) in replacing, restoring or reconstituting Documents due to a physical loss of or damage to such Documents that are the property of the Insured or are in the Insured's care, custody or control in the conduct of the Professional Business and where such loss or damage is discovered and is notified to Us during the Policy Period.

The cover provided by this extension is not subject to Insuring Clause 1.1 or Exclusion 4.23.

The maximum aggregate amount payable under this extension is \$500,000.

### 2.3 Dishonesty of Insured Persons

Insuring Clause 1.1 provides cover for any Claim brought about, or contributed to, by any dishonest, fraudulent, criminal or malicious act or omission of any Insured person, PROVIDED ALWAYS THAT:

- 2.3.1 We will not indemnify the Insured in respect of any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;

- 2.3.2 We will not indemnify the Insured in respect of any loss of negotiable instruments, bearer bonds or coupons, stamps, coins, bank or currency notes;
- 2.3.3 We will not indemnify any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.4 We will not indemnify the Named Insured where any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission is a sole principal or director of the Named Insured;
- 2.3.5 We will not indemnify the Named Insured where all principals, partners or directors of the Named Insured are persons committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.6 the Insured will, at Our request and expense take all reasonable steps to obtain reimbursement from any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 2.3.7 We will deduct from any amount payable under this extension any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Insured to the person committing such act, or any monies held by the Insured and belonging to such person;
- 2.3.8 We will only be liable to indemnify the Insured for the balance of loss sustained in excess of the amounts recoverable from the person(s) committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;
- 2.3.9 Dual Sign Off was required for any withdrawal of funds from any bank or trust account operated by the Insured at the time the dishonest or fraudulent act or omission occurred;
- 2.3.10 if the dishonest or fraudulent act or omission is in connection with a trust account then the Insured's trust account must have been independently audited on an annual basis at the time of the dishonest or fraudulent act or omission; and
- 2.3.11 nothing herein will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission.

"Dual Sign-Off" in this extension means that any cheque payment or electronic money transfer receives prior approval by at least two approved signatories; and that the person reconciling the Insured's bank statements being a different person to the one that operates those bank accounts.

The cover provided by this extension is not subject to Exclusion 4.14.

## **2.4 Fiduciary Duty**

Insuring Clause 1.1 provides cover for any Claim in direct consequence of a breach of fiduciary duty owed by the Insured to a client or customer of the Named Insured.



## 2.5 Defamation, Libel and Slander

Insuring Clause 1.1 provides cover for any Claim made as a direct consequence of any inadvertent defamation, libel or slander by the Insured arising out of the conduct of the Professional Business.

## 2.6 Infringement of Copyright or Patents

Insuring Clause 1.1 provides cover for any Claim made as a direct consequence of any inadvertent infringement or alleged inadvertent infringement of any copyright, patents or other intellectual property rights arising out of the conduct of the Professional Business.

The cover provided by this extension is not subject to Exclusion 4.15.

## 2.7 Newly Created or Acquired Subsidiaries

We will indemnify, in the same manner and to the same extent as the Named Insured, any entity or subsidiary acquired or created by the Named Insured during the Policy Period, PROVIDED ALWAYS THAT:

- 2.7.1 the Policy Period applicable to such cover will be the period commencing on the date of such acquisition or creation and expiring twenty-eight (28) days after that date or on the expiry of the Policy Period (whichever is the earlier);
- 2.7.2 the retroactive date applicable to such cover will be the date of acquisition or creation of the entity or subsidiary; and
- 2.7.3 the Claim arises out of the exercise and conduct of the entity or subsidiary's business which is the same as or substantially similar to the Named Insured's Professional Business.

Note: The Named Insured may apply to Us within twenty-eight (28) days of this extension being triggered to vary the policy to continue the cover provided by this extension until the expiry of the Policy Period by notifying Us of the acquisition or creation of the entity or subsidiary and providing all information requested by Us. Any such variation will only be offered by Us at Our sole and absolute discretion and subject to any additional terms imposed including the charging of any additional premium which We consider appropriate having regard to the nature of the risk to be assumed by Us.

In the event the Insured does not accept the terms offered or the amount of any additional premium, the Insured may cancel the policy in accordance with clause 7.3.

## 2.8 Contractual Liability

Insuring Clause 1.1 provides cover for any Claim against the Insured in respect of any Contractual Liability in the conduct of the Professional Business.

Note: Exclusion 4.11 limits the cover provided for Contractual Liability in certain circumstances.

## 2.9 Joint Venture/Consortium

We will indemnify the Insured for:

- 2.9.1 any Claim against the Insured arising out of the acts, errors or omissions of the Insured in the conduct of the Professional Business as part of any joint venture;
- 2.9.2 the Insured's civil liability, to pay compensation, whether jointly or severally, arising from a Claim against any joint venture entity in respect of whose conduct the Insured is legally liable;

PROVIDED ALWAYS THAT:

- a) such conduct would have been covered by this policy if it had been the conduct of the Insured;
- b) such conduct occurred whilst the Named Insured was a member of the joint venture or consortium;
- c) the Named Insured has specifically declared in writing to Us, prior to entering into this policy (whether in response to a specific question in the proposal form or otherwise), its membership of the joint venture or consortium together with the turnover/fees of the joint venture or consortium (not just the Insured's proportion); and
- d) We have specifically agreed in writing to cover the Insured's civil liability in respect of the joint venture.

## 2.10 Costs of Court Attendance

In the event of any of the under-mentioned persons attending court as a witness in connection with any Claim in respect of which the Insured is entitled to indemnity under this policy, We will pay to the Named Insured court attendance costs at the following rates per day for each day on which attendance is required:

- 2.10.1 any principal, partner or director of the Named Insured - \$650.00; and
- 2.10.2 any employee of the Named Insured - \$250.00.

The cover provided by this extension is not subject to Insuring Clause 1.1.

## 2.11 Public Relations Expenses

Where a Claim has been made against the Insured for which cover is available under this policy (or where the Insured has notified facts which may give rise to a future Claim), and in the reasonable belief of the Insured the Insured's reputation has been or will be significantly impaired, then We will reimburse the Insured for any reasonable and necessary costs and expenses of a public relations consultant retained by the Insured with Our prior written consent to design and implement a reasonable and necessary publicity campaign approved by Us with the object of preventing or mitigating damage to the reputation of the Insured in consequence of such Claim or anticipated Claim.

We will not unreasonably withhold or unreasonably delay their consent or approval required by this extension.

The maximum aggregate amount payable under this extension is \$50,000. The Excess payable

by the Insured is costs inclusive for any Claim made under this extension.  
The cover provided by this extension is not subject to Insuring Clause 1.1.

### **2.12 Mitigation Costs**

We will indemnify the Insured for reasonable and necessary mitigation costs and expenses incurred or agreed to be incurred by the Insured;

2.12.1 as a result of a reasonable and necessary action taken by the Insured to reduce the amount of any potential Claim that would be covered under this policy; and

2.12.2 arising from a fact, matter or circumstance first discovered by the Insured during the Policy Period which might lead to the potential Claim that would be covered under this policy;

PROVIDED ALWAYS THAT:

- a) such fact, matter or circumstance is notified to Us as soon as practicable upon being discovered by the Insured, during the Policy Period and prior to the Insured incurring any such mitigation costs or expenses;
- b) no admission of liability (whether by word, conduct or otherwise) is made by the Insured;
- c) We have given prior written consent (not to be unreasonably withheld or unreasonably delayed) to the incurring of, or agreement to incur, such mitigation costs or expenses;
- d) We will not pay any costs or expenses incurred by the Insured in proving entitlement to coverage under this extension;
- e) cover afforded under this extension will not include any Defence Costs; and
- f) the maximum aggregate amount payable under this extension is \$50,000.

The cover provided by this extension is not subject to Insuring Clause 1.1.

### **2.13 Inquiry Costs**

We will indemnify the Insured for the reasonable and necessary legal costs and expenses incurred with Our prior written consent (not to be unreasonably withheld or unreasonably delayed) for representation of the Insured at any regulatory inquiry or other proceeding:

2.13.1 which has an effect on the defence of any Claim covered by Insuring Clause 1.1; and

2.13.2 that the Insured first became aware of and notified Us during the Policy Period.

The maximum aggregate amount payable under this extension is \$250,000.

Subject to paragraph 2.13.1 above, the cover provided by this extension is not subject to Insuring Clause 1.1.

### **2.14 Legal Panel**

The Insured may contact Us to access Our professional indemnity legal panel during business hours for one complimentary session up to sixty (60) minutes of verbal advice in relation to matters which are covered under this policy. In the event of a Claim arising from the matter We

agree to the appointment of any of Our professional indemnity legal panel firm to act on the Insured's behalf in respect of any Claim notified to Us providing there is no existing or potential conflict of interest, in which case We will refer the Insured to another member of the panel.

The cover provided by this extension is not subject to Insuring Clause 1.1.

## **2.15 Run-Off Cover**

We agree in the event of:

- 2.15.1 a Named Insured entity ceasing to exist or operate or being consolidated with, merged into or acquired by any other entity; or
- 2.15.2 the Named Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration, or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings;

the cover provided under this policy will continue until the expiry of the Policy Period or cancellation of this policy, whichever is earlier, PROVIDED ALWAYS THAT such cover will only apply in respect of Claims arising out of acts, errors or omissions occurring prior to the date on which such event detailed in clause 2.15.1 or 2.15.2 occurred, unless otherwise agreed in writing by Us.

