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Contract Works & Public Liability – Individual Project

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IMPORTANT CUSTOMER INFORMATION

Your Duty of Disclosure

Before you enter into a contract of general insurance with an insurer, you have a duty, under the Insurance Contracts Act 1984 (as amended), to disclose to the insurer every matter that you know, or could reasonably be expected to know, which 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 these matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however does not require disclosure of any matter:

- (a) that diminishes the risk to be undertaken by the insurer;
- (b) that is of common knowledge;
- (c) that the insurer knows, or in the ordinary course of business, ought to know; or
- (d) as to which compliance with your duty is waived by the insurer.

Non-Disclosure in relation to contracts of general insurance

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract with respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning subject to the Insurance Contracts Act 1984 (as amended).

Parties to the Policy

Where shown in the Policy:

- (a) **We/our/ours/us/Lumley Insurance** - means Wesfarmers General Insurance Limited ABN 24 000 036 279, trading as Lumley Insurance
- (b) **You/your/yours** - means the **Insured** as defined within the Policy.

Deductible

Means the amount shown in the Schedule that **You** will bear for each and every **Occurrence/Event** of injury, loss or damage payable under this Policy.

Claims

This Policy does not provide cover in relation to events that occurred before this contract commenced.

Declared Sum Insured for Insured Property

It is most important that the **Sum Insured** you select is adequate to represent the **New Replacement Value of Insured Property**, and is calculated in accordance with the cover being arranged. Otherwise **You** may be under-insured and in accordance with the Co-insurance provision of **Your** policy **You** may be responsible for paying part of any loss **You** suffer.

IMPORTANT CUSTOMER INFORMATION (continued)

Subrogation

Your Policy of Insurance provides that **You** will not be entitled to cover, if **You** enter into or have entered into any agreement that excludes or limits **Your** right of recovery from other parties. Therefore **You** must not have agreed and must not agree to give away any of **Your** rights because this will affect the insurer's right to recover from other parties.

Policy Style

Words shown in bold lettering within the text are subject to a specific definition, or are shown within the Policy Schedule.

Cooling Off

If **You** are not completely satisfied with the Policy you may cancel it by notifying us in writing within 21 days of insurance having commenced. **You** will receive a refund of the amount **You** have paid unless something has occurred for which a claim may become payable under the Policy. Should **You** cancel this Policy it is **Your** responsibility to notify any other of the Insured parties that may rely on this cover being in effect of the cancellation.

Confirming Transactions

You may contact **Us** or **Your** adviser, in writing (which is always required if **You** are advising cancellation) or by phone, to confirm any transaction under this Policy. Any transaction will be documented by **Us** as quickly as possible.

Code of Practice

A self-regulatory Code of Practice exists for the general insurance industry, designed to raise overall standards. Lumley Insurance has adopted the Code, details of which can be obtained from **Your** adviser or any of **Our** Offices.

Complaints – Internal and External Complaints Procedure

If **You** do not agree with any decision **We** make in relation to **Your** insurance, please write to **Us** stating what **You** disagree with and why.

We will then either resolve or attempt to resolve **Your** complaint immediately or refer the matter to **Our** Internal Resolution Disputes Committee (IRDC).

If **You** are not satisfied with a claim decision by the IRDC, the matter may be referred to an independent alternate dispute resolution body, the "Financial Ombudsman Service (FOS)" provided it falls within their jurisdiction.

Privacy

Lumley Insurance respects **Your** privacy and complies with the Privacy Act and the National Privacy Principles. A copy of **Our** Privacy Statement is available at any of **Our** offices.

IMPORTANT CUSTOMER INFORMATION (continued)

This Policy incorporates the Schedule, Definitions, Insuring Clauses, Basis of Settlements, Exclusions, Conditions, Endorsements and any other terms herein contained which are to be read together, and any word or expression to which a specific meaning has been attached in any part of this Policy, shall bear such meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

Whereas **You** have paid or agreed to pay to **Us** the Premium shown in the Schedule, now, **We** agree, subject to the terms, Exclusions, Conditions, limitations and other provisions contained herein or endorsed hereon, to indemnify **You** as specified herein against loss or damage arising from any insured events which occur during the Period of Insurance stated in the Schedule or any renewal thereof.

Provided that **Our** total Liability shall not exceed the appropriate Limits(s) of Liability / **Sum(s) Insured** as stated in the Schedule, or as otherwise provided in the Policy, or such amounts as may be substituted by Endorsement hereon or attached hereto.

In issuing this Policy **We** rely upon the information contained in the Proposal and any written statements made by **You** or anyone acting on **Your** behalf.

COVER

DEFINITIONS

Aircraft

Any object that is intended to fly or move through the air, atmosphere or space.

Completed Operations

All completed works of the **Named Insured**, which includes without limitation, buildings, refurbishments, fit-outs, construction/civil works of every description, all goods, property, products or materials sold, owned, hired out, worked upon, altered, repaired, manufactured or supplied by or under the direction of the **Named Insured** and including all discontinued goods/products, where such work or property is no longer in the custody or control of the **Named Insured**.

Completed works will be deemed to be completed at the earliest of the following times:

- (a) when all operations to be performed by or on behalf of the **Insured** under any contract have been completed and accepted or handed over to the Principal/owner; or
- (b) when all operations to be performed by or on behalf of the **Insured** at the **Contract Site** have been completed and accepted or handed over to the Principal/owner; or
- (c) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organisation other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project work;

whichever first occurs.

Works that may require further service maintenance correction repair or replacement because of any defect or deficiency but which are otherwise completed shall be deemed completed.

Note: The meaning of Suppliers, Manufacturers, Products, Goods or Manufactured is as defined in the Trade Practices Act 1974 (as amended).

