

# Steadfast Client Trading Platform

## Industrial Special Risks Policy



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# Steadfast Client Trading Platform Industrial Special Risks Policy

This Policy has been designed to meet the insurance requirements of organisations engaged in industrial and commercial business operations and incorporates the flexibility to address the individual requirements of particular businesses or groups.

The Policy consists of two Sections. Section 1 covers the risk of material loss or damage to Business Assets or other property which the Insurer(s) have agreed to insure and Section 2 provides cover for loss of Turnover and Gross Profit of the business in consequence of the interruption of or interference with business operations following insured damage to property.

Please read the Policy and the Schedule forming part of the Policy document carefully and do not hesitate to contact your Steadfast Broker if needing to clarify or correct any aspect of the Policy or information stated in the Schedule.

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

WHEREAS the Insured named in the Schedule has paid or agreed to pay to the Insurer(s) specified below the Premium shown on the Schedule, now the Insurer(s) agree(s), subject to the terms, Conditions, Exclusions, Memoranda, limitations and other provisions contained herein or endorsed hereon, to indemnify the Insured as specified herein against loss arising from any insured events which occur during the Period of Insurance stated in the Schedule or any renewal thereof.

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



# Definitions Applicable to all Sections

*Words with particular meanings when used in this Policy or endorsements or attachments forming part of this Policy.*

## **Act of Terrorism**

Act of Terrorism means and 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:

- (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.

## **Boiler and/or Pressure Vessel**

Boiler and/or Pressure Vessel means:

- (a) any Boiler used for domestic purposes;
- (b) any other boiler, economiser or other pressure vessel which shall include any pipes, valves and other apparatus forming part of these and in respect of which a certificate is required to be issued under the terms of any statute or regulation.

## **Boiler Explosion**

Boiler Explosion means the sudden and violent rending of the permanent structure of the plant by force of internal steam or fluid pressure or bodily displacement of any part of such structure together with force ejection of its contents. Except in the case of a steam test at a pressure not exceeding the maximum pressure permitted by the inspecting authority, the term explosion shall not mean failure under any test.

## **Boiler Collapse**

Boiler Collapse means the sudden and dangerous distortion of any part of the permanent structure of plant by bending or crushing caused by force of steam or fluid pressure whether attended by rupture or not. Except in the case of a steam test at a pressure not exceeding the maximum pressure permitted by the inspecting authority, the term collapse shall not mean failure under any test.

## **Burglary**

Burglary means Theft or attempted Theft by any person:

- (a) consequent upon forcible and violent entry to Premises or locked cabinets, counters or showcases in which Property Insured is located, including any attempt thereat;
- (b) feloniously concealed in an enclosed building at the Premises; or
- (c) threatening or committing physical violence against persons including armed hold-up.

## **Business Hours**

Business Hours means the period during which the Insured's premises are actually occupied for business purposes and during which the Insured or employees of the Insured are in the premises.

**Debris**

Debris means the residue of all damaged property and/or other substances (other than landlord's property if not Property Insured by this Policy), following damage to Property Insured by a peril or event covered by this Policy including; liquids and/or chemicals used in the extinguishment or suppression of damage or in preventing imminent damage to property hereby insured by fire or any other peril covered by this Policy.

**Deductible**

Deductible means the first amount of each claim which is payable by the Insured, as stated in the Schedule. Should more than one deductible apply under this Policy for any claim or series of claims arising from the one original source or cause, such deductibles shall not be aggregated and the highest single level of deductible only shall apply. The Limits and Sub-Limit(s) of Liability shall apply in addition to, and shall not be reduced by, the amount of any applicable excess.

**Flood**

Flood means the covering of normally dry land by water that has escaped or been released from the normal confines of any of the following:

- (a) a lake (whether or not it has been altered or modified);
- (b) a river (whether or not it has been altered or modified);
- (c) a creek (whether or not it has been altered or modified);
- (d) another natural watercourse (whether or not it has been altered or modified);
- (e) a reservoir;
- (f) a canal;
- (g) a dam.

**Indemnity Value**

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 that the Damage occurred taking into consideration age, condition and remaining useful life.

**Land Value**

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 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.