## **2.16 Severability**

Where the Insured comprises more than one entity, any conduct on the part of an Insured whereby such Insured:

- 2.16.1 failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth); or
  - 2.16.2 made a misrepresentation to Us before this contract of insurance was entered into;
- will not prejudice the right of any other Insured to indemnity as may be provided by this policy, PROVIDED ALWAYS THAT:
- a) such other Insured is entirely innocent of and have no prior knowledge of any such conduct. The onus of proof in this regard will be upon such other Insured;
  - b) such other Insured will, as soon as is reasonably practicable upon becoming aware of any such conduct, advise Us in writing of all known facts in relation to such conduct; and
  - c) enquiry has been made by each Named Insured, before the contract of insurance was entered into of each other Named Insured and persons who make up the Insured for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984 (Cth).

Note: This provision does not limit the duty of disclosure owed by the entities or persons that make up the Insured.

## 2.17 Estates and Legal Representatives

In the event of the death, mental disorder and/or other incapacity or insolvency or bankruptcy of the Insured, We will indemnify the estate, heirs, legal representatives or assignees of the Insured in respect of any civil liability of the Insured to the extent that the Insured would have been covered by Insuring Clauses 1.1 and 1.2 if the Insured was alive, had capacity or was not insolvent or bankrupt PROVIDED ALWAYS THAT such persons will observe and be subject to all the terms conditions and exclusions of this policy insofar as they can apply.

## 2.18 Continuous Coverage

We will indemnify the Insured for any Claim arising from any fact, matter or circumstance known to the Insured, prior to the Policy Period, and which the Insured knew, or a reasonable person in the Insured's profession or position could, in the circumstances, be expected to know, might give rise to a Claim against the Insured, PROVIDED ALWAYS THAT:

- 2.18.1 We were the professional indemnity insurer of the Insured when the Insured first became aware of such fact, matter or circumstance;
- 2.18.2 We continued without interruption to be the professional indemnity insurer of the Insured from the time mentioned in paragraph 2.18.1 above up until the Policy Period;
- 2.18.3 had We been notified by the Insured of such fact, matter or circumstance when the Insured first became aware of it, the Insured would have been covered under the policy in force at that time but is not now entitled to be covered by that policy because the Insured did not notify the fact, matter or circumstance;
- 2.18.4 neither the Claim nor the fact, matter or circumstance has previously been notified to Us or to any other insurer;
- 2.18.5 there is an absence of fraudulent noncompliance with the Insured's duty of disclosure and an absence of fraudulent misrepresentation by the Insured in respect of such facts or circumstances;
- 2.18.6 We may reduce Our liability to the extent of any prejudice We may suffer in connection with the Insured's failure to notify the facts or circumstances giving rise to a Claim prior to the Policy Period;
- 2.18.7 if the Insured was entitled to have given notice under any other policy of insurance not issued by Us and thereby have an entitlement to indemnity, in whole or in part, then this Continuous Coverage extension does not apply; and
- 2.18.8 the Indemnity Limit provided for any Claim covered by this extension is the lesser available under the terms of the policy in force at the earlier time referred to in paragraph 2.18.3 above, or under this policy. The terms of this policy otherwise apply.

The cover provided by this extension is not subject to Exclusion 4.1.2.

## 2.19 Appointed Sub-Consultants

We will indemnify the Insured for any Claim made against the Insured in respect of the Insured's civil liability directly arising out of the conduct of any appointed sub-contractor or sub-consultant in the course of the exercise and conduct of the Professional Business.

## 2.20 Fines and Penalties

We will indemnify the Insured for Fines or Penalties arising from any Claim first made against the Insured during the Policy Period, PROVIDED ALWAYS THAT:

- 2.20.1 the conduct giving rise to the Claim was not intentional, wilful, reckless or deliberate;
- 2.20.2 indemnification is permitted at law;
- 2.20.3 We will not indemnify the Insured for Fines and Penalties imposed in connection with any requirement to pay taxes, rates, duties, levies, charges, fees or other revenue charge or impost; and
- 2.20.4 the maximum aggregate amount payable under the policy in respect of all Claims for Fines and Penalties and Defence Costs in connection with such Claims is \$250,000.

The cover provided by this extension is not subject to Exclusion 4.3.

## 2.21 Project Manager or Construction Manager

This policy shall indemnify the Insured for the activities the Insured performs as a project manager or construction manager (where the Named Insured is retained as a project manager or construction manager for a fee or other benefit) but only in respect of design consultancy, project construction co-ordination or advice and such activities are carried out by persons holding appropriate professional qualifications to perform the Named Insured's professional duty.

However, the policy shall not cover any Claim in connection with:

- 2.21.1 failure to procure or maintain any financing for the payment of contract work or services in connection therewith;
- 2.21.2 the final cost of a project or any part thereof exceeding a pre-set financial limit to which the Named Insured agreed;
- 2.21.3 any incorrect, inadequate or misleading representations or estimates by the Insured in relation to profit or return on capital;
- 2.21.4 bankruptcy liquidation or insolvency of any of the parties involved in a project;
- 2.21.5 use or repair of any real or personal property or ownership, rental, occupation, deemed occupation, leasing, maintenance or operation of any real or personal property; or
- 2.21.6 bodily injury sickness disease or death sustained in the course of their employment to or of any person arising out of their employment by the Named Insured under either a contract of service or an apprenticeship with the Named Insured.

## 2.22 Reinstatement of the Indemnity Limit

If the Indemnity Limit is partially reduced or exhausted by any Claim, Claims and/or Defence Costs then We will reinstate the Indemnity Limit for any subsequent Claims covered by Insuring Clause 1.1 and Defence Costs covered by Insuring Clause 1.2, PROVIDED ALWAYS THAT:

- 2.22.1 such reinstatement shall only apply to subsequent Claims and Defence Costs that are totally unrelated or unconnected to the Claim, Claims and/or Defence Costs that reduced or exhausted the Indemnity Limit; and
- 2.22.2 We will be liable for no more than twice the Indemnity Limit in the aggregate in respect of all Claims and Defence Costs (other than Defence Costs which are stated to be "in addition" as per clause 1.2).

## Section 3. Optional Extensions

We will provide the following cover, PROVIDED ALWAYS THAT:

- a) each Optional Extension will only apply where it is specifically noted in the Schedule as included;
- b) the cover provided by each Optional Extension is subject to the Schedule, Insuring Clauses, Claims Conditions, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the policy (unless otherwise expressly stated); and
- c) the inclusion of any Optional Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Automatic Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

### 3.1 Fidelity

We will indemnify the Named Insured for loss of negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to the Named Insured or for which the Named Insured is legally liable where any such loss is sustained in consequence of any dishonest or fraudulent act or omission of any Insured person, PROVIDED ALWAYS THAT:

- 3.1.1 such loss is first discovered by the Named Insured during the Policy Period and is notified in writing to Us within twenty-eight (28) days of the date of such discovery (but never beyond the expiry of the Policy Period);
- 3.1.2 We will not indemnify the Named Insured for any loss sustained in consequence of any act or omission occurring after the date of discovery of, or the reasonable cause for suspicion of, dishonest or fraudulent conduct on the part of the person concerned;
- 3.1.3 We will not indemnify any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 3.1.4 the Named Insured will, at Our request and expense take all reasonable steps to obtain reimbursement from such person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission;
- 3.1.5 any monies which but for such dishonest, fraudulent, criminal or malicious act or omission would be due from the Named Insured to the person committing such act, or any monies held by the Named Insured and belonging to such person, will be deducted from any amount payable under this insurance;
- 3.1.6 We will only indemnify the Named Insured for the balance of loss sustained in excess of the amounts recoverable from the person committing such dishonest, fraudulent, criminal or malicious act or omission or their estates or legal personal representatives;
- 3.1.7 one cost inclusive Excess shall apply to each and every loss incurred by the Named Insured;



3.1.8 nothing herein will preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest, fraudulent, criminal or malicious act or omission; and

3.1.9 the maximum aggregate amount payable under this extension is \$50,000.

The cover provided by this extension is not subject to Insuring Clauses 1.1 or 1.2 or Exclusion 4.14.

### 3.2 Extended Continuity Cover

Where:

3.2.1 a Named Insured held a professional indemnity insurance policy for a period of twelve (12) months immediately preceding this Policy Period (the Preceding Policy); and

3.2.2 the Preceding Policy was issued by an insurance company which was fully authorised under the Insurance Act 1973;

then, for the purposes of Automatic Extension 2.18 "Continuous Coverage", We will treat the Preceding Policy as if it were a policy issued by Us.

### 3.3 Multi Year Run-Off

In the event that, during the Policy Period, a Named Insured entity merges with or is taken over by another entity, or is sold or wound up, then We will make available to such Named Insured entity (and any person who is or was a principal, partner, director or employee of such Named Insured prior to the effective date of such merger, takeover, sale or winding up) an extension to the Policy Period for a period of up to an additional six (6) years PROVIDED ALWAYS THAT:

3.3.1 such Named Insured shall give Us written notice of such merger, takeover, sale or winding up as soon as reasonably practicable and during the Policy Period;

3.3.2 Our offer to extend cover may be subject to such additional terms, conditions and premium as We may reasonably impose having regard to the nature of the risk to be assumed by Us;

3.3.3 such extension of the Policy Period will not take effect until Our offer is accepted by such Named Insured; and

3.3.4 such extension will only apply to Claims arising out of a breach of professional duty in the exercise and conduct of the Professional Business which occurred prior to the effective date of such merger, takeover, sale or winding up.