Construction Plant

(a) **Contractors Major Plant & Equipment**

Being;

- fixed cranes, mobile cranes, concrete mixing vehicles, earth moving equipment, and other similar plant whether self propelled vehicles or not.

(b) **Contractors Minor Plant and Equipment**

Being;

- hoists, scaffolding, props;
- re-usable shoring and forming equipment;
- welding equipment, air compressors;
- surveying equipment including laser levels;
- concrete mixing, batching, vibrating and screeding equipment;
- drying and/or de-humidifying equipment.

(c) **Tools**

Hand held powered and non-powered trade tools.

DEFINITIONS (continued)

Contract

The contract or agreement between any **Insured** (a) and (b) and which gives rise to the **Insured Property** (a), and includes any sub-contract or sub-agreement entered into pursuant to such contract or agreement.

Contract Site

The Contract Site is defined as the location at which any one **Insured Contract(s)** is to be completed and handed over to the Principal/owner.

Civil Works

The construction, alterations, and additions of, earthworks, excavation, foundations, retaining walls, revetments, piling, roads, bridges, sub-divisions, dams, breakwaters, tunnels, shafts, drives, drifts channels, canals, airstrips, wharves, jetties and the like; but not earthworks, foundations, retaining or piling works directly associated with the construction of a building.

Deductible

The amount shown in the Schedule that **You** will bear for each and every **Occurrence/Event** of injury, loss or damage payable under this Policy.

Event

A happening causing sudden and unforeseen physical loss of or damage to **Insured Property**.

Insured Property

The following real and personal property:

- (a) **Contract Works** as described under **Insured Contract(s)** in the Schedule (inclusive of overheads and profit margins), contract consumables and all other materials, including the complete reconstitution of contract records, core samples and the like, architects' engineers' surveyors' and other professionals' fees.
Provided that Contract Works however described under **Insured Contract(s)** in the Schedule are only **Insured Property** insofar as they comprise work under contract of the **Named Insured**.
- (b) Principal /owner supplied materials and equipment;
- (c) Temporary works, non-reusable formwork, non-reusable scaffolding, non-reusable props and the like;
- (d) **Tools** owned by the **Named Insured** or for which the **Named Insured** is responsible;
- (e) **Contractors Minor Plant and Equipment**, owned by or the responsibility of the **Named Insured**;
- (f) **Contractors Major Plant and Equipment**, owned by or the responsibility of the **Named Insured**;
- (g) Temporary buildings, hoardings, camp buildings and all other site buildings and their contents;
- (h) Employees' effects (but only where such effects are required to be insured by any work place agreement);
- (i) Existing Property of the Principal where the contract conditions require the **Named Insured** to arrange cover for these structures and where such structures have been specifically agreed to be included within this Policy by endorsement;

owned by the **Insured**, or in the **Insured's** care, custody or control, and for which the **Named Insured** is contractually liable or has assumed the responsibility to insure, and which is to be used in the course of construction of, or in connection with, and for the purpose of the **Insured Contract(s)** detailed in the Schedule.

DEFINITIONS (continued)

Insured

“Insured” shall mean:

(a) the **Named Insured** noted in the Schedule being either:

- (i) any Principal, or
- (ii) the Contractor, or
- (iii) the Project Manager

(b) either:

- (i) any Principal, or
- (ii) the Contractor, or
- (iii) the Project Manager

not being the **Named Insured** noted in the Schedule but being a legal entity with whom the Policy holder has entered into a contract for the performance of any part or parts of the **Insured Contract(s)**, but only to the extent required by the contract.

(c) any director or employee of any of the entities noted in (a) and (b) above but only for liability in respect of which such entity insured would have been entitled to indemnity if the claim had been made against such entity.

(d) any sub-contractor to entities noted in (a) or (b) above being a legal entity with whom such sub-contractor has entered into a sub-contract agreement for the performance of any part or parts of the **Insured Contract(s)**, but only to the extent required by such sub-contract or sub-agreement.

For the purpose of this Policy a Professional Consultant(s) such as:

- (i) Engineer(s), or
- (ii) Architect(s), or
- (iii) Surveyor(s)

is/are not considered as a sub-contractor.

(e) any legal entity identified by name in the Schedule as having a financial, legal or equitable interest in the **Insured Property**, but only in respect of the insurance provided under Section 1 and only to the extent of such financial, legal or equitable interest.

(f) any supplier to entities noted in (a), (b) or (d) above being a legal entity with whom such supplier has entered into an agreement for the supply of any physical items of the **Insured Contract(s)**, but only to the extent required by such agreement and only whilst the supplier is at the **Contract Site**.

(g) any Professional Consultants to entities noted in (a) or (b) above being a legal entity who are required under contract conditions to be included as an Insured, but only in relation to their on-site activities associated with the **Insured Property**.

All for their respective rights interests and liabilities.

Market Value

The value of the **Insured Property** at a normal sale or in the case that value cannot be established, the value taking profit expectations and factors such as age, wear, tear, location and useability into account.

DEFINITIONS (continued)

New Replacement Value

The cost of replacement of the **Insured Property** by new property of the same kind and capacity including packing, freight, government charges, and installation costs.

Special rebates and price allowances shall not be considered.

Occurrence

"Occurrence" (where used in Section 2) means:

An event, including continuous or repeated exposure to substantially the same general conditions, from which arises **Personal Injury** and/or **Property Damage** neither expected nor intended (except for the matters set out in part (e) of the Definition of '**Personal Injury**') from the standpoint of the **Insured**.

All **Occurrences** of a series consequent upon or attributable to one source or original cause shall be deemed to be one **Occurrence**.

Period of Insurance

The Policy shall operate during the **Construction Period** and if required by the construction contract conditions for the **Maintenance or Defects Liability Period** for all construction being undertaken by the **Insured** during the **Period of Insurance** stated in the Schedule.

