

Arch Modified Industrial Special Risks Insurance Policy

Contents

| | |
|---------------------------------------------------------------------------------------------|----|
| IMPORTANT INFORMATION | 3 |
| INDUSTRIAL SPECIAL RISK INSURANCE POLICY | 7 |
| SECTION 1 – MATERIAL LOSS OR DAMAGE | 10 |
| MEMORANDA TO SECTION 1 | 14 |
| SECTION 2 – CONSEQUENTIAL LOSS | 17 |
| MEMORANDA TO SECTION 2 | 22 |
| EXCLUSIONS APPLICABLE TO ALL SECTIONS | 24 |
| MEMORANDA APPLICABLE TO ALL SECTIONS | 28 |
| CONDITIONS APPLICABLE TO ALL SECTIONS | 29 |
| ENDORSEMENTS ATTACHING TO AND FORMING PART OF THE INDUSTRIAL SPECIAL RISKS INSURANCE POLICY | 34 |
| ENDORSEMENTS APPLICABLE TO MEMORANDA TO SECTION 1 | 35 |
| ENDORSEMENTS APPLICABLE TO MEMORANDA TO SECTION 2 | 36 |
| ENDORSEMENTS TO EXCLUSIONS APPLICABLE TO ALL SECTIONS | 38 |
| ENDORSEMENTS TO MEMORANDA TO ALL SECTIONS | 40 |

Important Information

INTRODUCTION

Unless the context otherwise provides, in this section:

- “We”, “Our” or “Us” means the **Insurers** and Arch; and
- “You”, “Your” or “Yours” means the **Insured**.

About the Insurers

The **Insurers** of this product are Arch Underwriting at Lloyd’s (Australia) Pty Ltd (“Arch”), in accordance with the authorisation granted to them by Certain Underwriters at Lloyd’s, of whose definitive numbers and the proportions underwritten by them, will be supplied on application. In consideration of the premium specified in the **Policy Schedule**, the said **Insurers** are hereby bound, severally and not jointly, each for his own part and not one for another, their executors and administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon.

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

Arch is an Australian Financial Services Licensee authorised to deal in and provide general advice on general insurance products. Arch has been authorised by the **Insurers** to act on their behalf to deal in and provide general advice and handle and settle claims in relation to this insurance.

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

Arch can be contacted as follows:

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

*Telephone: (02) 8284 8400
Email: info@archinsurance.com.au*

IMPORTANT NOTICES UNDER THE INSURANCE CONTRACTS ACT 1984 (CTH)

Your Duty of Disclosure

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

Your duty however does not require disclosure of any matter:

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

Non-Disclosure

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

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

Co-Insurance

Please note that co-insurance provisions apply to this Policy. This means that if You underinsure, You will become Your own insurer for a portion of the damage/loss. Please check the policy wording for further details in respect of the co-insurance provisions.

Sanction Limitation and Exclusion Clause

Please note Condition 19. Sanction Limitation and Exclusion Clause within “Conditions Applicable to all Sections” of the Policy which prevents Us from providing cover, benefits or paying claims where that would expose Us to sanctions, prohibitions, or restrictions.

GENERAL INSURANCE CODE OF PRACTICE

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

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

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

COMPLAINTS PROCEDURE

If You have any concerns or wish to make a complaint in relation to this policy, Our services or Your insurance claim, please let Us know and We will attempt to resolve your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact Arch Underwriting at Lloyd’s (Australia) Pty Ltd in the first instance:

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

or by telephone at (02) 8284 8400
or by email at complaints@archinsurance.com.au

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

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

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

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

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

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

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

DISPUTES NOTICE

The **Insurer(s)** accepting the insurance under the Policy agree that:

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

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

who has an authority to accept service and appear on the **Insurer's** behalf;

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

CLAIMS NOTIFICATION

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

| | |
|---------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| Arch Property Claims Suite 11.02, Level 11 360 Collins St MELBOURNE VIC 3000 | Telephone: +61 (0)3 8614 6474 Email: propertyclaims@archinsurance.com.au |
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AGENCY ARRANGEMENTS AND AGENT'S REMUNERATION

If your Policy has been issued through our agent, or a broker who is acting under a binder agreement with us, then they are acting as our agent and not as your agent.

If your Policy has been issued by a broker, other than a broker acting under an agency/binder arrangement with us, then the broker is acting as your agent.

When the Policy has been arranged through an agent or broker, remuneration (such as commission) is payable by us to them for arranging the insurance. You can ask them for more information.

RENEWAL PROCEDURE

Before this Policy expires We will, through Your insurance broker, normally offer renewal by sending a renewal invitation advising the amount payable to renew this Policy. It is important that You check the information shown before renewing each year to satisfy Yourself that the details are correct.

GST NOTICE

This Policy has a GST provision in relation to premium and the **Insurer's** payment to the **Insured** for claims. It may have an impact on how you determine the amount of insurance you may need. Please read it carefully. Seek professional advice if you have any queries about GST and your insurance.

Sums insured

All monetary limits in this Policy may be increased for GST in some circumstances (see below).

Claim settlements – Where the Insurer agrees to pay

When the **Insurer** calculates the amount the **Insurer** will pay the **Insured**, the **Insurer** will have regard to the items below:

Where the **Insured** is liable to pay an amount for GST in respect of an acquisition relevant to the **Insured's** claim (such as services to repair a **Damaged** item insured under the Policy) the **Insurer** will pay for the GST amount.

The **Insurer** will pay the GST amount in addition to the Sum Insured/Limit of Liability or other limits shown in the Policy or in the **Policy Schedule**.

If the **Insured's** Sum Insured is not sufficient to cover the **Insured's** loss, the **Insurer** will only pay the GST amount that relates to the **Insurer's** settlement of the **Insured's** claim.

The **Insurer** will reduce the GST amount the **Insurer** pays for by the amount of any input tax credits to which the **Insured** is or would be entitled.

Where the **Insurer** makes a payment under this Policy as compensation instead of payment for a relevant acquisition, the **Insurer** will reduce the amount of the payment by the amount of any input tax credit that the **Insured** would have been entitled to had the payment been applied to a relevant acquisition.

Where the Policy insures business interruption, the **Insurer** will (where relevant) pay the **Insured** on their claim by reference to the GST exclusive amount of any supply made by the **Insured's** business that is relevant to the **Insured's** claim.

Disclosure – Input tax credit entitlement

If the **Insured** registers, or is registered, for GST the **Insured** are required to tell the **Insurer** the **Insured's** entitlement to an input tax credit on the **Insured's** premium. If the **Insured** fails to disclose or understates their entitlement, the **Insured** may be liable for GST on a claim the **Insurer** may pay.

This Policy does not cover the **Insured** for this GST liability, or for any fine, penalty or charge for which the **Insured** may be liable.

FURTHER INFORMATION AND CONFIRMATION OF TRANSACTIONS

If You require further information about this insurance or wish to confirm a transaction, please contact Us.

Arch Modified Industrial Special Risks Insurance Policy

This Policy incorporates the **Policy Schedule**, Sections, Definitions, Conditions, Exclusions, Endorsements, Memoranda and Warranties (if any) and any other terms herein contained which are to be read together.

In consideration of the **Insured** having paid the Premium shown on the **Policy Schedule**, the **Insurers** agree, subject to the terms, conditions, exclusions, limitations and other provisions of this Policy, to indemnify the **Insured**, against loss arising from any insured events which occur during the **Period of Insurance**.

PROVIDED THAT the total liability of the **Insurers** at any one **Situation** shall not exceed the appropriate Limit or Sub-Limit(s) of Liability as stated in the **Policy Schedule** or such amount(s) as may be amended by endorsement or memorandum to this Policy and that each **Insurer** shall only be liable to contribute to any loss covered by this Policy that proportion of the loss as is specified beside its name.

GENERAL DEFINITIONS

The following definitions are applicable to all sections of this Policy, unless such meaning is inapplicable to the context in which the word or expression appears:

Asset Schedule means the "Asset Schedule" contained in the "Declared Values & Asset Schedule" part of the **Policy Schedule**.

Business means the business as specified in the **Policy Schedule** carried on by the **Insured** at the **Situation** at the commencement of the **Period of Insurance**.

Business Hours means the **Insured's** office and working hours (including overtime) during which the **Insured** or its employees are at the **Situation** for the purpose of the **Business**.

Burglary shall mean theft or any attempted theft of the **Property Insured** consequent upon:

- (i) actual forcible and violent entry upon the **Situation**;
- (ii) by a person feloniously concealed on the **Situation**
- (iii) threat of violence or violent intimidation.

Cosmetic Damage means scratching, denting, marring, pitting or other superficial damage (including graffiti) caused by an event insured under this **Policy** which alters the appearance of **Property Insured** but does not prohibit it from functioning as intended.

Damage (with "**Damaged**" having a corresponding meaning) means physical loss, damage or destruction.

Debris means:

- (a) the residue of **Damaged Property Insured**; or
- (b) materials deposited on the **Situation** as a result of the operation of an insured peril;

excluding any material which can cause **Pollution** or **Contamination** and which is deposited beyond the boundaries of the **Situation**.

Deductible means the first amount of each claim, as specified in the **Policy Schedule**, which is payable by the **Insured** (unless expressly stated otherwise). Where more than one **Deductible** may apply under the **Policy** for any claim or series of claims arising out of the one original source or cause, such **Deductibles** will not be aggregated and only the highest single **Deductible** will apply.

The Limit(s) and Sub-Limit(s) of Liability apply in addition to, and are not reduced by the amount of any applicable **Deductible**.

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

Flood does not include **Pluvial Flood**.

Indemnity Value means the cost necessary to replace, repair or rebuild the Property Insured to a condition substantially the same as but not better or more extensive than its condition at the time the Damage occurred taking into consideration age, condition and remaining useful life.

Insured/You/Your means The Insured named in the **Policy Schedule**

Insurer(s)/We/Us/Ours means the Insurer(s) as specified in the **Policy Schedule**.