Note: The Indemnity Limit is not increased by this extension notwithstanding the extended Policy Period.

In the event the Insured does not accept the terms offered or the amount of any additional premium, the Insured may cancel the policy in accordance with clause 7.3.

## Section 4. Exclusions

We shall not be liable to indemnify the Insured in respect of any Claim, liability, loss, cost, expense, Fine or Penalty directly or indirectly arising out of, related to, or in connection with:

### 4.1 Previously Known Claim or Circumstance

any:

- 4.1.1 Claim made upon the Insured prior to the inception of this policy;
- 4.1.2 fact, matter or circumstance known to the Insured, at any time prior to the inception of this policy, and which the Insured knew or a reasonable person in the Insured's profession could, in the circumstances, be expected to know or have known might give rise to a Claim against the Insured;
- 4.1.3 fact, matter or circumstances which were disclosed by the Insured to Us prior to the inception of this policy, whether in the proposal or otherwise; or
- 4.1.4 fact, matter or circumstance which was notified by the Insured to any prior insurer.

### 4.2 Trading Losses and Insolvency

- 4.2.1 any trading losses or trading liabilities or debts incurred by any business managed or carried on by the Insured; or
- 4.2.2 the insolvency of the Insured.

### 4.3 Fines, Penalties, Punitive, Multiple or Exemplary Damages

any fine or penalty or any multiple, exemplary, punitive or aggravated damages.

### 4.4 Nuclear Risks

- 4.4.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- 4.4.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### 4.5 War and Terrorism

any of the following regardless of any other cause or event contributing concurrently or in any other sequence any of the following:

- 4.5.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;
- 4.5.2 riots, strikes or civil commotion;
- 4.5.3 any Act of Terrorism; or

4.5.4 any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 4.5.1 to 4.5.3 above.

**4.6 Asbestos, Toxic Mould and Pollution**

asbestos, toxic mould, seepage, Pollution or contamination of any kind.

**4.7 USA/Canada**

4.7.1 any action brought in any court of the United States of America, Canada or their dominions or protectorates or judgement registered or lodged in connection with such an action; or

4.7.2 any work or activities undertaken by the Insured in the United States of America, Canada or their dominions or protectorates.

**4.8 Loss of Documents - Magnetic or Electrical Media**

the physical loss of or damage to Documents which are stored on magnetic or electrical media unless such Documents have been duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the Documents to their original status.

**4.9 Liability arising out of Employment**

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, bullying, invasion of privacy, disease or death of any employee of the Insured or damage to or destruction of any property of any employee, including loss of use, arising out of, or in the course of, their employment or any dispute in connection with employment.

**4.10 Liability involving Transport or Property owned by the Insured**

the ownership, possession or use by or on behalf of the Insured of any:

4.10.1 aircraft, watercraft, hovercraft, motor vehicle or trailer; or

4.10.2 buildings, structures, premises or land or that part of any building leased, occupied or rented by the Insured or any property of the Insured.

**4.11 Contractual Liability**

any liability assumed by the Insured under any contract or agreement where such liability would not have existed in the absence of such a contract or agreement including, without limitation, any contractual term or agreement:

4.11.1 to pay liquidated damages or any penalty; or

4.11.2 in the nature of an indemnity, release, hold harmless, warranty or guarantee.

#### **4.12 Directors' and Officers' Liability**

any conduct or alleged conduct of the Insured in the capacity of a director, secretary or officer of a body corporate or any breach or alleged breach by the Insured of a duty owed in that capacity.

#### **4.13 Trustee Liability**

any services provided by the Insured in the capacity of a trustee provided always that this exclusion will not apply where the Insured acts as a stakeholder, custodian or trustee where such activities are undertaken incidentally to the provision of other professional services in the conduct of the Professional Business.

#### **4.14 Fraud, Dishonest, Criminal or Intentional Loss Damage or Injury**

any act, error or omission of any Insured which is dishonest, fraudulent, criminal or malicious or which is intended by that person to cause loss, damage or injury or to deprive a third party of a right to which they would otherwise be entitled (or which is done or omitted to be done with reckless disregard for the consequences) or is a wilful or reckless breach of statute, contract or duty.

#### **4.15 Infringement of Intellectual Property Rights**

any infringement or alleged infringement of any copyright or patents or other intellectual property rights.

#### **4.16 Payments or Benefits Received**

any fees, charges, disbursements, expenses, costs, taxes, commissions or other payments or benefits of whatsoever kind received or retained by, or paid or payable to, the Insured in connection with the Professional Business.

#### **4.17 Associated Companies**

made against the Insured by any firm, company, partnership or other entity in which the Insured or any director, partner or principal of the Insured has a financial or executive interest or which has a financial or executive interest in the Insured unless solely emanating from an independent and unrelated third party.

#### **4.18 Retroactive Date**

the conduct of the Professional Business prior to the retroactive date (if any) specified in the Schedule

#### **4.19 Listed Human Disease**

a Listed Human Disease or any directly or indirectly related condition or threat or fear thereof (whether actual or perceived).

**4.20 Cyber Liability & Social Engineering**

- 4.20.1 the unauthorised access to or use of any Computer System owned, operated by or licensed to the Insured; or
- 4.20.2 Social Engineering Fraud.

**4.21 Supply of Goods**

the sale, manufacture, installation, construction, alteration, repair, servicing or treating of any goods or products sold, distributed or supplied including but not limited to the sale and/or supply of hardware and/or software by the Insured.

**4.22 Certain Legislation**

the Competition and Consumer Act 2010 (Cth), Australian Securities and Investments Commission Act 2001 (Cth) or any State or Territory Fair Trading Act.

**4.23 Bodily Injury and/or Property Damage unless in Breach of a Professional Duty**

bodily injury, mental injury (including but not limited to mental stress and mental anguish), harassment, invasion of privacy, disease or death of any person(s) or loss of or damage to property unless such Claim arises directly out of any breach of a professional duty owed by the Insured in the conduct of the Professional Business.

**4.24 Project Manager or Construction Manager**

the Insured acting as a project manager or construction manager unless covered by automatic extension 2.21.

**4.25 Investment Advice**

the giving of any express or implied warranty or guarantee, making a representation, failing to give an appropriate warning or engaging in misleading and deceptive conduct relating to the financial return (including, without limitation, any actual, historical, anticipated, forecast or projected financial return) of any investment or portfolio of investments.

**4.26 Failure to Arrange Insurance and/or Finance**

the failure of the Insured to arrange and/or maintain insurance and/or finance.

To the extent that any parts of the above exclusions are found to be invalid or unenforceable, the remainder of each exclusion and all other exclusions shall remain in full force and effect.

## Section 5. Definitions and Interpretations

The following definitions of each word, words or phrase appearing in the title are applicable to all Policy sections. All words appearing in the title also include the plural or singular of those words.

### 5.1 Act of Terrorism

Means an activity that:

- 5.1.1 involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and
- 5.1.2 appears to be intended to:
  - 5.1.3 intimidate or coerce a civilian population;
  - 5.1.4 disrupt any segment of the economy of a government de jure or de facto, state or country;
  - 5.1.5 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or
  - 5.1.6 affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage taking.

### 5.2 Claim

Means:

- 5.2.1 any writ, application, summons or other originating legal process, cross claim or counter claim issued against or served on the Insured claiming damages or other compensatory relief;
- 5.2.2 the positive assertion in writing of a legal entitlement to damages or other compensatory relief in connection with an alleged civil liability on the part of the Insured, in terms evincing an intention to pursue such legal entitlement; or
- 5.2.3 for the purpose of Automatic Extension 2.20, any enforcement action or proceeding served on the Insured seeking to impose any Fine or Penalty.

### 5.3 Computer System

Means an information technology system made up of one or more items of computer hardware, software, or programmes and the electronic data stored thereupon that share a central storage system, and any other peripheral devices. Computer System shall also include any electronic devices and/or electrical equipment.

### 5.4 Contractual Liability

Means liability which attaches by virtue of a contract or agreement but only to the extent to which it would have attached in the absence of such contract or agreement.

## 5.5 Cooperate

Means that the Insured:

- 5.5.1 assists Us and Our duly appointed representatives to put forward the best possible defence of a Claim within the time constraints available;
- 5.5.2 will have adequate internal systems in place, which will allow ready access to material information; and
- 5.5.3 will at all times and at its own cost give to Us or Our duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Court Rules and Practice Directions, recoveries and subrogation claims.

## 5.6 Defence Costs

Means all reasonable and necessary costs and expenses incurred in the investigation, reporting on, defence or settlement of any Claim in respect of which We are liable to indemnify the Insured under this policy. This also includes reporting in writing to Us on the investigation, defence or settlement of any Claim.

## 5.7 Documents

Means project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents of any nature whatsoever and will include computer software and systems records (electronic data will be deemed to be physical property for the purposes of this insurance). This definition excludes bearer bonds, coupons, stamps, coins, bank or currency notes and other negotiable instruments.

## 5.8 Excess

If the Schedule states that the Excess is Defence Costs “inclusive” then Excess will mean the sum shown in the Schedule unless otherwise stated in this insurance and will be the first amount payable of each Claim made against the Insured. If the Schedule states that the Excess is Defence Costs “exclusive” then Excess will mean the sum shown in the Schedule unless otherwise stated in this insurance and will be the first amount payable of each Claim made against the Insured excluding Defence Costs.