**Malicious Damage**

Malicious Damage means intentional and wilful destruction of or damage to the Property Insured by any person or persons (other than the Insured), including persons engaged in Burglary, Theft or any attempt thereat but not Theft of property.

**Money**

Money means current coin, bank notes, currency notes, cheques, travellers cheques stored value cards, securities and negotiable instruments, 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 whilst contained in the Situation and whilst in transit to and from the Situation anywhere in Australia or New Zealand, 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.

**Pollution of Contamination**

Pollution of Contamination means 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).

**Property Insured**

Property Insured means all tangible property both real and personal of every kind and description (except as hereinafter excluded) belonging to the Insured or other property 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.

For customer's goods not within the definition of Property Insured, where the insured has elected to insure unspecified customer's goods, Property Insured includes customer's goods to the extent that they are not otherwise insured.

The Co-insurance Memorandum will not apply to this extension of cover. The Insurer(s) liability for payment shall not exceed the Sub-Limit of Liability stated in the Schedule against "Unspecified Customers' Goods".

It is understood and agreed that the term "personal property" shall include Money.

**Theft**

Theft means the physical removal of property without the consent of the owner with the intention of depriving the owner of the rightful possession of that property or its use.

**Unspecified Damage**

Unspecified Damage means damage caused by any peril or circumstance not more specifically covered or excluded by this Policy other than:

fire; lightning; thunderbolt; explosion; implosion; collapse; earthquake; subterranean fire; volcanic eruption; impact; aircraft and/or other aerial devices and/or articles dropped therefrom; sonic boom; Theft; breakage of glass; loss of money; the acts of persons taking part in riots or civil commotions or of strikers or locked-out workers or of persons taking part in labour disturbances or of other malicious persons (including those engaged in Theft or attempted Theft) or the acts of any lawfully constituted authority in connection with the foregoing acts or in connection with any conflagration or other catastrophe; storm and/or tempest and/or rainwater and/or wind and/or hail, and/or Flood, and/or water or other liquids or substances discharged, overflowing or leaking from apparatus, appliances, pipes or any other system at the premises or elsewhere or any other peril mentioned under the Heading 'Sub-Limits of Liability in the Schedule'.



# Section 1 – Material Loss or Damage

## The Indemnity

In the event of any physical loss, destruction or damage (hereinafter in Section 1 referred to as “Damage” with “Damaged” having a corresponding meaning where following a peril or event not otherwise excluded by the Policy, the Property Insured is impacted and is no longer in its normal state or fit for its intended purpose or safe usage) not otherwise excluded happening during the period of insurance at the Situation to the Property Insured described in Section 1, the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) liability, indemnify the Insured in accordance with the applicable Basis of Settlement.

Subject to the liability of the Insurer(s) not being increased beyond the Limit(s) of Liability already stated herein, the Insurer(s) will also indemnify the Insured the following additional costs and expenses necessarily and reasonably incurred for:

- (a) architects’, surveyors’, consulting engineers’, legal and other fees for approval, project management and certification of the reinstatement, replacement or repair of damaged Property Insured and clerks of works’ salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon damage to property hereby insured but not such costs, fees and salary for preparing any claim hereunder;
- (b) 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) shall not be liable for payment of any fines and/or penalties imposed upon the Insured by any such Authorities;
- (c) any legal liability to make enquiries in connection with the reinstatement or replacement of Property Insured following the damage;
- (d) representation at any Statutory Inquiry conducted following the damage. The term “Statutory Inquiry” shall mean any judicial, coronial or other form of inquiry or hearing established by or at the direction of any government, semi-government, local or planning authority as a direct result of damage to Property Insured. We will not pay more than the Sub-Limit of Liability stated in the Schedule against “Statutory Inquiries”;
- (e) the purpose of preventing imminent damage or minimising damage to Property Insured caused or threatened by fire at or in the vicinity of the Property Insured or by any other peril or event insured by this Policy, including fire brigade attendance fees associated with fire or a chemical emergency and the costs of making good damage to gain access. The cover applies to action taken after damage has commenced or been threatened;
- (f) making the Premises and/or surrounding areas safe following the damage and for the temporary protection and safety of Property Insured pending its repair, replacement or sale as salvage;
- (g) the 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;
- (h) switching off and re-setting alarms following the damage;
- (i) travelling expenses to avert or minimise loss or damage including the protection of, safeguarding or recovery of Property Insured;
- (j) locating and exposing the source of gas, water or other liquid, escaping, discharging, leaking or overflowing from fixed systems including, tanks, pipes and other fixed apparatus and preventing imminent damage or diminishing damage to Property Insured including the costs and expenses of making good or reinstating damage to other property necessarily incurred in locating the source of the problem.