Market Value means the estimated amount (determined by Insurer(s) acting reasonably) for which the Property Insured should exchange immediately before the Damage between a willing buyer and a willing seller in an arm's length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion.

Money means:

- (a) current coins, bank notes, currency notes, cheques, credit card sales and/or discount house vouchers, postal orders, money orders, unused postage and revenue stamps and including the value of stamps contained in franking machines; and
- (b) travellers cheques, securities and negotiable instruments including Casket Lottery and Lotto tickets/coupons/scratch tickets, bus/train/ferry tickets and phone cards.

Money In Transit means **Money** in transit to and from any **Situation(s)** whilst in the personal custody of the **Insured** and/or persons authorised by the **Insured**, including whilst such **Money** is contained in the night safe of any Bank where the **Insured** transacts business, provided the liability of the **Insurers** for **Money** in night safes shall cease at Bank closing time on the next Bank business day following deposit therein and in the case of **Money** drawn as wages and/or salaries and carried by the **Insured** also whilst at the **Situations** and places of disbursement until paid away, provided that:

- (a) the **Insurers'** liability in respect of **Money** not paid out on the day of withdrawal from the Bank shall be limited to an amount not exceeding forty percent (40%) of the particular withdrawal; and
- (b) during non-**Business Hours**, such **Money** be kept in a securely locked safe or securely locked strongroom at the **Situations**.

Money in Private Residence means **Money** in the personal custody of the **Insured** and/or persons authorised by the **Insured** whilst contained in their private residences provided that the liability of the **Insurers** shall cease at Bank closing time on the next Bank business day following that on which the transit of the **Money** to the private residence was completed.

Period of Insurance means the Period of Insurance stated in the **Policy Schedule**. The term "Local Time" means the time at the **Insured's** principal place of business.

Policy Schedule means the current Schedule incorporated in the Certificate of Insurance which has been numbered and issued by or on behalf of the **Insurers**.

Pollution or Contamination - where the words "Pollution" or "Contamination" are used as part of this Policy or its endorsements or attachments they shall have the specific meaning given below:

"Damage or loss arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, atmosphere or any watercourse or body of water (including groundwater)."

Pluvial Flood means the covering of normally dry land by water:

- (a) that has escaped or been released from natural or engineered drainage system(s) due to accumulation of rainwater from rain precipitation; or
- (b) due to accumulation or runoff of surface water or groundwater from rain precipitation

Property Insured means all tangible property both real and personal of every kind and description (except where expressly excluded) belonging to the **Insured** or for which the **Insured** is responsible, or has assumed responsibility to insure prior to the occurrence of any **Damage**, including all such property in which the **Insured** may acquire an insurable interest during the **Period of Insurance**.

It is understood and agreed that the term "personal property" shall include **Money** whilst contained in the **Situation** and whilst in transit to and from the **Situation** anywhere in Australia, including whilst contained in the night safe of any bank or financial institution where the **Insured** transacts business, and in the personal custody of the **Insured** and/or persons authorised by the **Insured** whilst contained in their private residences.

Situation(s) means the address(es) specified in the **Policy Schedule**.

Theft shall mean theft, of the **Property Insured** in circumstances other than as described as **Burglary**.

Unspecified Damage means **Damage** to the **Property Insured** (subject to the Exclusions Applicable to Sections 1 and 2) arising out of any one source or original cause other than:

- (a) fire,
- (b) lightning,
- (c) thunderbolt,
- (d) earthquake,
- (e) subterranean fire and/or volcanic eruption,
- (f) aircraft and/or other aerial devices and/or articles dropped or falling therefrom and/or impact by space debris,
- (g) sonic boom,
- (h) explosion,
- (i) implosion or collapse,
- (j) smoke and/or steam,
- (k) spontaneous fermentation or heating,
- (l) spontaneous combustion,
- (m) subsidence,
- (n) earth movement or collapse resulting therefrom or landslide,
- (o) flood,
- (p) water from or action by the sea,
- (q) tsunami, tidal wave or high water,
- (r) storm, tempest, wind, hail and/or rainwater,
- (s) water and/or other substance discharged, overflowing and/or leaking from apparatus, appliances, pipes, sprinkler and/or any other system(s),
- (t) the acts of persons taking part in riots or civil commotions or the acts of strikers or locked out workers or persons taking part in labour disturbances,
- (u) the acts of malicious persons,
- (v) the acts of any lawfully constituted authority in connection with any of the aforementioned events,
- (w) impact by any waterborne craft, land vehicles or animals,
- (x) burglary, theft, loss of money,
- (y) fraudulent or dishonest acts;
- (z) fusion;
- (aa) **Pluvial Flood**; or

any other event or circumstance which is more specifically mentioned under any other Sub Limit of Liability and/or **Deductible**.

Section 1 – Material Loss Or Damage

THE INDEMNITY

1. In the event of any **Damage** not otherwise excluded, happening to **Property Insured** at the **Situation** during the **Period of Insurance**, the **Insurers** will, subject to the provisions of this Policy including the application of the **Deductible** and any limitation on the **Insurer(s)** liability, indemnify the **Insured** in accordance with the applicable Basis of Settlement.

2. Unless specified in the **Policy Schedule** as 'Not Insured' and subject to the liability of the **Insurers** not being increased beyond the Limit(s) of Liability, the **Insurers** will also indemnify the **Insured** for:

(a) **Professional Fees**

Architects', surveyors', consulting engineers', legal and other fees and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision reasonably and necessarily incurred in reinstatement (determined by **Insurer(s)** acting reasonably) consequent upon **Damage** to **Property Insured** but not such costs, fees and salary for preparing any claim hereunder;

(b) **Government or other Statutory Authority Fees**

any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority, where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any building(s) insured hereunder, provided that the **Insurer(s)** will not be liable for the payment of any fines and/or penalties imposed upon the **Insured** by any such authorities;

(c) **Fire Extinguishing Costs**

costs and expenses reasonably and necessarily incurred (determined by **Insurer(s)** acting reasonably) for the purpose of extinguishing fire at or in the vicinity of **Property Insured** or threatening to involve such property or for the purpose of preventing or diminishing imminent **Damage** to **Property Insured** by any other insured peril insured, including **Damage** to gain access and the cost of replenishment of fire-fighting appliances and charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines;

(d) **Temporary Protection Costs**

costs and expenses reasonably and necessarily incurred (determined by **Insurer(s)** acting reasonably) for the temporary protection and safety of **Property Insured** pending repair or replacement, consequent upon **Damage** recoverable under this Policy;

(e) **Replacement of Locks and/or Keys**

Costs of replacing locks and/or keys and/or combinations where if as a result of actual or attempted **Burglary** or **Theft**, the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations;

(f) **Removal, Storage and/or Disposal of Debris**

Costs and expenses reasonably and necessarily incurred, in respect of:

(i) The removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon **Damage** to **Property Insured** by a peril insured against by this Policy;

(ii) The **Insured's** legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 8 in relation to a **Situation**, roadways, services, railway or waterways of others, consequent upon **Damage** to **Property Insured** by a peril insured against

by this Policy, for such costs together with the cost of cleaning provided that such liability was not assumed by the **Insured** under an agreement entered into after the commencement of the **Period of Insurance** or any renewal thereof unless liability would have attached in the absence of such agreement;

Provided that the insurance under this section does not extend to any liability that the **Insured** may incur as a consequence of pollution of any kind;

(iii) The demolition and removal of any property belonging to the **Insured** which is no longer useful for the purpose it was intended, providing such demolition and removal is necessary for the purpose of the reinstatement or replacement of **Property Insured** under this section and is consequent upon **Damage to Property Insured** by a peril insured against by this Policy.

(g) **Clothing and Tools of Trade of Directors and Employees**

Damage to personal property, tools and effects (excluding **Money**) of directors and employees of the **Insured** whilst on or at the **Situation** and **Damage** to visitors' personal effects (excluding **Money**) whilst on or at the **Situation**, but only to the extent that such property is not otherwise insured;

(h) **Cosmetic Damage**

Costs and expenses necessarily incurred in repairing or restoring the appearance of **Property Insured** due to **Cosmetic Damage** occurring at the **Situation**.

(i) **Clearance of Drains**

Costs of clearance of drains including expenses necessarily incurred in clearing and/or repairing drains, gutters, sewers and the like, at or in the vicinity of **Property Insured**, consequent upon **Damage** recoverable under this Policy.

(j) **Unpacking Expenses**

Costs and expenses necessarily incurred by the **Insured** in taking inventory (including unpacking, repacking and restocking) to identify, quantify and value any property **Damaged** by any peril insured against by this Section, including examination of property not belonging to but in the care, custody or control of the **Insured**.

(k) **Expediting Expenses**

Costs and expenses incurred by the **Insured** (determined by **Insurer(s)** acting reasonably) for express carriage rates and extra payments for overtime, night, Sunday or holiday working incurred in connection with the repair or reinstatement of the **Property Insured** directly or indirectly arising from an event insured by the Policy.

(l) **Customs, Excise and Other Duties**

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

Provided that the insurance provided under Clauses (b) to (m) inclusive above shall not be subject to application of any Co-insurance clause or memorandum contained in this Policy.

BASIS OF SETTLEMENT

For the purpose of ascertaining the classification under which any property is insured, the **Insurers** agrees to accept the designation applied to such property by the **Insured** in its records, provided that such property is not specifically excluded by this Policy.