The Excess shall be net of any input tax credit the Insured may be entitled to claim in relation to GST.

## 5.9 Fine or Penalty

Means:

- 5.9.1 a penalty imposed upon the Insured by any regulatory authority arising from any actual or alleged breach of any occupational health and safety or environmental legislation; or
- 5.9.2 any compensatory civil penalty.

#### **5.10 Indemnity Limit**

Means the sum shown in the Schedule which is available to indemnify the Insured in respect of any one Claim and in the aggregate during the Policy Period subject to Automatic Extension 2.22.

#### **5.11 Insured**

Means:

- 5.11.1 the Named Insured;
- 5.11.2 any person who is, during the Policy Period, a principal, partner or director of the Named Insured but only in respect of work on behalf of the Named Insured;
- 5.11.3 any person who is, during the Policy Period, an employee of the Named Insured but only in respect of work performed while an employee of the Named Insured and on behalf of the Named Insured; and/or
- 5.11.4 any former principal, partner, director or employee of the Named Insured but only in respect of work performed while a principal, partner, director or employee of the Named Insured and on behalf of the Named Insured.

#### **5.12 Listed Human Disease**

Means

- 5.12.1 any disease identified or listed at any time as a human disease under the Biosecurity Act 2015 (Cth) or its current equivalent, as amended or replaced from time to time, or
  - 5.12.2 any disease identified or listed in a state of emergency, public health emergency or pandemic declared by any governmental authority or identified by the World Health Organisation or its current equivalent as amended or replaced;
- regardless of when the disease is so listed or identified.

#### **5.13 Named Insured**

Means the person(s), partnership, company, corporation or other entity named as the Named Insured in the Schedule.

#### **5.14 Policy Period**

Means the period shown in the Schedule.

#### **5.15 Pollution**

Means any one or a combination of a release, emission, discharge, dispersal, disposal, escape of any substances, which are capable of causing harm (which will mean any harm to the health of any living organism or interference with ecological systems of which they form part and, in the case of a person, will include offence caused to any of their senses) into or onto any water, land or air.



**5.16 Preceding Policy**

Means a professional indemnity insurance policy for a period of twelve (12) months immediately preceding, without interruption, the Policy Period.

**5.17 Professional Business**

Means the professional services provided by or on behalf of the Insured as described in the Schedule.

**5.18 Schedule**

Means the document entitled 'Schedule' that relates to this insurance.

**5.19 Social Engineering Fraud**

Means any fraudulent or dishonest instruction to the Insured or its agents which purports to be from a legitimate or trusted source authorised to make such instruction and which results in the Insured:

- 5.19.1 transferring, paying or delivering any money or securities from an account maintained by the Insured to another person or entity;
- 5.19.2 transferring or delivering any property to another person or entity;
- 5.19.3 revealing confidential information; or
- 5.19.4 changing or altering bank account or payment details of any person or entity.

**5.20 We, Us, Our**

Means Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.

## Section 6. Claims Conditions

The following conditions apply to this insurance:

### 6.1 Discovery and Notice of a Claim

If during the Policy Period the Insured receives notice of any Claim that may be covered under this insurance the Insured will give notice to Us as soon as practicable and before the expiry of the Policy Period. Notice of any Claim will be provided in writing to:

National Head of Claims

australiaclaims@berkleyinaus.com

Berkley Insurance Australia

PO Box Q296

QVB NSW 1230.

### 6.2 Admission of Liability

In the event of any Claim, the Insured will not admit liability and no admission, offer, settlement, promise or payment will be made by the Insured without Our prior written consent.

### 6.3 Conduct of Claims

Following notification of any Claim under this policy, We will be entitled to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter. The Insured will Cooperate with and give all such assistance as We may reasonably require.

### 6.4 Claim Settlements

We may at any time pay (or agree to pay) to the Insured in connection with any Claim or Claims the Indemnity Limit (less the Excess, any sums already paid and unpaid Defence Costs incurred with Our prior written consent) and upon such payment (or agreement to pay) We will not be under any further liability in respect of such Claim or Defence Costs except for Defence Costs incurred prior to such payment (or agreement to pay) with Our prior written consent.

In no circumstances will We be liable in respect of such Claim or Claims for an amount greater than otherwise provided for in this policy. In the event that:

6.4.1 We have made a payment in excess of the amount for which We would otherwise have been liable in accordance with the policy in respect of such Claim or Defence Costs, the Insured will refund to Us that proportion of the payment which exceeds the amount which We would otherwise have been liable for in accordance with the policy; and

6.4.2 We have agreed to pay an amount in excess of the amount which We would otherwise have been liable for in accordance with the policy in respect of such Claim or Defence Costs, Our liability in respect of such agreement will be limited to the amount which We would otherwise have been liable for in accordance with the policy.

#### **6.5 Our and the Insured's Right to Defend**

The Insured will not be required to contest any legal proceedings unless a Senior Counsel (to be mutually agreed upon by the Insured and Us or failing agreement to be appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued) advises that, taking due account of the interests of both Us and the Insured, the defence of such proceedings has reasonable prospects of being successful and should be contested having regard to the alternative to contesting the proceedings.

If the Insured wishes to continue to contest any Claim which We wish to settle, the Insured may do so. However, Our maximum liability in respect of that Claim will thereafter be limited to the amount for which the Claim could have been settled plus Defence Costs incurred with Our prior written consent up to the date upon which it would have reasonably settled the Claim, less any unpaid Excess or the final amount of the Claim including Defence Costs.

#### **6.6 Excess**

In respect of each Claim or loss covered by this policy the Insured is liable for the amount of any Excess stated in the Schedule and We will have no liability for the amount of any Excess.

#### **6.7 Allocation**

Where the Insured is entitled to indemnity pursuant to Insuring Clause 1.2 Defence Costs in circumstances where a Claim is made and part of that Claim for compensation arises out of, is in connection with or is related to facts or matters that are not covered by this policy then, Our liability under this policy is limited to that proportion of the Defence Costs which represents a fair and equitable allocation between the Insured and Us, taking into account the relative legal and financial exposures attributable to covered allegations and allegations that are not covered under this policy.

In circumstances where the Insured and Us cannot agree on an allocation between covered allegations and allegations that are not covered, the dispute shall be submitted to binding opinion from a Senior Counsel agreed between the parties or, failing agreement, appointed by the President of the Bar Association of the State or Territory of Australia where this policy is issued.

## Section 7. General Conditions

The following conditions apply to this insurance (for the purposes of these conditions any reference to Claim also includes reference to legal costs and expenses and a Fine or Penalty):

### 7.1 Jurisdiction and Service

In the event of a dispute arising under or in connection with this policy, We at the request of the Insured will submit to the jurisdiction of competent courts in the Commonwealth of Australia. The dispute shall be determined in accordance with the law and practice of that jurisdiction, as applied in those courts.

### 7.2 Terms of Payment

All premiums due to Us under this policy will be paid within thirty (30) days from the policy's inception.

### 7.3 Cancellation

The circumstances and manner in which We may cancel this insurance is governed by the Insurance Contracts Act 1984 (Cth).

The Insured may cancel this insurance at any time by giving fourteen (14) days' notice and provided there have been no notifications made by the Insured under this policy the Insured will be entitled to a pro rata refund. If the Insured has made a notification under the policy then the Insured is not entitled to any refund.

### 7.4 Subrogation

If any payment is made by Us, the Insured grants to Us all rights of recovery against any parties from whom a recovery may be made and the Insured will take all reasonable steps to preserve such rights.

### 7.5 Claims Aggregation

Where two (2) or more Claims are in connection with the same original cause, a series of related or interrelated events or causes or breaches of duty, then all such Claims will constitute one Claim under this policy; and

7.5.1 only one (1) Excess will be payable by the Insured; and

7.5.2 the maximum amount payable by Us in respect thereof will not exceed the Indemnity Limit (except in respect of Defence Costs which are stated to be "in addition" to the Indemnity Limit).

## 7.6 Alteration to risk

The Insured will give Us written notice as soon as reasonably practicable of any material alteration to the risk during the Policy Period including but not limited to:

- 7.6.1 an Insured going into bankruptcy, receivership, liquidation or any other form of external administration (whether or not its voluntary) or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- 7.6.2 any cancellation or suspension, or loss of or condition imposed, upon any licence, registration or other authority required by the Insured to conduct the Professional Business; and/or
- 7.6.3 any material change in the nature of the professional services offered by an Insured.

Where the Insured fails to notify Us as required under this clause or there is any material alteration to the risk during the Policy Period, We may be entitled to cancel this policy in accordance with the Insurance Contracts Act 1984 (Cth).

Where such notice is not provided by the Insured before the happening of a Claim or a notification giving rise to a Claim under this Policy, We may refuse to pay a Claim either in whole or in part or We may reduce our liability to pay a Claim in accordance with the Insurance Contracts Act 1984 (Cth).

## 7.7 GST

Where We are required to indemnify the Insured and the Insured is entitled to claim an input tax credit in relation to GST the amount of such input tax credit will be deducted from any amount payable by Us.

Where the Insured is entitled to claim an input tax credit in relation to GST for a payment required to be made by the Insured as an Excess, then the monetary limit of the Excess shall be deemed to be net of the Insured's entitlement to the Input tax credit.