The **Construction Period** shall commence at the date of possession of the **Contract Site** by the contractor or at the commencement date of the contract works provided such date is within the **Period of Insurance** stated in the Schedule and end:

- (a) at the time of Practical Completion of the **Insured Contract**, being when the contract works are complete except for minor omissions and minor defects which do not prevent the contract works from being reasonably capable of being used for their intended purpose, OR
- (b) with respect of any portion of the **Insured Contract** from the time it is taken over or taken into use (whichever is the earlier) by the Principal, OR
- (c) at the expiry date of the **Construction Period** noted in the Schedule

whichever occurs first.

The **Maintenance / Defects Liability Period** shall commence at the end of the **Construction Period** and end:

- (a) a maximum of twelve (12) months thereafter, OR
- (b) any lesser period as may be specified in each construction contract, or noted in the Schedule;

whichever occurs first.

Notwithstanding the above any work of reconstruction rectification or repair of **Insured Contract(s)** undertaken by the **Insured** during any **Maintenance Period / Defects Liability Period** in accordance with the provisions of any contract shall be covered hereunder subject to the terms and conditions applicable Insuring Clause 1.1 of Section 1.

DEFINITIONS (continued)

Personal Injury

"Personal Injury" means:

- (a) Bodily injury, death, illness, personal injury, disease, disability, shock, fright, mental anguish or mental injury including loss of services resulting there from;
- (b) False arrest, detention, false imprisonment, malicious prosecution, humiliation, wrongful eviction, discrimination or wrongful detention;
- (c) The publication or utterance of libel, slander or other defamatory or derogatory material, or a publication of utterance in violation of any individual's right of privacy except: -
 - (i) when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
 - (ii) when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the **Insured**.
- (d) Wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
- (e) Assault and battery not committed by or at the direction of an **Insured** unless committed for the purpose of preventing, eliminating or mitigating the effects of actual or possible danger to persons or property.

Pollutants

Any irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, chemicals or waste. Provided that "waste" shall include but not be limited to all material to be recycled, reconditioned or reclaimed.

Property Damage

Physical damage to or destruction of tangible property including the loss of use thereof at any time resulting there from.

Vehicle

Any registered mechanically propelled vehicle designed for use on land, registered trailer, registered caravan or registered motorcycle belonging to **You** or for which **You** are liable.

Watercraft

Anything intended to float on or in water, or travel on, through or under water.

Worksite

Any place or places where the **Named Insured** or his employees for and/or in connection with the **Insured Contract** together with all areas surrounding the said place or places perform any work.

SECTION ONE – MATERIAL DAMAGE

EXTENT OF COVER

1 Insuring Clause

1.1 During the Construction Period

We will indemnify **You** for sudden and unforeseen physical loss of or damage from any cause not hereinafter excluded, occurring during the **Construction Period** to the **Insured Property** whilst:

- awaiting construction;
- under construction, assembly, erection, installation or being dismantled;
- undergoing testing and commissioning;
- in transit by road, rail, water or by licensed airline operating a regular scheduled service, and whilst being unloaded;

and whilst within the **Geographical Limits** described in the Schedule.

1.2 During the Maintenance / Defects Liability Period

We will indemnify **You** for sudden and unforeseen physical loss of or damage from any cause not hereinafter excluded, to the **Insured Property** provide such loss or damage:

1.2.1 manifests itself during the **Maintenance / Defects Liability Period** noted in the Schedule; and

1.2.2 originates from:

1.2.2.1 a cause occurring and arising out of works carried out by **You** during the **Construction Period** and within the **Geographical Limits** stated in the Schedule; or

1.2.2.2 any cause occurring and arising out of the course of operations carried out by the Contractor and/or Sub-contractors (as defined within "Insured") in complying with the requirements of the Maintenance / Defects Liability Period clauses of the Contract.

Provided that **Our** liability under this Policy shall not exceed the **Sum(s) Insured** stated within the **Limits of Liability** of the Schedule for relevant items of the **Insured Property**.

SECTION ONE – MATERIAL DAMAGE (continued)

2 Additional Cover

2.1 Following an indemnifiable **Event** covered by the Insuring Clauses noted above, this Policy automatically extends to cover costs and expenses necessarily and reasonably incurred by **You** or on **Your** behalf for:

2.1.1 Removal of Debris

Removal of Debris being:

- (a) the removal and disposal of debris necessary to restore or replace damaged **Insured Property**;
- (b) the demolition, removal and disposal of damaged Insured Property;
- (c) the demolition, removal and disposal of undamaged **Insured Property** necessary to restore or replace damaged **Insured Property**.

2.1.2 Consultants' Fees

Clerks' of works salaries and expenses, architects', surveyors', engineers', project managers', project coordinators', legal and all other fees, costs or expenses incurred for the purpose of repairing, reinstating or replacing the **Insured Property**, but excluding any fees for the preparation of a claim or estimate of fees.

Consultants' Fees will not exceed those authorised under the scale of the various institutions regulating such charges prevailing at the time of the loss or damage.

2.1.3 Expediting Expenses

Additional costs and expenses incurred by **You** or on **Your** behalf for the sole purpose of expediting repairs or replacement of lost or damaged **Insured Property**. Such costs are limited to costs and expenses for:

- (a) express delivery within Australia. Express delivery will include carriage by airfreight within Australia by the use of licensed airline(s) operating a regular scheduled service, but not aircraft chartered specifically for such carriage;
- (b) travel costs of the **Insureds**, provided such costs are for regular service fares within Australia, but not aircraft chartered specifically for such carriage;
- (c) overtime or penalty rates of labour and other related allowances or payments;
- (d) accommodation and boarding costs, including meals and other costs associated therewith.