- (a) On buildings, machinery, plant and all other property and contents (other than those specified below);
the cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement and Replacement and Extra Cost of Reinstatement Memoranda as set out herein.
- (b) On raw materials, supplies and other merchandise not manufactured by the Insured;
the replacement cost at the time and the place of replacement, provided that such replacement shall have been carried out with reasonable despatch or, if such property is not replaced, the original cost to the **Insured** of such property or the **Market Value** whichever is the lesser. If such property is obsolete, the Basis of Settlement if such property is replaced shall be the original cost to the **Insured** of such property or its **Market Value**, whichever is the lesser.
- (c) On material in process of manufacture;
the replacement cost of the raw materials and the cost of labour and other manufacturing costs charges expended thereon at the time and the place of the **Damage**.
- (d) On finished goods manufactured by the Insured;
the replacement cost of the raw materials and the cost of labour and other manufacturing costs expended thereon before any allowance for profit calculated at the time and place of the **Damage** or the cost of re-stocking such goods within a reasonable time, whichever is the lesser. If such goods are obsolete, the Basis of Settlement whether or not such goods are replaced shall be the original cost to the **Insured** of the raw materials and the cost of labour and other manufacturing costs expended thereon before any allowance for profit or their **Market Value**, whichever is the lesser.
- (e) On computer systems records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description;
the cost of repairing, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to the **Insured** of the said information; or if such is not required, the replacement cost of materials as blank stationery at the time and place of the **Damage**.
- (f) On patterns, models, moulds, templets, jigs, dies or lasts;
the cost of repair or replacement (if repaired or replaced with reasonable despatch) otherwise the value of such property to the **Insured** calculated at the time and place of **Damage**, but not exceeding the cost of replacement.
- (g) On glass;
the cost of repairing or replacing the broken glass with the quality, size or make necessary to comply with the minimum requirements of any Statutory authority, including:
 - (i) Temporary shuttering, contract charges payable for security services and the cost of hiring additional security services when needed pending replacement of broken glass;
 - (ii) Signwriting or ornamentation on glass Replacement burglar alarm tapes on glass;
 - (iii) Removing and refixing of window and show case frames and fittings, heat reflecting material or process on glass; and
 - (iv) Protective film on glass

- (h) On directors', partners', proprietors', employees' and visitors' personal property and property of welfare, sport and social clubs as described in clause (g) of The Indemnity;

the cost of repair or if replaced, the replacement cost at the time and place of replacement.

Provided that in the case of personal property comprising a pair or set, whether or not every component part of the pair or set is **Damaged**, the Basis of Settlement shall be increased to include the difference between the **Market Value** or replacement value (whichever is greater) before the **Damage** and the **Market Value** or replacement value (whichever is greater) after the **Damage**.

- (i) On empty **Situations** awaiting demolition;

the salvage value of the building materials and/or landlords fixtures and fittings, net of demolition costs.

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

the contract price or, in the case of a partial cancellation of the contract of sale, that part of the contract price which shall have been lost to the **Insured** because of the partial cancellation.

- (k) On Securities:

1. if with the approval of the **Insurer(s)**, the Securities can be replaced, the cost of replacement paid or payable by the **Insured**; or
2. if the Securities cannot or are not to be replaced by the **Insured**, the greater of:
 - 2.1 the price for which the **Insured** purchased them; and
 - 2.2 the closing market value on the last business day prior to the date of discovery by the **Insured** of the loss or destruction of the Securities or, if the time of discovery by the **Insured** is after the close of the market, their closing market value on the day of discovery by the **Insured** of the loss or destruction of the Securities;
3. in the case of a loss of subscription, conversion or redemption privileges immediately preceding the expiration thereof;

such valuation being in the currency in which the loss was sustained. Losses sustained in currencies other than Australian dollars shall be settled by converting the amount of loss to Australian dollars at the market rate as set by the Reserve Bank of Australia at the time of settlement of the loss or such other rates as may be expressly agreed with the **Insurer(s)**.

If there is no market price or value on the relevant day stated herein, then the value shall be agreed between the **Insured** and the **Insurer(s)**, or in default thereof, the **Insured** and the **Insurer(s)** shall submit to arbitration and be bound by the decision of the Umpire.

Provided that if the **Insured** elects to claim the **Indemnity Value** of any **Damaged** property, the **Insurers** will pay to the **Insured** the value of such property at the time of the happening of the **Damage** or at its/their option acting reasonably, reinstate, replace or repair such property or any part thereof. In any event the **Insurers** will pay costs incurred by the **Insured** in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.

Memoranda to Section 1

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

INTERESTS OF OTHER PARTIES

- (a) The pecuniary or economic interest of only those lessors, financiers, trustees, mortgagees, owners and all other parties specifically noted in the records of the **Insured** shall be automatically included without notification or specification; the nature and extent of such interest to be disclosed in event of **Damage**.
- (b) Where the insurance covers the interest of more than one party, any act or neglect of an individual party will not prejudice the rights of the remaining party/parties; provided the remaining party/parties shall, immediately on becoming aware of any act or neglect whereby the risk of **Damage** has increased, give notice in writing to the **Insurers** and on demand pay such reasonably additional premium as the **Insurers** may require.
- (c) Notwithstanding paragraph (b) above, it is understood and agreed that in the event of any of the parties referred to herein being entitled to the benefits of any "Concessions Agreement", which it may have entered into with the **Insurers**, the said "Concessions Agreement" will take precedence over the provisions of paragraph (b).

BRANDED GOODS

Any salvage of branded goods and/or merchandise, the **Insured's** own or held by the **Insured** in trust or on commission, and/or goods sold but not delivered, shall not be disposed of by sale without the consent of the **Insurers**. If such salvage is not disposed of by sale then the value of the salvage shall be deemed to be the market value of the goods after brands, labels or names have been removed by or on behalf of the **Insured**.

DECLARED VALUES

The Declared Values specified in the **Asset Schedule** in respect of each **Situation** (in accordance with the applicable Basis of Settlement) shall not include any allowance for Extra Cost of Reinstatement nor any of the costs and expenses referred to under clauses (b) to (g) of 'The Indemnity'.

REINSTATEMENT OR REPLACEMENT

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

The basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the **Damaged Property Insured** at the time of its reinstatement, subject to the following provisions and subject also to the terms, conditions and Limit(s) or Sub Limit(s) of Liability of this Policy.

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

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

Provisions

- (i) The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the **Insured**, but subject to the liability of the **Insurers** not being increased), must be commenced and carried out with reasonable despatch, failing

which, the **Insurers** will not be liable to make any payment greater than the **Indemnity Value** of the **Damaged** property at the time of the happening of the **Damage**.

- (ii) When any **Property Insured** to which this memorandum applies is damaged in part only, the liability of the **Insurers** will not exceed the sum representing the cost which the **Insurers** could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- (iii) No payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred.

Provided that where the **Insured** reinstates or replaces any lost or destroyed property at a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.

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

EXTRA COST OF REINSTATEMENT

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

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

Provisions

- (i) The work of reinstatement (which may be carried out wholly or partially upon any other site(s), if the requirements of the aforesaid Act, Regulation or By-Law so necessitate, subject to the liability of the Insurer(s) not being thereby increased), must be commenced and carried out with reasonable despatch, failing which the **Insurer(s)** shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein.
- (ii) The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Insured had been required to comply prior to the happening of the **Damage**.
- (iii) Co-insurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for co-insurance purposes in terms set out in any clause contained in this Policy.
- (iv) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of the Insured shall be on a similar basis.

FLOOR SPACE RATIO INDEX (PLOT RATIO)

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

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

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

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

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

ACQUIRED COMPANIES

- (a) This Policy extends to include property located within Australia, belonging to any company or entity in which a **Controlling Interest** is acquired by the **Insured** during the **Period of Insurance**, provided that:
- (i) the business activities of the newly acquired company or entity are similar to that of the **Business**;
 - (ii) the **Insured** declares the details of the acquisition to the **Insurers** within thirty (30) days of the date of acquisition; and
 - (iii) the **Insurers** are entitled to impose any reasonable additional terms and conditions to the **Policy** and request any reasonable premium(s) from the date of the increase in risk.
- (b) For the purposes of this memorandum, **Controlling Interest** means:
- (i) the acquisition of shares carrying more than fifty per cent (50%) of votes capable of being cast at a general meeting of ordinary shareholders in such company; or
 - (ii) the capacity or ability to directly or indirectly dominate decision-making in relation to financial and operational policies.
- (c) Notwithstanding the above, there is no coverage under this memorandum in respect of:
- (i) **Flood**; and
 - (ii) any property which is situated north of the Earth's -24 degree parallel of latitude.

CO-INSURANCE

Unless otherwise stated to the contrary, this Policy is subject to the following Co-insurance memorandum:

In the event of **Damage** to **Property Insured** at any **Situation** caused by any event insured under this Policy, the **Insurer(s)** shall be liable for no greater proportion of the **Damage** than the amount of the **Insured's** declaration of value as set out in the **Asset Schedule** on the day of the commencement of the **Period of Insurance** bears to the sum representing ninety percent (90%) of the actual value of **Property Insured** at such **Situation** on the day of commencement of the **Period of Insurance**, but not exceeding the Limit of Liability specified in the **Policy Schedule**.

Provided that this clause will not apply if the amount of the **Damage** does not exceed five percent (5%) of the amount of the **Insured's** declaration of value as set out in the **Asset Schedule**.

It is expressly understood and agreed that the provisions of this Co-insurance Memorandum will apply separately to each **Situation** specified in the **Asset Schedule**.

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

Section 2 – Consequential Loss

THE INDEMNITY

1. In the event of:
 - (a) any building or any other property used by the **Insured** at the **Situation** for the purpose of the **Business**, being **Damaged** during the **Period of Insurance** by any cause or event not expressly excluded under this Policy; and
 - (b) the **Business** carried on by the **Insured** being interrupted or interfered with as a consequence, the **Insurers** will, subject to the provisions of this Policy, pay to the **Insured** the amount of loss resulting from such interruption or interference in accordance with the applicable Basis of Settlement.
2. **Insurers** will not be liable for any loss under this section unless:
 - (a) the **Insured's** property which is the subject of the **Damage**, is covered against such **Damage** under a policy of insurance (loss arising out of **Damage** by explosion of Boilers and/or Economisers excepted); and
 - (b) coverage has been granted by the insurers of such policy of insurance referred to in 2(a) above (except in circumstances where no indemnity is payable solely because of the application of a deductible).