## 7.8 Sanctions

We are not liable to make any payment under this Policy where such payment would be in violation of any sanction, prohibition or restriction with which We are required to comply, including but not limited to United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or the United States of America.

## 7.9 Headings and Notes

Headings and notes are for information purposes only and are not to be construed as part of this insurance. This clause shall not apply to Section 5 – Definitions.

## Public & Products Liability Insurance

### Policy Wording

Wording Document

|                               |                              |                                 |
|-------------------------------|------------------------------|---------------------------------|
| <b>Contact</b>                | Brisbane                     | Adelaide                        |
| australia@berkleyinaus.com.au | Level 7, 300 Ann Street      | Level 3, 33 King William Street |
| www.berkleyinaus.com.au       | Brisbane QLD 4000            | Adelaide SA 5000                |
|                               | Ph: 07 3220 9900             | Ph: 08 8470 9020                |
| Sydney                        | Melbourne                    | Perth                           |
| Level 7, 321 Kent Street      | Level 10, 350 Collins Street | Unit 3, 193 Carr Place          |
| Sydney NSW 2000               | Melbourne VIC 3000           | Leederville WA 6007             |
| Ph: 02 9275 8500              | Ph: 03 8622 2000             | Ph: 08 6488 0900                |

# Public & Products Liability Insurance

## Policy Wording

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# Public & Products Liability Insurance

## Policy Wording

### Important Information

Please read the following information

#### A. Your Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know that may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

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

#### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

#### B. Subrogation Agreements

Where another person would be liable to compensate you for any loss or damage otherwise covered by the insurance, but you have agreed with that person either before or after the loss or damage occurred that you would not seek to recover any monies from that person, We will not cover you under the insurance for such loss or damage.



## C. Privacy Statement

Berkley Insurance Australia handles your personal information in a responsible manner and in accordance with the *Privacy Act 1988 (Cth)*.

### Consent

By requesting us to provide you with insurance and insurance related services, you consent to the collection, use and disclosure of personal information you have provided to us for the purposes set out in our Privacy Policy.

### How we collect your personal information

Generally we collect personal information from you or your agents. Personal information may also be collected by us from our agents and service providers; other insurers and insurance reference bureaus; third parties who may claim under your policies; service providers who assist us in investigating, processing and settling claims; third parties who may be arranging cover for a group that you are part of; statutory, regulatory and law enforcement bodies and from publicly available sources.

### Why we collect personal information

The personal information we collect enables us to provide our products and services. This may include processing and settling claims; offering products and services that may be of interest to you and conducting market research for products and services that may be relevant to you.

You can choose not to receive product or service offering from us by calling (02) 92758500 Eastern Standard Time 9am to 5pm Monday to Friday inclusive. For further information, you can access our Privacy Policy at [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

### Who we disclose your personal information to

Your personal information may be disclosed to other parties with whom we have business arrangements for purposes set out in the paragraph above. These parties may include insurers, intermediaries, reinsurers, related companies, our advisers and parties involved in claims assessment, processing, investigation and settlement. Where required by law, we may also disclose information to government, law enforcement, dispute resolution and statutory or regulatory bodies.

### Personal information about others

Where you provide personal information about others, you represent to us that you have made them aware that you will do so, the types of third parties we may disclose it to together with the purposes we and our third parties use it for, how they can access such information and how complaints can be made

Where you provide sensitive information about others, you represent to us that you have obtained their consent. If you have not, and will not do so, you must tell us before you provide the sensitive information.

### Overseas Disclosure

Your personal information may be disclosed to other companies in the Berkley group, reinsurers and service providers that may be located in Australia and overseas. The countries this information may be disclosed may vary from time to time but may include the United States of America and other countries where the Berkley group has a presence.

Any information disclosed may only be used for the purposes detailed above.

### **Accessing your personal information and dealing with complaints**

You may request access to the personal information we hold about you by calling us at any time.

Our Privacy Policy details how you can make a complaint about a breach of the privacy principles as set out in the *Privacy Act 1988 (Cth)* and our complaints process.

Our Privacy Policy is available at [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

#### **D. Contact Details**

Berkley Insurance Australia

Level 7, 321 Kent Street

SYDNEY NSW 2000

Ph: 02 9275 8500

Fax: 02 9261 2773

Email: [australia@berkleyinaus.com.au](mailto:australia@berkleyinaus.com.au)

Web site: [www.berkleyinaus.com.au](http://www.berkleyinaus.com.au)

# 1. Policy Information

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The following is provided for information purposes only and does not form part of the Policy.

This Policy details the type of cover available and your rights and obligations in relation to your insurance. Please read it carefully to ensure that it meets your requirements.

## 1.1 This Policy consists of:

- 1.1.1 the Schedule which shows who is the Insured, the Business being covered and other Policy particulars such as the Period of Insurance, the Indemnity Limits and certain amounts for which the Insured may be responsible
- 1.1.2 the Insuring Clauses which explain the basis on which the cover is provided;
- 1.1.3 the Extensions and Exclusions which give precise details of the cover being provided under this Policy;
- 1.1.4 the Definitions and Interpretations which detail the words within the policy which have special meanings;
- 1.1.5 the General Conditions which incorporate terms that apply to the whole Policy; and
- 1.1.6 any endorsement which has been applied to expand or restrict coverage.

Notice should be given to Us as soon as practicable of any changes which may affect the insurance provided by this Policy.

Alterations in the cover required after the Policy has been issued will be confirmed by separate endorsement which you should file with the Policy. You should refer to these endorsements and the Policy to ascertain precise details of cover currently in force.

Your insurance broker will be able to provide any help or information that you might require.

## 2. Insuring Clauses

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### 2.1 Public & Products Liability Insuring Clause

We will indemnify the Insured up to the Indemnity Limit in respect of all sums which they shall become legally liable to pay for Compensation arising from;

2.1.1 Personal Injury;

2.1.2 Property Damage; or

2.1.3 Advertising Injury;

first happening during the Period of Insurance, caused by or resulting out of an Occurrence within the Territorial Limits; and

- a) in connection with the Business; or
- b) caused by any Product.

### 2.2 Defence Costs Insuring Clause

We will also pay, in addition to the Indemnity Limit, Defence Costs where such costs have been incurred with Our prior written consent, PROVIDED THAT We will not be obligated to pay any Defence Costs after the Indemnity Limit has been exhausted by payment of judgments or settlements.

## 3. Extensions

We will provide the following cover under this section, PROVIDED THAT:

- a. the cover provided by each Extension is subject to the Schedule, Insuring Clauses, General Conditions, Exclusions, Definitions and Interpretations and any other terms of the Policy (unless otherwise expressly stated); and
- b. the inclusion of any Extension will not increase the Indemnity Limit. Where a sub-limit is stated in respect of any Extension, such sub-limit shall form part of and not be in addition to the Indemnity Limit.

### 3.1 Movement of Obstructing Vehicles

Insuring Clause 2.1 provides cover for liability caused by or arising from any vehicle (not owned, hired by or lent to the Insured) being driven by the Insured or by any Employee with the Insured's permission whilst such vehicle is being moved for the purpose of allowing free movement of any vehicles or pedestrians, PROVIDED THAT:

- 3.1.1 movements are limited to vehicles parked on or obstructing the Insured's premises or any site at which the Insured is working; and
- 3.1.2 the vehicle causing obstruction will not be driven by any person unless such person is licensed and competent to drive the vehicle; and
- 3.1.3 the vehicle causing obstruction is driven by use of the owner's ignition key; and
- 3.1.4 We shall not provide indemnity against liability;
  - a) in respect of damage to such vehicle, or
  - b) in respect of which compulsory insurance or security is required under any legislation governing the use of the vehicle.

The cover provided by this extension is not subject to Exclusion 4.13.

### 3.2 Overseas Personal Liability

We will indemnify:

- 3.2.1 where the Named Insured is a natural person, the Named Insured; or
- 3.2.2 any director, officer or partner of the Named Insured; or
- 3.2.3 at the request of the Named Insured;
  - a) any Employee of the Named Insured normally resident in the Commonwealth of Australia; or
  - b) any spouse or child of the persons referred to in clause 3.2.1, 3.2.2 or 3.2.3 a) above who are normally resident in the Commonwealth of Australia and accompanying such persons in respect of liability incurred by such persons in a personal capacity;

in connection with an event occurring in a country outside of the Territorial Limits whilst on a temporary visit to such country in connection with the Business. In addition, We will indemnify the Named Insured for any liability arising out of any event for which the persons referred to in clauses 3.2.2 or 3.2.3 are or would, at the request of the Named Insured, be entitled to be indemnified under this extension.

PROVIDED THAT:

- 3.2.4 any person entitled to indemnity under this extension shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this Policy insofar as they can apply; and

- 3.2.5 nothing in this extension shall increase Our liability to pay any amount exceeding the Indemnity Limit regardless of the number of persons claiming to be indemnified; and
- 3.2.6 We shall not provide indemnity against;
- a) any Contractual Liability but only to the extent to which it would not have attached in the absence of such contract or agreement;
  - a) liability for which indemnity is provided by any other insurance;
  - b) liability in respect of Property Damage to property belonging to or in the custody or under the control of any person entitled to indemnity under this extension;
  - c) liability in respect of Personal Injury to any person entitled to indemnity under this extension; or
  - d) liability caused by or arising from:
    - (i) the ownership or occupation of land or buildings;
    - (ii) the carrying on of any business, profession, trade or employment; or
    - (iii) the ownership possession or use of animals other than horses or domestic dogs or cats.
- 3.2.7 if the event occurs in the United States of America or Canada or their respective protectorates and territories for which Compensation is otherwise payable by Us under this Policy, Defence Costs shall form part of and not be payable in addition to the Indemnity Limit.
- 3.2.8 The cover provided by this extension is not subject to Exclusion 4.23.