2.1.4 Mitigating Expenses

Costs and expenses to contain, suppress, save, protect, prevent or mitigate against imminent or actual loss destruction of, or damage (indemnifiable under this Policy, or would be indemnifiable but for the suppression, containment or protection from such loss or damage) to **Insured Property**.

SECTION ONE – MATERIAL DAMAGE (continued)

2.1.5 Temporary Protection

Costs and expenses incurred in the purchasing and/or hiring and in the erection and dismantling of hoardings, barriers, fences and any other forms of protection which the relevant Insured must provide in order to comply with the requirements of any Government Department, Local Government or other Statutory Authority.

Provided Our liability in respect to Removal of Debris, Consultants Fees and Expediting Expenses, Mitigating expenses and Temporary Protection shall not exceed the respective Sum(s) Insured stated against such items noted in the Schedule.

2.2 Escalation Allowance

If at any time during construction the estimated final **Total Contract Works Sum Insured** (for any one Contract) exceeds the current value stated in the Schedule for **Total Contract Works Sum Insured**, then the amounts stated under all other items of **Sum(s) Insured** for Section 1 shall be automatically proportionally increased (for such a Contract), provided the amount of any such increase shall not exceed the **Escalation Allowance** stated in the Schedule.

2.3 Construction Period Extension

Should the Contract not be completed and ready for hand-over by the **Construction Period** Expiry Date noted in the Schedule, **We** will hold **You** covered for up to 14 days (if required), so that **You** can arrange for the **Period of Insurance** to be extended.

EXCLUSIONS

We will not indemnify **You** for:

1 Gradual Deterioration

loss of or damage to and the costs necessary to replace repair or rectify:

- (a) **Insured Property** that is worn, torn, rusted, mildewed or has gradual deterioration.
- (b) **Insured Property** lost or damaged to enable the replacement repair or rectification of **Insured Property** excluded by (a) above.

Exclusion (a) above shall not apply to other parts or items of **Insured Property**, which is free from wear, tear, rust, mildew and gradual deterioration, but are damaged in consequence thereof.

For the purpose of this Policy and not merely this Exclusion the **Insured Property** shall not be regarded as lost or damaged solely by the virtue of the existence of any wear, tear, rust, mildew and gradual deterioration in the **Insured Property** or any part thereof.

2 Design, Materials and Workmanship

loss of or damage to and the costs necessary to replace repair or rectify:

- (a) **Insured Property** that is in a defective condition due to a defect in design, plan, specification, materials or workmanship of such **Insured Property** or any part thereof;
- (b) **Insured Property** lost or damaged to enable the replacement repair or rectification of **Insured Property** excluded by (a) above.

SECTION ONE – MATERIAL DAMAGE (continued)

Exclusion (a) above shall not apply to other **Insured Property** that is free of the defective condition but is damaged in consequence thereof.

For the purpose of this Policy and not merely this Exclusion the **Insured Property** shall not be regarded as lost or damaged solely by the virtue of the existence of any defect in design, plan, specification, materials, or workmanship in the **Insured Property** or any part thereof.

3 **Fines, Penalties, Damages and Consequential Loss**

penalties (contractual or otherwise) for non-completion or delay in completion, non-compliance with any **Contract** conditions, fines, liquidated damages, or aggravated, punitive, or exemplary damages, or any other consequential financial loss.

4 **Electrical and Mechanical Breakdown**

loss of or damage to any **Insured Property** caused by its own electrical or mechanical breakdown, failure or derangement.

5 **Inventory Shortage**

loss or damage discovered only at the time an inventory is taken.

6 **Cash and Securities**

loss, or damage to cash, bank notes, treasury-notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes, securities and computer software.

7 **Ocean Marine Transit**

loss or damage to the **Insured Property** occurring during the course of ocean marine transit.

8 **Watercraft and Aircraft**

loss of or damage to waterborne vessels and craft, aircraft and aerial devices.

9 **Abandonment of Works**

loss of or damage due to abandonment of the works associated with the **Insured Property**, or to cessation of work for any other reason, except for the first thirty (30) days of any such cessation.

10 **Discontinued Business**

any loss or damage directly or indirectly caused by, or arising out of, or aggravated by **Your** business being wound up, or carried on by a receiver, or being permanently discontinued.

11 **Embezzlement or Misappropriation by Employees**

loss of or damage due to embezzlement or fraudulent misappropriation by an employee.

12 **Provisional Repairs**

the cost of any provisional repairs unless such repairs constitute part of the final repairs and do not increase the total repair cost.

13 **Mobile Phones**

loss of or damage to mobile telephones, two way radios or any other voice transmitter or receivers.

SECTION ONE – MATERIAL DAMAGE (continued)

BASIS OF LOSS SETTLEMENT

1 Partial and Total Loss

1.1 Insured Property Items (a) Contract Works, and (b) Principal Supplied Materials

The basis of settlement under this section of the Policy will be:

- (a) in the case of loss or damage which can be repaired, the cost of repairs necessary to restore the item(s) to their condition immediately before the occurrence of the damage less any salvage; or
- (b) in the case of a total loss, the actual value of the item(s) immediately before the occurrence of the loss less any salvage;

however, only to the extent to which the costs claimed had to be borne by **You** and to the extent to which they are included in the **Sum Insured** in the Schedule.

All damage which can be repaired must be repaired, but if the cost of repairing any damage equals or exceeds the value of the item(s) before the occurrence of damage, settlement will be made on the basis provided for in (b) above.