BASIS OF SETTLEMENT

Item No. 1 – Loss of Gross Profit

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

- (a) In respect of reduction in **Turnover**, the sum produced by applying the **Rate of Gross Profit** to the amount by which the **Turnover** during the **Indemnity Period** shall, in consequence of the **Damage**, fall short of the **Standard Turnover**; and
- (b) In respect of Increase in Cost of Working, the additional expenditure necessarily and reasonably incurred (determined by Insurer(s) acting reasonably) for the sole purpose of avoiding or diminishing the reduction in **Turnover** which, but for that expenditure, would have taken place during the **Indemnity Period** in consequence of the **Damage**, but not exceeding the sum produced by applying the **Rate of Gross Profit** to the amount of the reduction thereby avoided.

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

Co-Insurance provisions applicable to Item No. 1 – Loss of Gross Profit

The provisions of this Co-Insurance clause will apply separately to each **Situation** specified in the **Asset Schedule**.

If the declared value of **Gross Profit**, as set out in the **Asset Schedule** at the commencement of each **Period of Insurance** is less than the sum produced by applying the **Rate of Gross Profit** to the **Annual Turnover**, (or its proportionately increased multiple thereof, where the **Indemnity Period** exceeds twelve (12) months) then the amount payable under this Item 1. will be proportionately reduced.

Item No. 2 – Claims Preparation Fees

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

Item No. 3 – Payroll

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

- (a) In respect of reduction of **Turnover**:
- (i) during the portion of the **Indemnity Period** beginning with the occurrence of the **Damage** and ending not later than the number of weeks thereafter specified in the **Policy Schedule**: the sum produced by applying the **Rate of Payroll** to the **Shortage in Turnover** during the said portion of the **Indemnity Period** less any saving during the said portion of the **Indemnity Period**, through reduction in consequence of the **Damage**, in the amount of **Payroll** paid.
 - (ii) during the remaining portion of the **Indemnity Period**: the sum produced by applying the **Rate of Payroll** to the **Shortage in Turnover** during the said remaining portion of the **Indemnity Period** less any saving during the said remaining portion of the **Indemnity Period**, through reduction in consequence of the **Damage**, in the amount of **Payroll** paid; but not exceeding the sum produced by applying the percentage of the **Rate of Payroll** specified in the **Policy Schedule** to the **Shortage in Turnover** during the said remaining portion of the **Indemnity Period**, increased by such amount as is deducted for savings under the terms of Clause (a)(i).

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

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

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

Co-Insurance provisions applicable to Item No. 3 – Payroll

The provisions of this Co-Insurance clause shall apply separately to each **Situation** specified in the **Asset Schedule**.

Provided that if the declared value of insured **Payroll** as set out in the **Asset Schedule** at the commencement of each **Period of Insurance** be less than the sum produced by applying the Payroll Limits to the sum produced by applying the **Rate of Payroll** to the **Annual Turnover** (or its proportionately increased multiple thereof, where the **Indemnity Period** exceeds twelve (12) months) the amount payable shall be proportionately reduced.

Item No. 4 – Additional Increased Cost of Working

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

Item No. 5 – Severance Pay

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

Item No. 6 – Accounts Receivable

The insurance under this item is limited to the loss sustained by the **Insured** in respect of all outstanding debit balances if the **Insured** is unable to effect collection thereof as a direct result of **Damage** to records of accounts receivable. The **Insurers** will also pay:

- (i) interest charges at ruling bank rates on any loan to offset impaired collections pending repayment of such amounts rendered uncollectable in consequence of the **Damage**;
- (ii) interest lost by the **Insured** in consequence of such impaired collections;
- (iii) additional expenditure necessarily and reasonably incurred in tracing and establishing the amounts of accounts receivable (determined by **Insurer(s)** acting reasonably);
- (iv) collection expenses in excess of normal collection costs, incurred in consequence of the **Damage**.

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

- (a) Determine the total amount of accounts receivable outstanding on the last working day of the fiscal month which ended twelve months before the beginning of the month in which the **Damage** occurs;
- (b) Calculate the average increase or decrease in the monthly total amounts of accounts receivable outstanding on the last working day of each of the twelve months immediately preceding the month in which **Damage** occurs;
- (c) The amount determined under paragraph (a), increased or decreased by the percentage calculated in accordance with paragraph (b) shall be deemed to be the total amount of accounts receivable outstanding at the time and date of the **Damage**;
- (d) The amount determined under paragraph (c) shall be adjusted as may be necessary to provide for any demonstrable variance from the amount so determined occurring before but during the month in which the **Damage** occurs; due consideration also being given to normal monthly trends in receipts.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or **Damaged**, or otherwise established or collected by the **Insured**, and an equitable amount to provide for doubtful debts. The cover hereby granted shall be subject to the sub-limit stated in the **Policy Schedule** against "Account Receivable".

Item No. 7 – Rental Revenue

The insurance under this item is limited to loss of **Rental Revenue** due to (a) reduction in **Rental Revenue** received and (b) increase in cost of working and the amount payable as indemnity hereunder shall be:

- (a) In respect of Reduction in **Rental Revenue**:

The amount by which the **Rental Revenue** during the **Indemnity Period** shall, in consequence of the **Damage**, fall short of the **Standard Rental Revenue**;

- (b) In respect of outgoings payable by the tenant under the terms of a lease or rental agreement:

The amount by which the expense otherwise payable or recoverable from any tenant of the **Situation** during the **Indemnity Period**, shall abate in consequence of the **Damage** and become the **Insured's** responsibility;

- (c) In respect of Increase in Cost of Working:

The additional expenditure necessarily and reasonably incurred (determined by **Insurer(s)** acting reasonably) for the sole purpose of avoiding or diminishing the reduction in **Rental Revenue** which but for that expenditure would have taken place during the **Indemnity Period** in consequence of the **Damage**, but not exceeding the loss of **Rental Revenue** thereby avoided, less any sum saved during the **Indemnity Period** in respect of such of the charges and expenses of the **Business** which relates to property leasing/rental as may cease or be reduced in consequence of the **Damage**.

Co-Insurance provisions applicable to Item No. 7 – Rental Revenue

The provisions of this Co-Insurance clause shall apply separately to each **Situation** specified in the **Asset Schedule**.

Provided that if the declared value of Gross Rentals as set out in the **Asset Schedule** at the commencement of each **Period of Insurance** be less than the Annual Rental Revenue, (or its proportionately increased multiple thereof, where the **Indemnity Period** exceeds 12 months) the amount payable hereunder shall be proportionately reduced.

DEFINITIONS APPLICABLE TO SECTION 2 – CONSEQUENTIAL LOSS

The following definitions are applicable to Section 2 of this Policy, unless such meaning is inapplicable to the context in which the word or expression appears:

Gross Profit means the amount by which:

- (a) the sum of the **Turnover** and the amount of the closing stock and work in progress, shall exceed
- (b) the sum of the amount of the opening stock and work in progress and the amount of the “Uninsured Working Expenses” as set out in the **Policy Schedule**.

Note: The amounts of the opening and closing stocks and work in progress shall be arrived at in accordance with the **Insured's** normal accountancy methods, with due provision being made for depreciation. Where insured expenses are included in the **Insured's** stocks and work in progress, these amounts will be excluded for the purposes of **Gross Profit**.

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

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

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

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

Turnover includes any financial incentives or concessions granted to the **Insured** by any Australian or State Government Department in recognition of specific performance in the development of market opportunities or employment of disadvantaged persons.

Section 2 Definitions Subject To Adjustment

the following definitions are subject to adjustments which shall be made as may be necessary to provide for the trend of the **Business** and for variations in or other circumstances affecting the **Business** either before or after the **Damage** or which would have affected the **Business** had the **Damage** not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the **Damage** would have been obtained during the relative period after the **Damage**:

Annual Rent Revenue means the **Rental Revenue** earned during the twelve months immediately before the date of the **Damage**.

Annual Turnover means the **Turnover** during the 12 months immediately before the date of the **Damage**.

Rate of Gross Profit means the rate of **Gross Profit** earned on **Turnover** during the financial year immediately before the date of the **Damage**.

Rate of Payroll means the rate of **Payroll** to **Turnover** during the financial year immediately before the date of the **Damage**.

Rental Revenue: The money paid or payable to the **Insured** or to others as outgoings by tenants under the terms of any rental or lease agreement pertaining to the **Situation** and/or for services rendered by or on behalf of the **Insured**.

Shortage In Rental Revenue: the amount by which the **Turnover** during a period shall, in consequence of the **Damage**, fall short of the part of the **Standard Revenue** which relates to that period.

Standard Rental Revenue means the **Rental Revenue** earned during that period in the twelve months immediately before the date of the **Damage** which corresponds with the **Indemnity Period**.

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

Definitions Applicable for New Businesses Only

Notwithstanding anything to the contrary in the Policy, in the event of **Damage** occurring at the **Situation** before the completion of the first year's trading of the **Business**, the terms "**Rate of Gross Profit**", "**Annual Turnover**", "**Standard Turnover**" and "**Rate of Payroll**" will have the following meanings:

Rate of Gross Profit means the rate of **Gross Profit** earned on **Turnover** during the financial year immediately before the date of the **Damage**.

Annual Turnover means the proportional equivalent for a period of 12 months of the **Turnover** realized during the period between the commencement of the **Business** and the date of the **Damage**.

Standard Turnover means the proportionate equivalent, for a period equal to the **Indemnity Period**, for the **Turnover** realized during the period between the commencement of the **Business** and the date of the **Damage** during that period in the 12 months immediately before the date of the **Damage**.

Rate of Payroll means the rate of **Payroll** to **Turnover** during the period between the date of the commencement of the **Business** and the date of the **Damage**.