The Insurer(s) will pay the cost of repairing or reinstating the fixed system, tanks or other apparatus but not the cost of repairing or reinstating any part found to have been installed incorrectly or which has failed due to age, gradual deterioration, corrosion or is unfit for its intended purpose;

- (k) the replacement of locks and/or keys and/or combinations where if as a result of theft or any attempted 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;

- (l) the clearance of blocked pipes, drains, gutters, sewers, filters, pumping equipment and the like (including exploratory costs) resulting from damage covered by this Policy to Property Insured at the Premises but not exceeding the Sub-Limit of Liability stated in the Schedule against "Cost of Clearing, Pipes, Filters and Pumps";
- (m) taking inventory (including unpacking, repacking and restacking) to identify, quantify and value any property physically lost, destroyed or damaged by any peril insured against by this Policy, including examination of property not belonging to but in the care, custody or control of the Insured;
- (n) 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 but not exceeding the amount of the Sub-Limit of Liability stated in the Schedule against "Expediting Expenses";
- (o) customs, excise and other duties which the Insured becomes liable to pay in the event of Damage to Property Insured;
- (p) costs and expenses necessarily and reasonably incurred but not exceeding the Sub-Limit of Liability stated in the Schedule against "Removal of Debris" in respect of:
  - (i) the removal, storage and/or disposal of debris consequent upon damage to Property Insured covered by this Policy;
  - (ii) the clean-up and restoration of the land at the Situation notwithstanding Property Exclusion 10, where such costs are the responsibility of the Insured, including the cost of clean-up and removal of any material or substance classed as a pollutant or contaminant deposited as a direct result of a peril or event covered by this Policy causing damage to Property Insured. This indemnity shall apply whether the Insured is proceeding pursuant to an order issued by the relevant environmental authority or not;
  - (iii) the Insured's legal liability in respect of removal, storage and/or disposal of Debris, notwithstanding Perils Exclusion 8 in relation to premises, roadways, services, railway or waterways of others, consequent upon damage to the Property Insured by a peril hereby insured against 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;
- (q) the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to Property Insured covered by this Policy;
- (r) the demolition of or dismantling, removal or reinstatement of undamaged property belonging to the Insured, provided such demolition of or dismantling, removal and reinstatement is necessary for the purpose of the reinstatement or replacement of Property Insured following damage caused by a peril or event covered by this Policy;
- (s) legal liability under any Federal or State Award or Determination for loss or destruction of or damage to employees' clothing and/or tools;
- (t) damage to personal property, tools of trade and effects (excluding Money) belonging to director's and employees of the Insured and damage to visitor's personal effects whilst located at the Situation but only to the extent that such property is not otherwise insured but not exceeding the Sub-Limit of Liability stated in the Schedule against "Personal Property of Employees and others";
- (u) Damage occurring anywhere in Australia or New Zealand to personal property belonging to directors and employees of the Insured whilst they are engaged on the business of the Insured away from the premises or their place of residence to the extent that such property is not otherwise insured.

The Insurer(s) liability under this indemnity in respect of each person and in the aggregate for any one event shall be limited to the amounts specified in the Schedule against "Accompanied Baggage in Australia or New Zealand".

Provided that only clause (a) shall be subject 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 Insurer(s) agree(s) 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.

The basis of settlement by property classification is set out below subject to the application of memorandum to Section 1 – ‘Co-Insurance’. In determining the amount payable as the indemnity, the value of salvage shall be deducted before the application of co-insurance.

(a) *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.

Provided that if the Insured elects to claim the Indemnity Value of any Damaged property, the Insurer(s) will pay to the Insured the value of such property at the time of the happening of the damage or at its/their option reinstate, replace or repair such property or any part thereof. In any event the Insurer(s) will pay costs incurred by the Insured or by them in accordance with the provisions of the Extra Costs of Reinstatement Memorandum.