1.2 Insured Property Items (c) Temporary Works, (d) Named Insured's Tools, (e) Contractors Minor Plant and Equipment, (f) Contractors Major Plant and Equipment, (g) Temporary Buildings, (h) Employees Effects, and (i) Existing Property

The basis of settlement under this section of the Policy will be:

- (a) in the case of loss or damage which can be repaired, the cost of repairs necessary to restore the item(s) to their condition immediately before the occurrence of the damage less any salvage; or
- (b) in the case of a total loss, if the costs of repairs equals or exceeds the **Market Value** of the insured item immediately before the occurrence of loss or damage, settlement shall be made on the basis of total loss. **We** will at **Our** option either:
 - (i) supply an equivalent replacement item similar in type, capacity and condition to the insured item immediately prior to the occurrence of the loss or damage.
 - (ii) pay the **Market Value** of the insured item immediately prior to the occurrence of the loss or damage.

however, only to the extent to which the costs claimed had to be borne by **You** and to the extent to which they are included in the **Sum Insured** in the Schedule.

If in the event of loss or damage it is found that the relevant **Sum Insured** for **Insured Property** Items (c), (d), (e), (f), (g), (h) or (i) is less than 85% of the sum required, then the amount **You** can recover under this Policy shall be reduced in the same proportion as the **Sum Insured** bears to 85% of the sum required to be insured.

We will not be liable to make payment under this Policy unless **You** have produced to **Our** reasonable satisfaction accounts, invoices, receipts and other documentation indicating that repairs have been effected or replacement has taken place, as the case may be.

SECTION ONE – MATERIAL DAMAGE (continued)

2 Deductible

The amount of indemnity otherwise payable by **Us** under this Policy shall be reduced by the **Deductible** noted in the Schedule.

Where, as a result of an occurrence, a claim is made in respect to more than one item, the **Deductible** applies only to the aggregate amount payable in the settlement of the claim.

If the amounts of the **Deductible(s)** on the item(s) which are the subject of the claim vary, then the highest **Deductible** shall be that applicable.

3 Seventy-Two Hour Loss Accumulation

For the purpose of the application of the **Deductible** all loss or damage to **Insured Property** arising during any one period of seventy-two (72) consecutive hours caused by storm, tempest, flood, cyclone or earthquake shall be deemed to be a single **Event** and therefore to constitute one occurrence. **You** may select the time from which any such period shall commence but no two such selected periods shall overlap.

4. Limit of Liability

Our total liability for any claim arising out of one **Event** or a series of **Event(s)** arising out of one source or original cause, will not exceed the **Sum Insured** noted in the Schedule set against the lost or damaged Insured Item, plus, any Additional Expenses insured and allowed under this Policy.

5 Progress Payments

Where **We** have accepted liability to meet a claim under Section 1 of this Policy, and where **Our** total liability in respect of such a claim is estimated to exceed \$50,000 after the application of any **Deductible**, **We** will pay at **Your** request progress payment(s) on account of such claim for such amount(s) and at such intervals as may be agreed;

- (a) provided always that **You** can demonstrate to **Our** reasonable satisfaction that the amount of the progress payment requested has actually been expended, and
- (b) provided further that the interval(s) between such progress payment shall be no less than thirty (30) days.

Such progress payment(s) shall be deducted from the amount finally determined in accordance with this Policy as being **Our** liability for such a claim.

6 Overheads and profit

Where **We** have accepted liability to meet a claim under Section 1 of this Policy **We** shall pay appropriate levels of overhead charges and profit applicable to repair and/or replacement. However, such overhead charges and profit shall not exceed the allowance percentages made originally for the whole of the contract.

SECTION TWO – PUBLIC LIABILITY

EXTENT OF COVER

1 Insuring Clause

We will indemnify **You** in respect of all amounts, not hereinafter excluded, which **You** shall become legally liable to pay for:

- (a) **Personal Injury;**
- (b) **Property Damage;**

sustained during the **Period of Insurance** as a result of an **Occurrence** and arising out of the **Insured Contract(s)** anywhere within the **Geographical Limits** specified in the Schedule.

2 Defence Costs

We will, in addition to the indemnity provided under clause 1 above, pay:

- 2.1 all charges, expenses, and legal costs incurred with **Our** written consent in the settlement or defence of any claim for compensation in respect of which **You** are entitled to indemnity under this Policy or if sustained would be entitled, and
- 2.2 all charges, expenses and law costs recovered from **You** by claimants in connection with said claims, and
- 2.3 all legal costs for any of **Your** representatives at any coroner's inquest or in any court of summary jurisdiction in connection with said claims, and
- 2.4 all expenses incurred by **You** for the first aid rendered for injury to others and/or for temporary repairs and/or shoring up of property made necessary by an **Occurrence** indemnified under this Section of the Policy.

Hereinafter called "**Defence Costs**"

Provided that:

- (a) We shall not be obliged to pay any claims or judgment or to defend any suit after **Our Limit of Liability** has been exhausted by payment or judgment or settlements;
- (b) If payment exceeding **Our Limit of Liability** has been made to dispose of a claim, **Our** liability for any **Defence Costs** in connection therewith shall be limited to such portion of the said **Defence Costs** as the **Limit of Liability** bears to the amount paid to dispose of the claims;
- (c) In no event shall **Our** liability in respect of **Defence Costs** exceed fifty percent (50%) of the **Limit of Liability** stated in the Schedule.

All such amounts for the above are payable in addition to the **Limit of Liability** specified in the Schedule for Insuring Clause 1.

3 Cross Liability

For the purpose of this Policy the word Insured shall be considered as applying to each party comprising the **Insured** in the same manner as if a separate Policy had been issued to each of them.

Notwithstanding the above, nothing contained herein shall operate to increase the **Limit of Liability** for any one **Occurrence** as stated in the Schedule.