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

Memoranda to Section 2

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

TURNOVER ELSEWHERE AFTER DAMAGE

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

DEPARTMENTAL CLAUSE

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

ACCUMULATED STOCKS

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

BOOKS OF ACCOUNT

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

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

PUBLIC UTILITIES EXTENSION

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

TURNOVER/OUTPUT ALTERNATIVE

If the **Insurer(s)** and the **Insured** agree (with **Insurer's(s)** consent not to be unreasonably withheld), the term "**Output**" may be substituted for the term "**Turnover**" and, for the purpose of this Policy, "**Output**" shall mean the sale and/or invoice value of goods manufactured and/or processed by the **Insured** in course of the **Business** at the **Situation**. Provided that only one such meaning shall be operative in connection with any one event involving **Damage**.

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

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

COMPUTER

Subject to the Property Cyber and Data Exclusion, this Policy extends to include loss (not otherwise recoverable) resulting from interruption of or interference with the **Business** occasioned by **Damage** to computer installations, including ancillary equipment and data processing media utilised by the **Insured** at the **Situation**.

SALVAGE SALE

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

(i) Clause (a) of Item 1 of Section 2 shall, for the purpose of such claim, read as follows:

“(a) In respect of Reduction in **Turnover**

the sum produced by applying the **Rate of Gross Profit** to the amount by which the **Turnover** during the **Indemnity Period** (less the **Turnover** for the period of the salvage sale) shall, in consequence of the **Damage**, fall short of the Standard Turnover, from which shall be deducted the **Gross Profit** actually earned during the period of the salvage sale.”

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

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

PREMISES IN THE VICINITY (PREVENTION OF ACCESS)

Loss as insured by Section 2 of the Policy resulting from interruption of or interference with the **Business** because of **Damage** caused by an insured peril (and otherwise insurable under the Policy) to any property in the **Vicinity** of the **Situation** that results in:

- (a) the prevention or hindrance of the use of, or access to, the **Situation**; or
- (b) a cessation or diminution of trade due to temporary falling away of custom;

will be deemed to be loss resulting from **Damage** to property used by the **Insured** at the **Situation**, irrespective as to whether any property of the **Insured** at the **Situation** is actually **Damaged** or not

Coverage under this Memorandum is subject always to:

- (i) the sub-limit specified in the **Policy Schedule** in the annual aggregate for all **Situations** combined; and
- (ii) a maximum **Indemnity Period** of three (3) months.

For the purposes of this memorandum, **Vicinity** means a radius of one (1) kilometre.

REGISTERED VEHICLES AND/OR TRAILERS

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

Exclusions Applicable to all Sections

PROPERTY EXCLUSION

This Policy does not cover any **Damage** to the following property or loss under Section 2 resulting therefrom:

1. Property (except **Money**) whilst in transit other than during the incidental movement of such property within **Situations** occupied by the **Insured**. This exclusion shall not apply during temporary removal of property (other than stock and/or merchandise) and unregistered motor vehicles to any **Situation** in the Commonwealth of Australia but, whilst such property is in transit, cover is limited to **Damage** caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest.
2. **Money**:
 - (a) whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured excepting the excess amount over and above such more specific insurance which excess is held to be covered hereunder, provided that:
 - (i) where in the ordinary course of business the **Insured** enters into an agreement which such carriers and such agreement provides that the **Insured** shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result of any event hereby insured against, this insurance shall operate as if this Property Exclusion 2.(a) had been deleted;
 - (b) Stolen from an unlocked and unattended vehicle;
 - (c) Stolen from a safe or strongroom opened by a key or by use of details of a combination, either or which has been left at the **Situation** outside **Business Hours**, unless such key or combination details have been properly secured;
 - (d) In the form of any kind of digital asset, including but not limited to cryptocurrency;
 - (e) Where the loss is not discovered within fifteen (15) working days of the event;
 - (f) Where the loss arises out of:
 - (i) kidnapping,
 - (ii) bomb threat,
 - (iii) hoax,
 - (iv) extortion,or any attempt of (i) to (iv) above.
3. Jewellery, furs, bullion, precious metals or precious stones other than as stock and/or merchandise of the **Business**.
4.
 - (a) any locomotive or rolling stock or watercraft other than as stock or merchandise of the **Business**; provided always that no cover shall apply hereunder whilst any watercraft is on water;
 - (b) any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the **Business**; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.
5. Vehicles or trailers registered or licensed to travel on a public road, provided that this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any **Situation** occupied or used by the **Insured**.
6. Livestock, animals, birds or fish.
7. Standing timber, growing crops and pastures.

8. Land, unmined or unrecovered oil, gas and mineral deposits provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy.
9. (a) Bridges, canals, roadways and tunnels, dams and reservoirs (other than tanks) and their contents;
(b) railway tracks (other than on the **Situation** occupied or used by the **Insured** for the purpose of its **Business**).
10. Docks, wharves and piers not forming part of any building.
11. Mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy.
12. Property during the course of, and as a result of, its processing.
13. (a) gates, fences, retaining walls, textile awnings and blinds;
(b) property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof;
caused by wind, rainwater or hail.
14. (a) property included in a project of construction, erection, alteration or addition including the partial dismantlement of existing structures where the contract value of work to be carried out at any one **Situation** during such activity exceeds 10% of the Limit of Liability or \$500,000 whichever is the lesser. Provided that this Exclusion 14(a) shall apply only to the works comprising such construction, erection, alteration or addition and not to any original or existing structures.
(b) empty **Situations** upon which demolition work has commenced.
15. Oil and gas drilling and/or production rigs whilst offshore.
16. All Machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electro-mechanical, electronic or hydraulic malfunction, failure, derangement, breakdown, fusion/burnout or non-operation of whatsoever kind.

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

For the purpose of Property Exclusion 16, "Machinery" means any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.
17. Any boiler (other than a boiler used for domestic purposes) economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such **Damage**.

However, this exclusion shall not apply to Section 2 as specifically stated therein.

PERILS EXCLUSIONS

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

1. **Damage to the Property Insured:**

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

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

2. (a) **Damage to the Property Insured;** and/or

- (b) any legal liability of whatsoever nature,

directly or indirectly caused by or contributed to by or arising from:

- (i) ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel; and/or

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

- (ii) nuclear weapons materials.

3. **Damage** occasioned by or happening through:

- (a) **Flood;**
- (b) water from or action by the sea, tidal wave or high water.

Provided that Perils Exclusions 3(a) and 3(b) shall not apply if **Damage** is caused by or arises out of an earthquake or seismological disturbance.

4. **Damage** occasioned by or happening through:

- (a) moths, termites or other insects, vermin, rust or oxidation, mildew, mould, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom);
- (b) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good;
- (c) error or omission in design, plan or specification or failure of design;
- (d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration;
- (e) faulty materials or faulty workmanship.

Provided that these Exclusions 4(a) to (e) shall not apply to subsequent **Damage to Property Insured** occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

5. **Damage** occasioned by or happening through:

- (a) incorrect siting of buildings consequent upon:
 - (i) error in architectural design or specification,
 - (ii) faulty workmanship,

- (iii) non-compliance by the **Insured** (or anyone acting on behalf of the **Insured**) with the necessary permits issued by Government, Public or Local Authorities;
 - (b) demolitions ordered by Government or Public or Local Authorities due to failure on the part of the **Insured** or their agents to obtain the necessary permits required.
6. **Damage** occasioned by or happening through:
- (a) theft of property (other than **Money** in transit) in the open air;
 - (b) unexplained or inventory shortage, disappearance resulting from clerical or accounting errors, shortage in the supply or delivery of materials to or from the **Insured**;
 - (c) (i) spontaneous combustion,
(ii) spontaneous fermentation or heating or any process involving the direct application of heat.

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

7. **Damage** occasioned by or happening through:
- (a)
 - (i) fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means involving the **Property Insured** by the **Insured** or any employee(s) of the **Insured** acting alone or in collusion with any other person(s);
 - (ii) access by any person(s) other than the **Insured** or the **Insured's** employee(s) to the **Insured's** computer system via data communication media that terminate in the **Insured's** computer system.

Provided that this exclusion shall not apply to theft consequent upon forcible and violent entry upon the **Situation** or felonious concealment upon the **Situation** committed by an employee of the **Insured**;

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

Provided that Perils Exclusions 7(b)(i) and 7(b)(ii) shall not apply in respect of **Damage** directly caused by strikes, locked out workers or similar persons;

- (c) erosion, subsidence, earth movement or collapse resulting therefrom;
 - (d) kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat.
- Provided that this Exclusion 7(a) to (d) shall not apply to subsequent **Damage** to the **Property Insured** occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.
8. Any legal liability of whatsoever nature other than as specified in the Policy.
9. Consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as provided in Section 2.
10. Notwithstanding anything to the contrary contained herein, this Policy does not cover **Damage** resulting from **Pollution or Contamination** except (unless otherwise excluded) **Damage** to property or any part thereof used by the **Insured** at the **Situation** for the purpose of the **Business** caused by:-
- (a) **Pollution or Contamination** at the **Situation** which itself results from fire, lightning, explosion, aircraft or other areal devices or articles dropped therefrom, riot, civil commotion, strikers, locked

out workers, persons taking part in labour disturbances, malicious persons, earthquake, storm, flood, bursting overflowing discharging or leaking of water tanks, apparatus or pipes, sprinkler leakage or impact by any road vehicle or animal.

- (b) Any of the perils listed in (a) above which itself results from **Pollution or Contamination**.

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

Memoranda Applicable to all Sections

EVENT

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

ADJUSTMENT OF PREMIUM

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

Conditions Applicable to all Sections

1. OBSERVANCE OF TERMS AND CONDITIONS

It is understood and agreed that the Policy's terms and conditions must be (to the extent applicable) complied with by the **Insured**, who acknowledges that the **Insurers** consider compliance with these terms and conditions to be fundamental to its decision to issue the Policy.