### **3.3 Costs of Court Attendance**

In the event of any of the under-mentioned persons attending court as a witness at Our request in connection with a claim in respect of which the Insured is entitled to indemnity under this Policy, We will reimburse the Insured at the following rates per day for each day on which attendance is required:

- 3.3.1 any director, officer or partner of the Insured \$650;
- 3.3.2 any Employee \$250.

### **3.4 Indemnity to Other Persons**

We will also indemnify as if a separate Policy had been issued to each:

- 3.4.1 the legal personal representatives of the Insured or any other person entitled to indemnity under this Policy but only in respect of liability incurred by the Insured or such other person; and
- 3.4.2 any owner of plant hired to the Insured but only to the extent required by the conditions of any written contract or agreement of hire; and
- 3.4.3 any officer or member of the Insured's catering, social, sports, educational, medical, dental and welfare organisations, fire, security, first aid and ambulance services in their respective capacity as such but not any medical or dental practitioner in respect of medical or dental services provided;

PROVIDED THAT:

- a) any persons specified above shall as though they were the Insured be subject to the terms (including without limitation the Conditions and the Exclusions) of this Policy insofar as they can apply; and
- b) nothing in this extension shall increase Our liability to pay any amount exceeding the Indemnity Limit regardless of the number of persons claiming to be indemnified.

### 3.5 Cross Liabilities

If the Insured comprises more than one party We will provide indemnity to each such Insured in the same manner and to the same extent as if a separate Policy had been issued to each of them, PROVIDED THAT nothing in this extension shall increase Our liability to pay any amount exceeding the Indemnity Limit regardless of the number of persons claiming to be indemnified.

## 4. Exclusions

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We will not provide indemnity against liability:

### 4.1 Advertising Injury

directly or indirectly arising out of or in connection with:

- 4.1.1 the failure of performance of any contract, but this exclusion does not apply to claims for unauthorised appropriation of ideas based upon breach of an implied contract;
- 4.1.2 any infringement of trade mark, service mark or trade name, but this shall not relate to titles or slogans;
- 4.1.3 any incorrect description of any good or product;
- 4.1.4 any mistake in advertised price;
- 4.1.5 any publication or utterance or testimonial used or made at the Insured's direction and with the Insured's knowledge of the inaccuracy or falsity of the publication, utterance or testimonial;
- 4.1.6 the failure of any Product or the Insured's services to conform with advertised performance, quality, fitness or durability; or
- 4.1.7 the Business if the principal business is advertising, broadcasting, publishing or telecasting.

### 4.2 Aircraft and Watercraft

caused by, arising out of or in connection with the ownership possession maintenance operation or use by or on behalf of the Insured of any:

- 4.2.1 airlines, Aircraft, aerodromes, airports, and/or other aviation risks, spacecraft, launch sites and/or other space risks; or
- 4.2.2 hovercraft or Watercraft other than hand propelled Watercraft or other Watercraft not exceeding 8 metres in length.

### 4.3 Asbestos

directly or indirectly arising out of resulting from in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity.

### 4.4 Aviation or Aero Spatial Devices or Purposes

caused by arising out of or in connection with any Product which to the knowledge of the Insured is intended for:

- 4.4.1 use in or on any aircraft or aero spatial device; or
- 4.4.2 aviation or aero spatial purposes.

### 4.5 Contractual Liability

assumed under an agreement unless such liability:

- 4.5.1 would have attached in the absence of such agreement;
- 4.5.2 arises out of a condition or warranty of goods implied or imposed by statute;
- 4.5.3 has been assumed under an Incidental Contract; or
- 4.5.4 has been agreed in writing by Us.



#### **4.6 Cyber Liability**

directly or indirectly arising out of the alteration of, damage to, or a reduction in functionality, availability or operation of a “computer system” as a result of the Insured’s “e-activities”.

For the purpose of this exclusion, “e-activities” shall mean any use of or Business undertaken by the Insured or by any person, persons, partnership, firm or company acting for or on behalf of the Insured in connection with electronic networks including the internet and private networks intranets extra-nets electronic mail worldwide web and similar medium.

#### **4.7 Cyber Liability & Social Engineering**

directly or indirectly arising out of, related to or in connection with:

- 4.7.1 the unauthorised access to or use of any Computer System owned, operated by or licensed to the Insured; or
- 4.7.2 Social Engineering Fraud.

#### **4.8 Employer’s Liability**

directly or indirectly:

- 4.8.1 caused by, arising out of or in connection with Personal Injury to any Employee or person arising out of and in the course of employment by the Insured where the Insured is indemnified or would be entitled to be indemnified (either in whole or in part) in accordance with insurance arranged or required to be arranged in respect of any workers’ compensation law; or
- 4.8.2 caused by, arising out of or in connection with Personal Injury to any Employee for mental anguish, harassment, libel, slander, defamation, humiliation or discrimination whilst in the Insured’s service or while employed by the Insured; or
- 4.8.3 imposed by the provisions of any workers’ compensation law or accident compensation legislation or industrial award, agreement or determination.

#### **4.9 Fines, Penalties, Punitive and Liquidated Damages**

to pay fines, penalties, punitive, liquidated, exemplary, or aggravated damages or any additional damages resulting from the multiplication of compensatory damages.

#### **4.10 Libel, slander or defamatory material**

directly or indirectly arising out of caused by or in connection with the publication or utterance of libel or slander or other defamatory material.

#### **4.11 Listed Human Disease**

directly or indirectly arising out of, related to or in connection with a Listed Human Disease or any directly or indirectly related condition or threat or fear thereof (whether actual or perceived).

#### **4.12 Loss of Use**

for any claim in respect of loss of use of tangible property which has not been physically injured or destroyed resulting from:

4.12.1 a delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

4.12.2 the failure of any Product to meet the level of performance, quality, fitness or durability warranted or represented by the Insured.

This Exclusion shall 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 Products or work have been put to their intended use by any entity other than the Insured.

#### **4.13 Mechanically Propelled Vehicle**

caused by, arising out of or in connection with the ownership possession operation or use by or on behalf of the Insured of any Mechanically Propelled Vehicle:

4.13.1 for which compulsory insurance or security is required under any legislation governing the use of the vehicle; or

4.13.2 where indemnity is provided by any other insurance effected by or on behalf of the Named Insured or the Insured.

PROVIDED THAT this Exclusion shall not apply to liability caused by or arising from:

- a) the use of vehicles whilst being operated as a Tool of Trade at the Insured's premises or on any site at which the Insured is working; or
- b) the loading or unloading of any vehicle or the bringing to or taking away of a load from any vehicle; or
- c) damage to any building, bridge, weighbridge, road or to anything beneath caused by vibration or by the weight of any vehicle or of its load.

#### **4.14 Molestation**

directly or indirectly caused by, arising out of, contributed to by, or in connection with the molestation of or interfering with any person

#### **4.15 Other Insurance**

to the extent that indemnity is available to the Insured (or other person entitled to make a claim on the Policy) for such liability under some other contract of insurance PROVIDED THAT this exclusion shall not operate in respect of a claim by the Named Insured where the Named Insured has entered into the other contract of insurance.

#### **4.16 Pollution or Contamination**

4.16.1 directly or indirectly caused by, arising from or contributed to by the discharge, dispersal, release, seepage, migration or escape of Pollutants into or upon buildings or structures, water, land or the atmosphere; or

4.16.2 for any costs incurred in removing nullifying or cleaning up Pollutants; or

4.16.3 for any costs incurred in preventing the escape of Pollutants; or

4.16.4 directly or indirectly caused by, arising from or contributed to by the discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any products which have been discarded, dumped, abandoned or thrown away by others.

Provided that, exclusions 4.16.1 and 4.16.2 shall not apply where the claim arises from a sudden, identifiable,

unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance and occurs outside of the United States of America, Canada and their respective protectorates and territories.

#### **4.17 Product Recall**

caused by, arising out of or in connection with the withdrawal, recall, inspection, repair, replacement, alteration, removal, rectification, reinstatement or reinstallation of any Product, or any refund made in respect of any Product.

#### **4.18 Professional Liability**

caused by or arising out of the rendering of or failure to render professional advice, design, specification or service for a fee but this exclusion shall not apply to claims arising out of:

4.18.1 the Insured providing or failing to provide first aid on Your premises; or.

4.18.2 advice given in respect of the use or storage of Your Products.

#### **4.19 Property Damage**

caused by, arising out of or in connection with Property Damage to property:

4.19.1 belonging to the Insured; or

4.19.2 in the physical or legal care, custody or control of the Insured or any Employee of the Insured, other than;

- a) personal effects of any visitor, director, partner or Employee of the Insured;
- b) premises (including their fixtures and fittings) leased or rented to the Insured;
- c) premises and their contents not belonging to, leased or rented to the Insured, at which the Insured is conducting work as part of their usual Business;
- d) buildings (including contents therein) which are not owned leased or rented by the Insured but are temporarily occupied by the Insured for the purpose of maintenance alteration extension installation or repair;
- e) vehicles (and their contents) on the Insured's premises, but not in any car parks owned or operated by the Insured for reward; or
- f) all other property up to a limit of \$250,000 in the aggregate in any one Period of Insurance.