SECTION TWO – PUBLIC LIABILITY (continued)

4. Limit of Liability

Our liability under Insuring Clause 1 shall not exceed the amount stated as "**Limit of Liability**" in the Schedule for any one **Occurrence** prior to the application of any **Deductible**.

In respect of payments made under Insuring Clause 1, **We** shall not be liable for the amount of the **Deductible** shown in the Schedule in respect of each and every **Occurrence**.

EXCLUSIONS

We will not indemnify **You** for:

1 Employees

any claim in respect of or arising out of **Personal Injury** to any employee arising out of or in the course of his/her employment.

2 Worker's Compensation

liability imposed by the provision of any Worker's or Worker's Compensation legislation or any Accident Compensation legislation or any Industrial award or agreement or determination;

3 Damages, Fines and Penalties

any amount by way of aggravated exemplary or punitive damages or in respect of fines or liquidated damages or incurred under any penalty clause;

4 Property Owned Leased or Hired

for any claim arising out of damage to property owned, leased or hired by or under hire purchase or on loan to **You** or otherwise in **Your** care, custody or control, other than:

- (a) premises (or the contents thereof), not being the **Insured Property** (g), temporarily occupied by **You** for work therein, or other property temporarily in **Your** possession for work thereon (but no indemnity is granted for damage to that part of the property on which **You** are working directly upon, which arises out of such work);
- (b) employees' and visitors' clothing and personal effects;
- (c) **Vehicles**, which are not owned by any of the Insured or used in connection with the **Insured Property**, whilst within a free car park at the **Contract Site** provided for the use of visitors;
- (d) premises or part premises (including contents thereof), not being the Contract Works, leased and/or rented and/or temporarily occupied by **You**.

5 Vehicles

- (a) **Personal Injury** insured or required to be insured under any compulsory legislation governing the use of any **Vehicle** or trailer attached to such **Vehicle**;
- (b) **Property Damage** caused by or arising out of the use of any mechanically propelled **Vehicle** including any trailer attached to such **Vehicle**;

Provided that Exclusion 5(b) shall not apply:

- (i) whilst such **Vehicle** or trailer is in use as a tool of trade in connection with the **Insured Property**;
- (ii) whilst such **Vehicle** or trailer, in connection with the **Insured Property**, is in transit other than under the power of such **Vehicle**;

SECTION TWO – PUBLIC LIABILITY (continued)

- (iii) where caused by or arising out of the delivery or collection of goods to or from any **Vehicle** or trailer where such is located on any carriageway or thoroughfare which forms part of the **Contract Site**;
- (iv) where caused by or arising out of the loading or unloading of, or the delivery or collection of, any goods to or from any **Vehicle** or trailer used in work undertaken by **You** or on **Your** behalf which is not in **Your** physical or legal control;
- (v) where the carriageway or thoroughfare forms part of the **Contract Site** of the **Insured Property** or is used as an access route from one part to another part of the site of the **Insured Property**.

6 Watercraft, Aircraft

Personal Injury or Property Damage caused by or arising out of or in connection with:

- (a) any **Watercraft** exceeding 8 metres in length, except where such **Watercraft** is not owned by **You** but is used by **You** for business entertainment.
- (b) the ownership, repair, construction, maintenance, servicing of any **Aircraft**, or installation of any property in or on any **Aircraft**.
- (c)
 - (i) the use by **You** as a “landing area” for **Aircraft** of any property or structure owned occupied or controlled by **You**.
 - (ii) maintenance, building, construction, extension, refurbishment on any “landing area”.

The term “landing area” includes any area on which **Aircraft** taxi, land, take-off, are housed, maintained or operated.

7 Professional Advice

arising out of any breach of a duty owed in a professional capacity by **You** or persons for whose breaches of such duty **You** may be legally liable.

Provided that this Exclusion does not apply to the rendering of or failure to render professional medical advice by medical persons employed by **You** (not being a qualified medical practitioner) in connection with the **Insured Property**.

8 Pollution

- (a) **Personal Injury or Property Damage** directly or indirectly arising out of the discharge, dispersal, release or escape of **Pollutants**,
- (b) the cost of removing, nullifying or cleaning-up **Pollutants**, and
- (c) the cost of preventing the escape of **Pollutants**.

Exclusions 8 (a) and 8 (b) will not apply where the **Personal Injury** or **Property Damage** arise from an unexpected, unintended sudden and instantaneous cause which takes place at a clearly identified point in time during the **Period of Insurance**.

9 Asbestos

- (a) any liability for **Personal Injury**, directly or indirectly, out of inhalation of, or fears of the consequences of exposure to, asbestos, asbestos fibres or derivatives of asbestos.
- (b) that part of any loss, cost or expense for the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or any derivatives of asbestos.

SECTION TWO – PUBLIC LIABILITY (continued)

10 Contractual Liability

liability assumed solely under any contract or agreement (other than the contract(s) pursuant to any works being carried out or any contract for the hire of construction plant, machinery or equipment related to the **Insured Property**) unless such liability would have attached notwithstanding the existence of such contract or agreement or is specifically allowed by written endorsement to this Policy.

11 Section One Cover

loss, destruction of or damage to property where such property consists of or forms part of the **Insured Property** covered under Section One of this Policy.

12 Waiver of Rights of Subrogation

liability arising out of any waiver of rights of subrogation recovery or recourse against any person other than any of the **Insured** existing prior to or undertaken after the happening of an **Occurrence** to which such waiver applies.

13 Underground Services

liability arising from damage to, and loss of use of, underground pipes and cables unless prior to the commencement of any work in the vicinity of underground pipes and cables appropriate authorities have been consulted and written details obtained from them as to the position of such underground pipes and cables together with their supports and fittings.