In the event that any such terms and conditions are not complied with by the **Insured**, subject always to the provisions of the Insurance Contracts Act 1984 (Cth), the **Insurers** may be entitled to:

- (a) amend the terms and conditions of the Policy (including but not limited to, the request of an additional premium, impose an increased deductible and/or additional exclusions);
- (b) cancel the Policy; or
- (c) refuse to pay a or reduce any liability in respect of a claim under this Policy by the amount which fairly represents the extent to which the **Insurers'** interests were prejudiced as a result of the **Insured's** breach of such condition and/or provision.

2. PRECAUTIONS TO PREVENT LOSS

The **Insured** shall take all reasonable precautions to prevent **Damage** to the **Property Insured** and/or minimise any interruption of or interference with the **Business**, including but not limited to ensuring compliance with all applicable statutory obligations, relevant Australian Standards, by-laws, regulations or public health orders imposed by any public authority for the safety of persons or property.

3. MISREPRESENTATION AND NON-DISCLOSURE

If the **Insured**:

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

and if the **Insurer(s)** would not have entered into this Policy for the same premium and on the same terms and conditions expressed in this Policy but for the failure to disclose or the misrepresentation, then -

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

4. ALTERATION

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

- (a) by removal of such property from the **Situation** other than as provided under the terms of Property Exclusion 1;
- (b) in the business, trading operations or processes of manufacture carried on at the **Situation** or whereby the nature of the occupation or other circumstances affecting the **Situation** (including but not limited to the nature of the business of any tenancy at the **Situation**) and/or the **Insured's** property therein contained shall be changed in such a way as to increase the risk of **Damage**;
- (c) whereby any **Situation** shall become unoccupied, and so remain for a period of more than thirty (30) days; or
- (d) whereby the **Insured's** interest ceases except by will or the operation of law.

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

5. SPRINKLER INSTALLATIONS

Applicable to owned premises/Situations or installations for which the Insured is responsible.

- (a) The **Insured** warrants that in such of the **Situations** as are protected or as are required by law to be protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the **Situation**, due diligence shall be used so that the same shall at all times be maintained in good working order.
- (b) The **Insured** further warrants that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS 1851 (Part 3 - Automatic Sprinkler Installation) by the installing engineers or firm or, failing this, by a person or organisation who must be approved by the **Insurer(s)** to carry out such maintenance.
- (c) Where the sprinklered **Situation** is leased to a tenant and the lease provides that the tenant shall provide for maintenance of the installation, any failure so to do will not prejudice the rights of the **Insured**, provided that the **Insured**, upon becoming aware of the failure, shall either immediately provide for maintenance of the installation or immediately give notice in writing to the **Insurer(s)** and on demand pay such reasonable additional premium as the **Insurer(s)** may require.
- (d) Where the **Insured** or a tenant responsible to provide for maintenance of the installation enters into an agreement for maintenance with a contractor and such an agreement provides in substance that the **Insured** or tenant shall indemnify and/or hold harmless and/or release from liability the contractor in respect of **Damage** which may occur as a result of any peril insured against by this Policy, the insurance hereby shall not be prejudiced by the **Insured** or the said tenant agreeing to such provision. The indemnity and/or hold harmless provision and/or release from liability shall be equally binding upon the **Insurer(s)**, who shall waive all rights of subrogation which may have otherwise existed against the tenant.
- (e) The **Insured's** officer responsible for insurance shall, upon becoming aware of such agreement, inform the **Insurer(s)** as soon as reasonably practicable and a reasonable additional premium will be paid if required by the **Insurer(s)**.

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

6. OTHER INSURANCE

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

7. CANCELLATION

- (a) This Policy may be cancelled at any time at the request of the **Insured**, in which case the **Insurer(s)** will retain the customary short-period rate for the time this Policy has been in force.
- (b) The **Insurer(s)** may also cancel this Policy by giving the **Insured** written notice to that effect where:
 - (i) the **Insured** or any person who was at any time the **Insured** failed to comply with the duty of utmost good faith;
 - (ii) the person who was the **Insured** at the time when this Policy was entered into failed to comply with the duty of disclosure;
 - (iii) the person who was the **Insured** at the time when this Policy was entered into made a misrepresentation to the **Insurer(s)** during the negotiations for this Policy but before it was entered into;

- (iv) the **Insured** or any person who was at any time the **Insured** failed to comply with a provision of this Policy, including, but not limited to, a provision with respect to the payment of the Premium;
 - (v) the **Insured** has made a fraudulent claim under this Policy or any other policy of insurance (whether with the **Insurer(s)** or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
 - (vi) the **Insured** failed to notify the **Insurer(s)** of any specific act or omission where such notification is required under the terms of this Policy; or
 - (vii) the **Insured** acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the **Insurer(s)** to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
- (c) The **Insurer(s)** notice of cancellation takes effect at the earlier of the following times:
- (i) the time when another policy of insurance between the **Insured** and the **Insurer(s)** or some other insurer, being a policy that is intended by the **Insured** to replace this Policy, is entered into; or
 - (ii) 4.00 p.m. on the thirtieth business day after the day on which notice was given to the **Insured**.

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

8. NOTIFICATION OF CLAIMS

On the discovery of any **Damage**, the **Insured** shall, as soon as reasonably practicable:

- (a) give notice of any such **Damage** in writing to the **Insurer(s)**;
- (b) deliver to the **Insurer(s)** a written claim containing a detailed and accurate account of the several articles or portions of property **Damaged** and of the amount of **Damage** thereto, having regard to their value at the time of the **Damage**, together with details of any other insurances on any property hereby insured;
- (c) use due diligence and take all reasonable steps to minimise any interruption of or interference with the **Business** to avoid or diminish the loss; and
- (d) deliver to the **Insurer(s)** a statement in writing of any claim certified by the **Insured's** auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

9. FRAUD

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

10. REINSTATEMENT

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

11. INSURER(S) RIGHTS

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

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

12. SUBROGATION

- (a) Any person claiming under this Policy shall at the request and at the expense of the **Insurer(s)** do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **Insurer(s)** for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the **Insurer(s)** shall be or would become entitled or subrogated upon the **Insurer(s)** paying for or making good any destruction or damage under this Policy or paying any moneys under Section 2 of this Policy.
- (b) If the **Insurer(s)** make(s) any recovery as a result of such action, the **Insured** may only recover from the **Insurer(s)** any amount by which the amount recovered by the **Insurer(s)** exceeded the amount paid to the **Insured** by the **Insurer(s)** in relation to the loss.

13. SUBROGATION WAIVER

Notwithstanding condition 12 above, the **Insurer(s)** agree(s) to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:

- (a) any corporation or organisation (including its directors, officers, employees or servants) owned or controlled by any **Insured**, subsidiary to any **Insured** or any co-owner of the **Property Insured**;
- (b) any **Insured** named or described by this Policy (including its directors, officers, employees or servants).

14. INSURED'S ACTION AFTER THEFT OR DAMAGE

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

15. TERMINATION OF COVER UNDER SECTION 2

Notwithstanding anything contained in the Policy to the contrary, if during the **Period of Insurance**:

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

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

In the event of the **Indemnity Period** having begun to run in respect of any claim relating to such **Business** or part thereof, the **Indemnity Period** shall end immediately, unless expressly agreed in writing by the **Insurer(s)**.

16. **CONSENT OF THE INSURERS**

There are various provisions under the Policy which require the **Insured** to obtain the **Insurers'** consent before incurring costs. In these circumstances, the **Insured** must obtain consent from the **Insurers** before incurring such costs. The **Insurers** will not unreasonably withhold or delay the provision of such consent.

Subject to the provisions of the Insurance Contracts Act 1984 (Cth), the **Insurers** have the right to reduce any liability in respect of a claim or amounts otherwise payable under this Policy by the amount which fairly represents the extent to which **Insurer's** interests were prejudiced as a result of the **Insured's** failure to obtain such consent.

17. **COVER FOR REASONABLE COSTS**

The **Insurers** cover various different costs, expenses, charges and fees ("costs") under this Policy, and unless otherwise stated, such cover is in respect of the "reasonable amount" of such costs.

Reasonable amount means an amount that is not excessive and to which the **Insured** has given reasonable consideration to its available options and potential courses of action, prior to incurring the amount, and the course of action ultimately taken by the **Insured** was reasonable in that context.

18. **PROGRESS PAYMENTS**

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

19. **SANCTION LIMITATION AND EXCLUSION CLAUSE**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

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(amended for Australia and New Zealand)

20. **VALUATION AND FOREIGN CURRENCY**

All premiums, limits, retentions, loss and other amounts under this Policy and in the **Policy Schedule** are expressed and payable in Australian Dollars. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of loss under this Policy is stated in a currency other than Australian Dollars, payment under this Policy will be made in Australian Dollars at the cash rate of exchange for the purchase of Australian dollars published in the Australian Financial Review on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of loss is due, respectively.

21. **CONSTRUCTION AND INTERPRETATION**

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

- (c) References to statutes include any amendments thereof, regulations thereunder, and re-enactments or consolidations thereof and any subsequent, replacement or similarly comparable legislation.

Endorsements attaching to and forming part of the Industrial Special Risks Insurance Policy

Subject otherwise to its terms, exclusions, limits and conditions, this Policy is amended to include the following endorsements unless specified in the **Policy Schedule** as 'Not Insured':

OUTPUT REPLACEMENT

Where any **Property Insured** consists of equipment, machinery or plant having a measurable function, capability or output and if, by reason of the Basis of Settlement Clause, it is necessary to replace such property with a new item or items which perform a similar function or functions, then the Basis of Settlement for such property shall be as follows:

- (a) Where any property is to be replaced by an item or items which have the same or a lesser total function, capability or output, then the Basis of Settlement is the estimated new installed cost of such replacement item or items that would give the same total function, capability or output as the property being replaced.
- (b) Where any property is to be replaced by an item or items which have a greater total function, capability or output and the new installed cost of such replacement item or items is no greater than the replacement value of the property being replaced, then the Basis of Settlement is the new installed cost of the replacement item or items.
- (c) Where any property is to be replaced by an item or items which have a greater total function, capability or output and the new installed cost of such replacement property is greater than the replacement value of the property being replaced, then the Basis of Settlement is either:
- (i) the estimated cost of replacement of such **Damaged** property as defined in sub clause (a) of the Reinstatement or Replacement Memorandum, or
- (ii) that proportion of the estimated new installed cost of the replacement item or items which the output of the **Damaged** property bears to the output of the replacement item or items.

whichever amount is the greater.