#### **4.20 Property Damage to Your Products**

caused by, arising out of or in connection with property damage to any Product if the damage is attributable to any fault or defect in them or to their harmful nature or unsuitability.

#### **4.21 Radioactive Contamination**

of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

4.21.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

4.21.2 the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or

4.21.3 exposure to magnetic, electric or electromagnetic fields or radiation.

#### **4.22 Rectification of faulty work**

arising from any claim in respect of the rectification of faulty work performed by or on behalf of the Insured.

#### **4.23 United States of America or Canada**

- 4.23.1 caused by, arising from or in connection with any Occurrence in the United States of America or Canada and their respective protectorates and territories; or
- 4.23.2 any action brought in any court of the United States of America or Canada or their respective protectorates and territories or any judgment registered or lodged in any jurisdiction in connection with such an action.
- 4.23.3 This exclusion shall not apply:
  - a) to extension 3.2; or
  - b) where We have agreed by endorsement to extend coverage to Products supplied for use in, or supply to the United States of America or Canada and their respective protectorates and territories unless otherwise agreed to in writing by Us.

#### **4.24 War and Terrorism**

directly or indirectly arising out of, related to or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence any of the following:

- 4.24.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, confiscation by order of any public authority or government de jure or de facto, martial law;
- 4.24.2 riots, strikes or civil commotion;
- 4.24.3 any Act of Terrorism; or
- 4.24.4 any action taken in controlling, preventing, suppressing, retaliating against or responding to or in any way relating to those things in 4.24.1 to 4.24.3 above.

## 5. Definitions and Interpretations

Headings and notes are for information purposes only and are not to be construed as part of this insurance. The following definitions of each word, words or phrase appearing in the title are applicable to all Policy sections. All words appearing in the title also include the plural or singular of those words.

### 5.1 Act of Terrorism

shall mean the actual or threatened:

- 5.1.1 use of force or violence against persons or Property;
- 5.1.2 commission of an act dangerous to human life or Property; or
- 5.1.3 commission of an act that interferes with or disrupts an electronic or communication system; undertaken by any person or group whether or not acting on behalf of or in connection with any organisation government power authority or military force and the reasonably apparent intent of effect is to:
- 5.1.4 intimidate or coerce a government or organisation or to disrupt any segment of the economy;
- 5.1.5 cause alarm fright fear of danger or apprehension of public safety in one or more distinct segments of the general public or to intimidate or coerce one or more such segments; or
- 5.1.6 further political ideological religious or cultural objectives or to express support for (or opposition to) a philosophy ideology religion or culture.

### 5.2 Advertising Injury

shall mean any unintentional;

- 5.2.1 defamation;
- 5.2.2 breaches of the misleading and deceptive conduct provisions of the Competition and Consumer Act 2010 (Cth) or any State or Territory Fair Trading Act or similar legislation of any country, state or territory;
- 5.2.3 infringement of copyright or passing off of title or slogan;
- 5.2.4 unfair competition, piracy or idea misappropriation; or
- 5.2.5 invasion of a right to privacy;

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 in connection with the Business or Products.

### 5.3 Aircraft

shall mean any vessel, craft or thing made or intended to transport persons or property through the air, atmosphere or space.

#### **5.4 Business**

shall mean the Insured's business as described in the Schedule and shall include:

- 5.4.1 the provision and management of catering, social, sports, educational, medical, dental and welfare services for the benefit of the Insured's Employees; and
- 5.4.2 fire, security, first aid and ambulance services provided by the Insured for the benefit of the Insured's Employees; and
- 5.4.3 the ownership, repair, maintenance and decoration of the Insured's premises; and
- 5.4.4 private work carried out by any Employee of the Insured (with the consent of the Insured) for any director, partner or senior official of the Insured.

#### **5.5 Compensation**

shall mean all sums which the Insured shall be legally liable to pay by judgment or agrees to pay by settlement (with Our prior written consent), including claimant's costs and expenses for:

- 5.5.1 Personal Injury; or
- 5.5.2 Property Damage; or
- 5.5.3 Advertising Injury

to which coverage under this Policy applies, PROVIDED THAT, Compensation does not include:

- a) fines or penalties;
- b) punitive, liquidated, exemplary or aggravated damages; or
- c) any additional damages resulting from the multiplication of compensatory damages.

#### **5.6 Computer System**

shall mean an information technology system made up of one or more items of computer hardware, software, or programmes and the electronic data stored thereupon that share a central storage system, and any other peripheral devices. Computer System shall also include any electronic devices and/or electrical equipment.

#### **5.7 Conditions**

shall mean the General Conditions.

#### **5.8 Contractual Liability**

shall mean liability which attaches by virtue of a contract or agreement.

#### **5.9 Defence Costs**

shall mean all reasonable and necessary costs and expenses incurred in the investigation, reporting on, defence or settlement of any claim in respect of which We are liable to indemnify the Insured under this Policy. This also includes reporting in writing to Us on the investigation, defence or settlement of any claim.

### **5.10 Employee**

shall mean:

- 5.10.1 any person under a contract of service or apprenticeship with the Named Insured;
  - 5.10.2 any person under a contract of service or apprenticeship with another employer who is hired to or borrowed by the Named Insured;
  - 5.10.3 any self-employed person working under contract with and under the direction of the Named Insured;
  - 5.10.4 any person or student undertaking work for the Named Insured under a work experience agreement, government training or similar scheme; or
  - 5.10.5 any volunteer of the Named Insured;
- whilst they are engaged in connection with the Business.

### **5.11 Endorsement**

shall mean any endorsement which might apply to this Policy.

### **5.12 Excess**

shall mean the total amount shown in the Schedule payable by the Insured or any other person entitled to indemnity. The Excess applies to each Occurrence or Claim as specified in the Schedule and is payable at such time required by Us.

If any payment made by Us includes the amount for which the Insured or any other person entitled to indemnity is responsible such amount shall be repaid to Us forthwith.

### **5.13 Exclusions**

shall mean the Exclusions detailed in Section 4.

### **5.14 Incidental Contracts**

shall mean:

- 5.14.1 any written rental, lease, or hire agreement of real or personal property, other than with respect to any term or condition contained in such rental, lease or hire agreement that requires the Insured to insure such property.
- 5.14.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, 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.
- 5.14.3 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.
- 5.14.4 those contracts designated in the Schedule

### **5.15 Indemnity Limit**

shall mean the limit as specified in the Schedule.

#### **5.16 Insured**

shall mean:

- 5.16.1 the Named Insured;
- 5.16.2 any partner, officer, director, or Employee of the Named Insured while acting within the scope of their duties for the Named Insured;
- 5.16.3 any Principal of the Named Insured but only in respect of the liability of such principal arising out of the performance by the Named Insured of any contract or agreement for the performance of work or services in connection with the Business;
- 5.16.4 all subsidiary and/or controlled corporations (including subsidiaries thereof) of the Named Insured and/or any other organisations under the control of the Named Insured incorporated in the Commonwealth of Australia and which are constituted or acquired by the Named Insured during the Period of Insurance; and
- 5.16.5 any 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 insured against by this Policy, which occurred prior to the date of divestment.

#### **5.17 Listed Human Disease**

shall mean:

- 5.17.1 any disease identified or listed at any time as a human disease under the Biosecurity Act 2015 (Cth) or its current equivalent, as amended or replaced from time to time, or
- 5.17.2 any disease identified or listed in a state of emergency, public health emergency or pandemic declared by any governmental authority or identified by the World Health Organisation or its current equivalent as amended or replaced;

regardless of when the disease is so listed or identified.

#### **5.18 Mechanically Propelled Vehicle**

shall mean any type of machine on wheels, skis or on self-laid tracks made or intended to be propelled other than by manual or animal power.

#### **5.19 Named Insured**

shall mean the person or corporate body named as such in the Schedule.

#### **5.20 Occurrence**

- 5.20.1 shall mean an event, including continuous or repeated exposure to substantially the same general conditions, which result in Personal Injury or Property Damage that is neither expected nor intended from the Insured's standpoint.
- 5.20.2 All events of a series consequent on or attributable to one source or original cause are deemed to be one Occurrence.
- 5.20.3 All Advertising Injury consequent on or attributable to one source or original cause is deemed to be one Occurrence.

#### **5.21 Period of Insurance**

shall mean the period specified in the Schedule.



## **5.22 Personal Injury**

shall mean:

- 5.22.1 bodily injury, death illness, disease, or disability;
- 5.22.2 mental injury mental anguish or shock;
- 5.22.3 false arrest, false imprisonment, wrongful detention, malicious prosecution, or humiliation;
- 5.22.4 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;
- 5.22.5 wrongful eviction, entry or other invasion of privacy;
- 5.22.6 unintentional libel or slander;
- 5.22.7 racial, religious, sexual or age discrimination not committed by or at the direction of the Insured; or
- 5.22.8 loss of consortium resulting from any of the circumstances described in clauses (5.22.1) to (5.22.4) above.