14 Vibration, Removal or Weakening of Support(s)

liability for **Personal Injury** or **Property Damage** caused by or arising from vibration or removal or weakening of support(s) to any property for a Limit of Liability greater than Fifty Thousand Dollars (\$50,000) unless **You** have requested an amount for vibration, removal or weakening of support(s) in the Proposal Form and it is specified in the Schedule.

15 Internet Operations

liability directly or indirectly caused by or arising from **Your Internet Operations**

Internet Operations means any of the following:

- (a) use of electronic mail systems by **You**, or **Your** employees, including part-time and temporary staff, and others within **Your** organisation;
- (b) access through **Your** network to the World Wide Web or a public internet site by **You**, or **Your** employees, including part-time and temporary staff, and others within **Your** organisation;
- (c) access to **Your** intranet (meaning internal company information and computing resources) which is made available through the World Wide Web for **Your** customers or others outside **Your** organisation; and
- (d) the operation and maintenance of **Your** web site.

This exclusion will not apply to legal liability arising out of any material which is already in print by a manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on **Your** web site, but this exclusion will apply to any other advice or information located on **Your** site that is used for the purpose of attracting customers.

SECTION TWO – PUBLIC LIABILITY (continued)

16 Libel and Slander

Personal Injury that is caused by:

- (a) the publication of any libellous or slanderous statement made prior to the **Period of Insurance**, or
- (b) any statement made by or at **Your** direction if **You** could reasonably be expected to know that the statement was false or illegal.

17 Completed Operations

any claims arising out of or in connection with the **Insured's Completed Operations**.

GENERAL EXCLUSIONS - (Applicable to Sections One and Two)

1 Electronic Data

We will not indemnify **You** for any loss or damage of whatever kind arising directly or indirectly out of:

- (a) total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data**, or
- (b) error in creating, amending, entering, deleting or using **Electronic Data**, or
- (c) total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all, or
- (d) any business interruption losses resulting there from,

regardless of any other contributing cause or **Event**, whenever it may occur, unless such loss or damage is a direct consequence of otherwise insured physical damage.

However, any accidental physical damage to an insured item, which originates directly from **Your** action to **Your** own property, and which causes or is caused by any of the matters referred to in (a) to (c) above, will be covered, subject to all other provisions of this Policy.

For the purpose of this Exclusion **Electronic Data** shall mean facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

2 Terrorism

We shall not indemnify **You** for any loss or damage to **Insured Property, Personal Injury or Property Damage**, costs or expense directly or indirectly caused by, contributed by, resulting from, or arising out of or in connection with any act of **Terrorism**, regardless of any other cause or **Event** contributing concurrently or in any other sequence to the loss.

Any act of **Terrorism** includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto and which:

GENERAL EXCLUSIONS (continued)

- (a) involves violence against one or more persons; or
- (b) involves damage to property; or
- (c) endangers life other than that of the person committing the action; or
- (d) creates a risk to health or safety of the public or a section of the public; or
- (e) is designed to interfere with or to disrupt an electronic system.

This exclusion also excludes loss of or damage to **Insured Property** of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing, retaliating against or responding to any act of **Terrorism**.

3 War and Nuclear Risks

We will not indemnify **You** for any loss or damage to **Insured Property, Personal Injury or Property Damage** occasioned by or through or in consequence directly or indirectly of any of the following:

- 3.1 (a) war, invasion, act of foreign enemies, hostilities, or war-like operations (whether war be declared or not), civil war;
- (b) mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power.
- 3.2 (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or
- (b) radio-active toxic explosive or other hazardous properties of any nuclear assembly or nuclear component thereof.

GENERAL CONDITIONS - (Applicable to Sections One and Two)

1 Misrepresentation and Non-Disclosure

If **You**:

- (a) failed to disclose any matter which **You** were under a duty to disclose to **Us**; or
- (b) made a misrepresentation to **Us** before this Policy of insurance was entered into;

and if **We** would not have entered into this Policy for the same Premium and on the same terms and Conditions expressed in this Policy but for the failure to disclose or the misrepresentation, then;

- (a) **Our** liability in respect of any claim shall be reduced to an amount which places **Us** in the same position in which **We** would have been placed if the failure to disclose had not occurred or the misrepresentation had not been made; or
- (b) if the non-disclosure or misrepresentation was fraudulent, **We** may avoid this Policy.

Where more than one party is insured under this Policy, any misrepresentation or non-disclosure will only affect the party responsible for the misrepresentation or non-disclosure and no other party.

2. Observance of Terms and Conditions

- (i) The observance of the Terms Conditions and Endorsements of this Policy by any person or entity insured in so far as they relate to anything to be done or complied with by any persons or entities insured, and
- (ii) the truth of the verbal and written statements made to **Us** by any of the persons or entities Insured or their representative or agents prior to concluding this Policy, and
- (iii) the notification as soon as practical by any of the persons or entities Insured of any alteration of risk which materially affects this insurance

shall be conditions upon which any liability of **Us** under this Policy depend.

3 Reasonable Care

You or **Your** employees and agents, must at their own expense use due diligence to:

- (i) take all reasonable precautions to prevent loss or minimise damage.
- (ii) comply with all reasonable recommendations made by **Us** to prevent or minimise damage.
- (iii) comply with all statutory requirements and recommendations of manufacturers and suppliers.
- (iv) prevent the Occurrence of Personal Injury and Property Damage insured against hereunder.

4 Notice of Claims – (Section One - Material Damage Only)

- (a) Following discovery of any loss, destruction or damage which might give rise to a claim under this Policy, **You** or **Your** representative must:
 - (i) notify **Us** as soon as possible and confirm such notification in writing giving an indication of the nature and extent of the loss, destruction or damage.