The difference between the insurable value as defined in this clause (c) and the new installed cost of the replacement item or items shall be borne by the **Insured**.

No payment beyond the value of the destroyed property at the time of the happening of its **Damage** shall be made hereunder until a sum equal to the value for settlement determined according to paragraphs (a), (b) and/or (c) hereof shall have been actually incurred.

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

RESTORATION OF LANDSCAPING

The **Property Insured** and Basis of Settlement (a) of Section 1 are extended to include landscaping, which term includes trees, shrubs, plants and lawns. Property Exclusions 7 and 8 shall not apply to the cover granted by this endorsement. It is agreed that the liability of the **Insurer(s)** shall not exceed the amount of the Sub-Limit of Liability stated in the **Policy Schedule** against "Landscaping" for any one loss or series of losses arising out of any one event or occurrence.

LEASED EQUIPMENT (RESIDUAL VALUE)

The Basis of Settlement under Section 1 of the Policy is extended to include the following clause, notwithstanding clause (a):

On machinery, plant and equipment leased on a **Residual Value** basis; in the event of actual or constructive total loss, the amount for which the lessee is contractually liable to the lessor, but not exceeding the sum represented by rent payable under such lease(s) for the period commencing on the date of **Damage** and ending on the retirement date(s) of such lease(s), plus the current market value of the property immediately before its loss or damage or the **Residual Value**, whichever is the greater, less any salvage value, but in any case not exceeding 10% above replacement value. In the event of **Damage** which does not amount to a constructive total loss, the cost of repair in accordance with the provisions of the Reinstatement or Replacement and Extra Cost of Reinstatement Memorandum as set out herein.

For the purpose of this Basis of Settlement, the term “**Residual Value**” shall mean the minimum amount which the lessee has guaranteed that the leased property will realise, being the same amount which the lessee has agreed would be payable to acquire such property upon the retirement date of the lease.

Endorsements applicable to Memoranda to Section 1

LABELS, CONTAINERS AND WRAPPINGS

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

LOSS OF LAND VALUE

Notwithstanding the provision of Perils Exclusion 9 and Property Exclusion 8:

- (a) In the event of the absolute refusal by the competent local or government Authority to allow reconstruction of the **Situation** following destruction or damage, the **Insurer** shall pay by way of indemnity the amount in excess of the **Land Value** before over the land value after the **Damage** to improvements, or
- (b) In the event of the competent local or government Authority allowing only partial reconstruction of the **Situation** after **Damage**, the **Insurer** shall pay by way of indemnity the deficiency between **Land Value** after such reconstruction and the **Land Value** before the **Damage**,

less any sum saved by way of compensation by such Authority arising out of the action referred to in (a) or (b) above.

The liability of the **Insurer** shall be limited to the Sub-Limit stated in the **Policy Schedule** against “Loss of Land Value” for any one loss or series of losses arising out of any one original source or cause at any one **Situation**.

Definition

Land Value means the sum certified by the Valuer General as being the value of the land so described in the policy after due allowance has been made for variations in or other circumstances affecting such value either before or after the damage or which would have been affected the value had the **Damage** not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the true Land Values pertaining both before and after the **Damage**.

Special Conditions

1. Settlement shall be made following the ruling of the competent local or government Authority resulting in the loss of land value. Should settlement have been made however and subsequently the ruling of the competent local or government Authority be changed prior to completion of the reconstruction, resulting in an increase in the Land Value, the part of the claim paid in excess of the revised Land Value shall be refunded to the Insurer.

2. all differences relating to the **Land Value** arising out of the policy shall forthwith be referred to the decision of two registered valuers; one to be appointed by each of the parties and in case the two registered valuers do not agree, of a third valuer, appointed by the President of the Australian Institute of Valuers as an expert, whose decision shall be binding.

CONSTRUCTIVE TOTAL LOSS

For the purposes of this endorsement there shall be deemed to be a constructive total loss when the **Property Insured** specified herein or any part thereof is reasonably abandoned:

- (a) because its actual total loss seems unavoidable; or
- (b) because it could not be preserved from actual total loss without an expenditure which would exceed its repaired and/or recovered value.

It is understood and agreed that the words “actual total loss” shall mean loss, destruction or damage (and not merely physical loss, destruction or damage) of or to the **Property Insured** specified herein or any part thereof.

UNDAMAGED FOUNDATIONS

When **Property Insured** is **Damaged** but its foundations are not destroyed and, due to the exercising of statutory powers or delegated legislation or authority by any government department, local government or other statutory Authority, reinstatement of the **Property Insured** is carried out upon another site or sites, then the abandoned foundations shall be deemed to have been destroyed: If the presence of the abandoned foundations increases the sale value of the original site, then such increase shall be regarded as salvage and shall be payable to the **Insurer(s)** by the **Insured** upon completion of the sale, or shall be deducted from the total amount otherwise payable by the **Insurer(s)** under this Policy, whichever shall occur later.

All differences relating to the amount of such increase in site sale value shall, as soon as reasonably practicable, be referred to the decision of two registered valuers, one to be appointed by each of the parties to this Policy. If the two valuers fail to agree, their differences shall be referred to the decision of a third valuer, appointed by the President of the Australian Institute of Valuers as an expert, whose decision shall be binding.

UNDAMAGED ANCILLARY AND/OR PERIPHERAL EQUIPMENT

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

Endorsements applicable to Memoranda to Section 2

PUBLIC UTILITIES MEMORANDUM EXTENDED

Any loss resulting from interruption of or interference with the **Business** directly or indirectly in consequence of **Damage** anywhere in Australia to any land-based communication link and/or electric power station or sub-station, gasworks, waterworks of the public supply undertaking from which the **Insured** obtains electric current, gas or water shall be deemed to be loss resulting from damage to Property used by the **Insured** at the **Situation**. It shall not be a condition precedent to liability under this endorsement that payment shall be made or liability admitted for damage under Section 1 of the Policy.

UNSPECIFIED CUSTOMERS &/OR SUPPLIERS PREMISES – AUSTRALIA WIDE

For the purposes of this Clause, the term “**Damage**” is extended to include **Damage** to property at the Premises of any producer or merchant (located within Australia), which shall be deemed to be **Damage** to property used by the **Insured** at the **Situation**.

The liability of the **Insurer(s)** under this extension, in respect of any one loss or series of losses arising out of any one original source or cause at any one Premises of a producer or merchant, shall be limited to the amount specified in the **Policy Schedule** against “Unspecified Customers &/or Suppliers Premises”.

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

INTERDEPENDENCY - AUSTRALIA

Loss as insured by Section 2 of the Policy resulting from interruption of or interference with the **Business** in consequence of **Damage** to property not insured by Section 1 of the Policy and situated at any other Premises in Australia owned and/or occupied by the **Insured** for the purpose of the **Business** shall be deemed to be resulting from **Damage** to property used by the **Insured** at the Premises.

INFECTIOUS OR CONTAGIOUS DISEASES, VERMIN, PESTS OR DEFECTIVE SANITARY ARRANGEMENTS, MURDER, SUICIDE ARRANGEMENTS;

Loss as insured by the Policy resulting from interruption of or interference with the **Business** directly or indirectly arising from closure or evacuation of the whole or part of the **Situation** by order of a competent public authority consequent upon:

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

shall be deemed to be loss resulting from **Damage** to property used by the **Insured** at the **Situation**. The **Situation** shall mean any insured **Situation** as detailed in the **Policy Schedule** and shall exclude any extension to the definition of **Situation** or Premises under other extensions or memoranda to Section 2.

The cover provided by this extension shall be subject to the sub-limit stated in the **Policy Schedule** against Infectious or Contagious Disease; Vermin, Pests or Defective Sanitary Arrangements; Food or Drink, Poisoning; Murder or Suicide, in the aggregate during any one **Period of Insurance**. For the avoidance of doubt, the specified sub-limit shall apply in the aggregate for all **Situations** or locations combined, not per **Situation/location**.

The maximum **Indemnity Period** provided under this endorsement is 3 months.

The cover provided by this endorsement shall be subject to the Excluded Diseases set out below.

EXCLUDED DISEASES

No cover is provided in respect of:

- (a) Severe Acute Respiratory Syndrome (SARS) or any variant thereof;
- (b) Anthrax;
- (c) any mutation of H1N1 (commonly known as swine flu) or H5N1 (commonly known as bird flu) or Novel Coronavirus (2019-nCoV) that manifests itself as a human infectious or human contagious disease; or
- (d) any type of influenza or other pandemic. A pandemic is an epidemic of disease that has spread beyond 40 kilometres from the **Insured’s Situation**; or
- (e) any infectious diseases which have been designated as ‘Phase 3’ pandemic alert phase as per 4-phase-alert system of the World Health Organization or similar alert system.
- (f) any infectious diseases declared or deemed to be a Listed Human Diseases (or similar declaration) under the *Biosecurity Act 2015* (Cth) as amended from time to time, as replaced or succeeded from time to time and/or under any similar legislation.

This insurance also excludes any claim:

- i) arising from any fear or threat (whether actual or perceived) of such an Excluded Disease

- ii) directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of such Excluded Disease, including but not limited to any costs incurred in the cleaning, decontamination, disinfecting, repair, replacement, recall or checking of any property and the cost of any alternative interim accommodation.