## **5.23 Policy**

shall mean:

- 5.23.1 all terms (including without limitation the Insuring Clauses, Definitions and Interpretation, Extensions, Conditions, Exclusions and Indemnity Limit) set out in this document;
  - 5.23.2 the Schedule; and
  - 5.23.3 all Endorsements applied to and issued from time to time for application to this document;
- all of which shall be read together and constitute the contract of insurance.

## **5.24 Pollutant**

shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals or waste materials, including materials that are intended to be recycled, reconditioned or reclaimed.

## **5.25 Premium**

shall mean the amount payable by the Insured specified as such in the Schedule or any Endorsement.

## **5.26 Principal**

shall mean any person, employer, firm, company, ministry or authority for whom the Insured is carrying out a contract or agreement for the performance of work.

## **5.27 Product**

shall mean any product or item (after it has ceased to be in the possession of the Insured) sold, supplied, erected, repaired, altered, treated, installed, processed, manufactured, tested, serviced, hired out, stored, transported or delivered by or through the Insured (including containers packaging or labelling thereof) in the course of the Business in or from the Territorial Limits and also includes:

- 5.27.1 any design, formula or specification of such Product; and
- 5.27.2 anything in respect of which the Insured is deemed to be the manufacturer by operation of a law of the Commonwealth of Australia or its external territories.

### **5.28 Property Damage**

shall mean:

5.28.1 physical injury to, destruction of or loss of tangible property including the resultant loss of use of that property; or

5.28.2 loss of use of tangible property that is not physically damaged, lost or destroyed PROVIDED THAT such loss of use is caused by physical damage to or destruction of other tangible property.

### **5.29 Schedule**

shall mean the Schedule attached to this Policy.

### **5.30 Social Engineering Fraud**

shall mean any fraudulent or dishonest instruction to the Insured or its agents which purports to be from a legitimate or trusted source authorised to make such instruction and which results in the Insured:

5.30.1 transferring, paying or delivering any money or securities from an account maintained by the Insured to another person or entity;

5.30.2 transferring or delivering any property to another person or entity;

5.30.3 revealing confidential information; or

5.30.4 changing or altering bank account or payment details of any person or entity.

### **5.31 Territorial Limits**

shall mean anywhere in the world except the United States of America, Canada and their respective protectorates and territories.

### **5.32 Tool of Trade**

shall mean any Mechanically Propelled Vehicle which has mechanical digging, scraping, drilling equipment or any tool or plant attached but only when it is being used by the Insured on any worksite at which work is performed for or in connection with the Business.

### **5.33 Watercraft**

shall mean any vessel, craft, or thing made or intended to float or travel on, in, through or under water.

### **5.34 We, Us, Our**

shall mean Berkley Insurance Company (trading as Berkley Insurance Australia) ABN 53 126 559 706.

References in this Policy to any statute, statutory provision, directive or other legislation include a reference to that statute, statutory provision, directive or legislation as amended extended consolidated or replaced from time to time (whether before or after the date of this Policy) and include any order regulation instrument or other subordinate legislation made under the relevant statute statutory provision directive or legislation.

## 6. General Conditions

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The following conditions apply to all sections of this Policy, except where indicated.

### 6.1 Alteration to risk

The Insured will give Us written notice as soon as reasonably practicable of any material alteration to the risk during the Policy Period including but not limited to:

- 6.1.1 an Insured going into voluntary bankruptcy, receivership, liquidation or any other form of external administration or an Insured failing to pay debts or breaching any other obligation which could give rise to the appointment of a receiver or bankruptcy or winding-up proceedings; and
- 6.1.2 any material change in the nature of the Business offered by an Insured.

Where the Insured fails to notify Us as required under this clause or there is any material alteration to the risk during the Policy Period, We may be entitled to cancel this policy in accordance with the Insurance Contracts Act 1984 (Cth).

Where such notice is not provided by the Insured before the happening of a Claim or a notification giving rise to a Claim under this Policy, We may refuse to pay a Claim either in whole or in part or We may reduce our liability to pay a Claim in accordance with the Insurance Contracts Act 1984 (Cth).

### 6.2 Premium Adjustment

If the Premium is based on estimates, an accurate record containing all particulars relative thereto shall be kept by the Insured. The Insured shall at all times allow Us to inspect such record and shall supply such particulars as We may require within one month from the expiry of the Period of Insurance. The Premium may thereupon be adjusted by Us. At Our request, the Insured shall supply Us with an auditor's certificate in support of such particulars.

If the Insured fails to supply such particulars within the period stated We shall be entitled to make a reasonable estimate of such particulars and adjust the Premium accordingly.

### 6.3 Reasonable Care

The Insured shall take all reasonable care:

- 6.3.1 to prevent any event which may give rise to a claim under this Policy;
- 6.3.2 to maintain the premises plant and everything used in the Business in proper repair;
- 6.3.3 in the selection and supervision of Employees;
- 6.3.4 to comply with all statutory and other obligations and regulations imposed by any authority; and
- 6.3.5 to make good or remedy any defect or danger which becomes apparent and take such additional precautions as the circumstances may require.

#### **6.4 Claims (Notice in Writing from the Insured)**

The Insured or their legal personal representatives shall give notice in writing to Us as soon as possible after any Occurrence or event which may give rise to liability under this Policy with full particulars of such Occurrence or event. Every claim, notice, letter, writ, process or other document served on the Insured shall be forwarded to Us as soon as practicable upon receipt by the Insured.

Notice in writing shall also be given to Us as soon as practicable by the Insured of any impending prosecution inquest or fatal inquiry in connection with any such event.

Notice of any claim will be provided in writing to:

National Head of Claims  
australiaclaims@berkleyinaus.com.au  
Berkley Insurance Australia  
PO Box Q296  
QVB NSW 1230

#### **6.5 Claims (Conduct and Control)**

No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without Our written consent.

We shall be entitled if We so desire to take over and conduct in the name of the Insured, the defence or the settlement of any claim and to prosecute in the name of the Insured for its own benefit, any claim for indemnity or damages or otherwise against all other parties or persons. We shall have full discretion in the conduct of any proceedings and in the settlement of any claim against the Insured and the Insured shall give all such information and assistance as We may require.

#### **6.6 Claims (Discharge of Liability)**

We may at any time at Our sole discretion pay to the Insured the Indemnity Limit (less any sum or sums already paid in respect or in lieu of Compensation) or any lesser sum for which the claim or claims against the Insured can be settled. Upon such payment We shall not be under any further liability in respect of such claim or claims except for Defence Costs for which We may be responsible incurred prior to such payment. PROVIDED THAT in the event of a claim or series of claims resulting in the liability of the Insured to pay a sum in excess of the Indemnity Limit Our liability for Defence Costs shall not exceed an amount being in the same proportion as Our payment to the Insured bears to the total payment made by or on behalf of the Insured in settlement of the claim or claims.

#### **6.7 Premium**

The Insured must pay all Premiums plus an applicable tax (General Insurance Tax) to Us within 30 days.

#### **6.8 Subrogation**

In the event of any payment under this Policy, We shall be subrogated to all the Insured's rights of recourse against any other entity, person or organisation. We shall be entitled to pursue and enforce such rights in the name of the Insured who shall provide us with all reasonable assistance in order to secure those rights. The Insured is not to waive or release any right of recourse against any other entity without first obtaining Our permission in writing.

## **6.9 Cancellation**

- 6.9.1 The Insured may cancel this Policy by notifying Us in writing, and We will allow a pro rata refund of Premium relating to the unexpired proportion of the Period of Insurance. Cancellation will be effective from the date that We are notified of the cancellation.
- 6.9.2 We may cancel this Policy in accordance with the relevant provisions of the Insurance Contracts Act 1984 (Cth) and will provide a pro rata refund of Premium for the unexpired Period of Insurance.
- 6.9.3 The Insured will not be entitled to a refund of premium under clause 6.9 (a) and 6.9 (b) if the Insured has made a notification under this Policy or if We have made any payments under this Policy.

## **6.10 Notification of Other Insurances**

If at the time of any Personal Injury or Property Damage which is indemnifiable, or but for Exclusion 6.9 would be indemnifiable, under this Policy there exists any other insurance policy which would provide indemnity to the Insured, then the Insured must provide full details of any such insurance policy to Us when making any claim under this Policy.

## **6.11 Jurisdiction and service**

In the event of a dispute arising under or in connection with this Policy, We at the request of the Insured will submit to the jurisdiction of competent courts in the Commonwealth of Australia. The dispute shall be determined in accordance with the law and practice of that jurisdiction, as applied in those courts.

## **6.12 Indemnity Limit**

- 6.12.1 Our liability for Compensation in respect of any one Occurrence in connection with the Business shall not exceed the Public Liability Indemnity Limit specified in the Schedule.
- 6.12.2 Our liability for Compensation in respect of any one Occurrence caused by a Product shall not exceed the Products Liability Indemnity Limit specified in the Schedule. Our aggregate liability for Compensation in respect of any one Occurrence caused by a Product shall not exceed the Products Liability Indemnity Limit specified in the Schedule.
- 6.12.3 In the event of an Occurrence happening in the United States of America, Canada and/or their respective protectorates and territories, the Indemnity Limit shall be inclusive of Defence Costs, claimant's costs and expenses and will apply in the aggregate to all claims during the Period of Insurance.

## **6.13 Sanctions**

We are not liable to make any payment under this Policy where such payment would be in violation of any sanction, prohibition or restriction with which We are required to comply, including but not limited to United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, Australia, United Kingdom or the United States of America.