GENERAL CONDITIONS (continued)

- (ii) take all steps within **Your** power to minimise the extent of the loss or damage.
- (iii) preserve all parts affected and make them available for inspection by **Us, Our** employees or agents.
- (iv) furnish all such information and documentary evidence as **We** may reasonably require.
- (v) notify the police of any actual or attempted theft, burglary or malicious damage.
- (b) Upon notification of any loss or damage being given to **Us, You** may carry out repairs or make good any minor damage, but in all cases **You** must give **Us, Our** employees or agents an opportunity to inspect the loss or damage before any repairs or alterations are effected. If no inspection is carried out by **Us** or on **Our** behalf within a period of time which is reasonable having regard to the location of risk, weather conditions and any other relevant factors, **You** may proceed with such repairs or replacement.
- (c) **We** will not pay for any additional damage to any item caused by the failure to repair that item properly and without delay.

5 Claim Co-operation (Section One Only)

On the happening of an event for which a claim is made or may be made under this Policy **We** may if **We** so desire and shall be entitled to:

- (a) take over and conduct in **Your** name the defence or settlement of such claim.
- (b) at **Our** own expense and for **Our** own benefit conduct proceedings or prosecute any action to enforce **Your** rights against others whether or not any payment has been made by **Us** in respect of such claim.
- (c) receive from **You** all assistance and information **We** may reasonably require for the purpose of defending or settling such claim or the pursuit of any rights of recovery from others.

6 Claim Co-operation (Section Two Only)

In the event of any **Occurrence** likely to give rise to a claim under Section Two of this Policy **You** must:

- (a) at **Your** own expense, take such immediate action as may be necessary to minimise the extent of **Personal Injury** and/or **Property Damage**;
- (b) as soon as possible, give notice in writing of such **Occurrence** to **Us**;
- (c) send to **Us** immediately on receipt any letter, claim, writ, summons or proceedings which may be commenced against **You**.
- (d) make no admission, offer, promise, payment, offer of indemnity to any party without **Our** written consent.

7 Subrogation

Any **Insured** shall at **Our** request and expense do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by **Us** for the purpose of enforcing any rights, remedies, or of obtaining relief or indemnity from other parties to which **We** will be or would become entitled or subrogated upon **Our** paying for or making good any **Personal Injury** or **Property Damage**, or loss or damage under this Policy, whether such acts or things shall be or become necessary or required before or after their indemnification by **Us**.

GENERAL CONDITIONS (continued)

You will not in any case be entitled to abandon any property to **Us**.

Notwithstanding the above, in the event of **Us** making payment to any **Insured(s)**, **We** shall not exercise any rights of subrogation against any other **Insured(s)** hereunder other than those **Insured** noted under part (g) of the Definition of “**Insured**”.

8 Alteration of Risk

You or **Your** agents must notify **Us** as soon as possible in writing of any material change(s) in the risk and confirm such notification by providing full details in writing. In such event **You** must at **Your** own expense take such additional precautions as may be necessary to minimise the risk of any claim arising under the Policy and must comply with any of **Our** reasonable directions or requirements.

No material alteration will be made or allowed by **Us** whereby the risk is increased unless agreed to in writing by **Us**.

Material change will include (but not be limited to) alteration in design, material, construction program or method of construction.

9 Inspection

We or **Our** employees or agents will at any reasonable time have the right to inspect and examine at the **Contract Site** and any other location, any item, plant or equipment associated directly or indirectly with the risk, the subject of this Policy, and **You** must provide to **Us**, **Our** employees or agents all details and information which **We** may reasonably require.

10 Other Insurances

In the event of a claim **You** must give **Us** written notice if **You** have any other insurance covering the loss or damage to the **Insured Property**, or liability cover for **Personal Injury** or **Property Damage**.

11 Assignment

We must first agree before the interest in this insurance can be transferred to anyone other than an existing insured party under this Policy.

12 Reinstatement of Sum Insured

Following any claim being paid under this Policy **We** will reinstate the **Sum(s) Insured**, provided **You** pay any additional premium that may be required by **Us**.

13 Goods and Services Tax

The premium charged for this policy will include an amount on account of GST.

You must inform **Us** of the extent to which **You** are entitled to an **input tax credit** for the premium each time that a claim is made under this policy. No payment will be made to **You** for any **GST** liability that **You** may acquire on the settlement of a claim if **You** have not informed **Us** of **Your** entitlement or correct entitlement to an **input tax credit**.

Despite the other provisions of this insurance (including provisions in the wordings, any schedules and any endorsements), **Our** liability will be calculated taking into account:

GENERAL CONDITIONS (continued)

- (a) any **input tax credit** to which **You** are entitled for any **acquisition** relevant to a claim, or to which **You** would have been entitled should **You** have made a relevant **acquisition**; and
- (b) (also for claims for business interruption only) the **GST** exclusive amount of any **supply** made by **Your** business which is relevant to **Your** claim.

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

14 Premium Adjustment

Section 1 and Section 2

The Premium for this Policy Section is provisional and **You** shall advise **Us** of the:

- (i) final date of the **Construction Period**, and the
- (ii) final Contract Price (inclusive of the value of Principal Supplied Materials) for the **Insured Contract**,

as soon as such information is available.

An adjustment of the Provisional Premium shall be made either up or down as the case may be, by applying an Adjusted Premium Rate (to take into account any change in **Construction Period**) to the final Contract Price.

The Final Premium adjustment be determined by:

- (i) calculating a new Premium Rate by multiplying the original Premium Rate by the ratio that the final **Construction Period** bears to the original **Construction Period**.
- (ii) calculating the total premium due by applying the Adjusted Premium Rate calculated in (i) above, to the declared final Contract Price.
- (iii) calculating the extra or refund premium for both Section 1 and Section 2, as the case may be, by deducting the original Provisional Premium from the total premium required as calculated in (ii) above.