Endorsements to Exclusions Applicable to all Sections

The Policy is amended by the addition of the following exclusions:

PROPERTY CYBER AND DATA EXCLUSION

- 1 Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy excludes any:

- 1.1 **Cyber Loss;**

- 1.2 loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any **Data**, including any amount pertaining to the value of such **Data**;

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

- 2 In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 3 This endorsement supersedes and, if in conflict with any other wording in the Policy or any endorsement thereto having a bearing on **Cyber Loss** or **Data**, replaces that wording.

Definitions

- 4 **Cyber Loss** means any loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any **Cyber Act** or **Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**.
- 5 **Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.
- 6 **Cyber Incident** means:
 - 6.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
 - 6.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
- 7 **Computer System** means:
 - 7.1 any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility,
owned or operated by the **Insured** or any other party.
- 8 **Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

LMA5401

TRANSMISSION AND DISTRIBUTION LINES EXCLUSION – ABOVE GROUND (300M EXCLUSION)

All above ground transmission and distribution lines, including wire, cables, poles, pylons, standards, towers, other supporting structures and any equipment of any type which may be attendant to such installations of any

description, for the purpose of transmission or distribution of electrical power, telephone or telegraph signals, and all communication signals whether audio or visual.

This exclusion applies to all equipment other than that which is on or within 300 metres (or 1000 feet) of an insured structure.

This exclusion applies both to physical loss or damage to the equipment and all business interruption, consequential loss, and/or other contingent losses related to transmission and distribution lines, other than contingent property damage/business interruption losses (including expenses), arising from loss and/or damage to lines of third parties.

LSW1635

PERILS EXCLUSIONS

WAR & TERRORISM

It is hereby agreed and declared that Perils Exclusion 1 of this Policy is deleted in full and replaced by the following:

1. **Damage to the Property Insured**, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in other sequence to the loss
 - (a) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;
 - (b) any **Act(s) of Terrorism**;

for the purposes of this exclusion, **Act of Terrorism** means an act, which may include but is not limited to an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

- (c) confiscation, commandeering, nationalisation, requisition or destruction or damage by or under the order of any government (whether lawfully constituted or otherwise) or public or local authority.

Furthermore any loss, destruction or damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to Perils Exclusion 1(a), 1(b) or 1(c) is also excluded from this Policy.

THEFT IN OPEN (EXCEPT MONEY) EXCLUSION MODIFIED

Perils Exclusion 6(a) is amended to read:

- (a) **Theft**, without forcible entry or threat of violence, of property in the open air.

The liability of the **Insurer(s)** shall not exceed the Sub-Limit stated in the **Policy Schedule** of the policy against "Theft of Property in the open air" for any one loss or series of losses arising out of any one event of occurrence at any one location.

BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

NMA2962

06/02/2003

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE

This Policy does not cover any loss or damage arising directly or indirectly from nuclear reaction nuclear radiation or radioactive contamination however such from nuclear reaction nuclear radiation or radioactive contamination may have been caused. NEVERTHELESS if fire is an insured peril and a fire arises directly or indirectly from nuclear reaction nuclear radiation or nuclear contamination, any loss or damage arising directly from that fire shall (subject to the provisions of this Policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction nuclear radiation or radioactive contamination arising directly from that fire.

NMA1191
7/5/1959

Endorsements to Memoranda to all Sections

STORAGE AGREEMENTS

When the **Insured** enters into a contract for storage of property and the terms of the contract contain a disclaimer clause, then the insurance provided by the policy shall not be prejudiced by the **Insured** agreeing to such terms. The **Insured's** officer responsible for insurance shall, upon becoming aware of such a contract, inform the **Insurer(s)** as soon as is reasonably practicable and the **Insured** shall pay a reasonable additional premium if required by the **Insurer(s)**.

LEASED BUILDING AGREEMENTS

When the **Insured** enters into a lease agreement for occupancy of any building or part of a building and the terms of the lease contain a disclaimer clause in favour of the lessor, then the insurance provided by the policy shall not be prejudiced by the **Insured** agreeing to such terms. The **Insured's** officer responsible for insurance shall, upon becoming aware of such an agreement, inform the **Insurer(s)** as soon as is reasonably practicable and the **Insured** shall pay a reasonable additional premium if required by the **Insurer(s)**.

ASBESTOS ENDORSEMENT

- (a) This Policy only insures asbestos physically incorporated in an insured building or structure, and then only that part of the asbestos which has been physically damaged during the **Period of Insurance** by one of the following Listed Perils:
- (i) Fire;
 - (ii) explosion;
 - (iii) lightning;
 - (iv) windstorm;
 - (v) hail;
 - (vi) direct impact of vehicle, aircraft or vessel;
 - (vii) riot or civil commotion, vandalism or malicious mischief; or
 - (viii) accidental discharge of fire protective equipment.

This coverage is subject to each of the following limitations:

1. The said building or structure must be insured under this Policy for **Damage** by that Listed Peril
2. The Listed Peril must be the immediate, sole cause of the damage of the asbestos.
3. The **Insured** must report to the **Insurers** the existence and cost of the **Damage** as soon as practicable after the Listed Peril first **Damaged** the asbestos. However, this Policy does not insure any such **Damage** first reported to the **Insurers** more than 12 (twelve) months after the expiration, or termination, of the **Period of Insurance**.
4. Insurance under this Policy in respect of asbestos shall not include any sum relating to:
 - (i) any faults in the design, manufacture or installation of the asbestos;

- (ii) asbestos not physically damaged by the Listed Peril including any governmental or regulatory authority direction request of whatsoever nature relating to undamaged asbestos.
- (b) Except as set forth in part (a) of this endorsement, this Policy does not insure asbestos or any sum relating thereto.

LMA5019 (Amended 15.11.2011)

SEVERAL LIABILITY NOTICE

The subscribing Insurers' obligations under this Policy are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

08/94
LSW1001

LLOYD'S AUSTRALIAN ALTERNATIVE DISPUTES RESOLUTION CLAUSE

In the event that a dispute arises between the **Insurers** and the **Insured** out of or otherwise in relation to this agreement, then:

- (a) Any party to the dispute shall, without prejudice to any other right or entitlement they may have, give written notice to the other party (the "**Dispute Notice**") requiring them within 7 days of this notice to negotiate (whether in a face to face meeting or by teleconference) in good faith as to how the dispute can be resolved;
- (b) If a dispute is not resolved within 10 days of the **Dispute Notice**, either party can request the other party within a further 10 days to agree on either:
 1. a process for resolving the dispute through means other than litigation or arbitration, such as further negotiation, mediation, or any other alternative dispute resolution technique. The rules governing any such technique shall be agreed as between the parties and where no such agreement as to the process and or guidelines is reached within 10 days, then it shall be by mediation by a mediator selected by the Chairperson for the time being of Lawyers Engaged in Alternative Dispute Resolution (**LEADR**) (or other appropriate professional body as agreed by the parties); or
 2. referral of the matters in dispute to an independent expert for an expert determination. The parties agree that they will not be bound by the determination of the expert. The expert:
 - (a) will be a person agreed between the parties within 10 days of the dispute being referred to expert determination or failing this, the expert will be a person appointed by the Australian Insurance Law Institute (or other appropriate professional body as agreed by the parties);
 - (b) will act as an expert and not as an arbitrator;
 - (c) will proceed in such a manner as he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (d) will take into consideration all documents, information and other written and oral material that the parties place before him or her including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute; and
 - (e) will act with expedition to provide the parties with a determination in writing within 35 days of the referral to him or her of the matters in dispute.

Both parties must use their best endeavours to achieve resolution by the selected process and further agree that neither party will initiate litigation (as set out in clause (c) below) without first pursuing such informal resolution techniques in good faith;

In the event that the dispute is not resolved by such informal process within 35 days of the **Dispute Notice** (or such other period as agreed in writing between the parties) the dispute shall be referred to litigation.

- (c) Following either a mediation or an expert determination pursuant to clause (b) of this provision, either party may then initiate proceedings in any competent Court in the Commonwealth of Australia in relation to the matters in dispute.

Such proceedings may only be commenced on 14 days written notice to the other party and shall be determined in accordance with the law and practice applicable in such Court.

Any summons, notice or process to be served upon the **Insurers** may be served upon:

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

who has authority to accept service on the **Insurers'** behalf.

If proceedings are instituted against any one of the **Insurers**, all **Insurers** participating in this insurance will abide by the final decision of such Court or any competent Appellate Court.

- (d) Except where the dispute renders it impossible to do so, the parties will continue performing their respective obligations under the Policy while the dispute is being resolved, unless and until such obligations are terminated or expire in accordance with this agreement.
- (e) Each party must use its reasonable endeavours to ensure that where a dispute is reasonably foreseeable, it is dealt with at a sufficiently early stage to ensure that there is a minimal effect on the ability of either party to perform its obligations under the Policy.
- (f) Notwithstanding anything in this schedule, either party may at any time commence Court proceedings in relation to any dispute or claim arising under, or in connection with the Policy where the party seeks urgent interlocutory relief.

LMA5547
17 May 2021

PRIVACY STATEMENT

Unless the context otherwise provides, in this section:

- “We”, “Our” or “Us” means the **Insurers** and Arch; and
- “You”, “Your” or “Yours” means the **Insured**.

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

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

Why We collect Your personal information

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

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

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

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

How We collect Your personal information

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

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

Who We disclose Your personal information to

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

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

We may need to disclose information to persons located overseas who will most likely be located in the United Kingdom. Who they are may change from time to time. You can contact Us for details or refer to Our Privacy Policy available at Our website. In some cases We may not be able to take reasonable steps to ensure they do not breach the Privacy Act and they may not be subject to the same level of protection or obligations that are offered by the Act. By proceeding to acquire Our services and products You agree that You cannot seek redress under the Act or against Us (to the extent permitted by law) and may not be able to seek redress overseas.

Accuracy of and access to Your personal information

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

Notifiable Data Breach

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

More information, access, correction or complaints

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

Your Choices

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