If the Insured elects to claim the indemnity value of any Damaged property, the Insurer(s) shall be liable for no greater proportion of the loss of such property than the amount that the Insured's declaration, made at the time of commencement of the Period of Insurance, of the value of such property, bears to eighty per cent (80%) of the actual value of such property at the time of commencement of the Period of Insurance, but not exceeding the Limit of Liability expressed in the Schedule. Any amount recoverable under the Extra Costs of Reinstatement Memorandum shall not be taken into account in determining the Insurer's proportion of the loss of such property.

On, textile awnings and blinds and 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, the Insurer(s) liability shall not exceed the amount of the Sub-Limit of Liability stated in the Schedule against "Weather Damage to Property in the Open Air" for any one loss or series of losses arising out of any one vent or occurrence.

(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 replacement shall have been carried out with reasonable dispatch or, if such property is not replaced, the original cost to the Insured of such property or the Indemnity Value, whichever is the lesser. If such property is obsolete, the Basis of Settlement (whether or not such property is replaced) shall be the original cost to the Insured of such property or the Indemnity 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 (including overheads as per the accounts of the Insured) 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 (including overheads) 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 such goods or the Indemnity Value, whichever is the lesser.

(e) *On goods sold but not delivered for which the Insured is responsible and, 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.

- (f) *On computer systems records, documents, manuscripts, 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 repair, replacement, reproduction or restoration is not carried out with reasonable dispatch, the replacement cost of materials as blank stationary at the time and place of the damage.

- (g) *Securities (which shall mean certificates of stock, bonds, coupons and all other types of securities):*

(i) If, with the approval of the Insurer(s), the Securities can be replaced, the cost of replacement paid or payable by the Insured; or

(ii) If the Securities cannot or are not to be replaced by the Insured, the greater of:

- The price for which the Insured purchased them;
- 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;

(iii) In the case of a loss of subscription, conversion or redemption privileges through the loss of any Security:

- the value of such 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.

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.

- (h) *On patterns, models, moulds, jigs, templates, dies or lasts:*

The cost of repair or replacement (if repaired or replaced with reasonable dispatch) otherwise the value of such property to the Insured calculated at the time and place of the damage, but not exceeding the cost of replacement.

- (i) *On glass:*

The cost incurred in repairing or replacing the broken glass in accordance with Australian Standard AS 1288-2006 or its equivalent including:

- (i) temporary shuttering and/or hiring of security service pending replacement of broken glass.
- (ii) removing and re-fixing of window and show-case frames, locks, fittings, shop front tiling and replacing burglar alarm tapes, protective film, and heat reflecting material; and
- (iii) replacing signwriting or ornamentation on glass.

- (j) *On works of art, antiques and curios, not forming part of the stock in trade or merchandise of the Business:*

Notwithstanding the first paragraph of Basis of Settlement (a), the cost of restoring and repairing to a condition substantially the same as before the Damage plus any reduction in market value caused by the Damage. If restoration or repair is not possible, the market value immediately before the Damage. The Insurer(s) liability shall not exceed the amount of the Sub-Limit of Liability stated in the Schedule against "Works of Art, Antiques and Curios".

(k) *On machinery, plant and equipment leased on a Residual Value basis:*

On machinery, plant and equipment leased on a Residual Value basis; notwithstanding the first paragraph of Basis of Settlement (a), if the Residual Value exceeds the cost of replacement of such property with similar property in a condition equal to, but not better or more extensive than, its condition when new, Provisions (i), (iii) and (iv) of the Reinstatement or Replacement Memorandum and the Provisions of the Extra Cost of Reinstatement Memorandum shall apply, and the basis of settlement shall be the amount for which the Insured, as 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 loss or destruction and ending on the retirement date(s) of such lease(s), plus the current market value of the property immediately before its loss or destruction or the Residual Value, whichever is the greater, less any salvage value.

The term "Residual Value" shall mean the minimum amount which the Insured, as lessee, has guaranteed that the leased property will realise, being the same amount which Insured, as lessee, has agreed would be payable to acquire such property upon the retirement date(s) of the lease(s).

For the purposes of this Clause there shall be deemed to be a constructive total loss of a damaged item of machinery, plant or equipment when the cost necessary to repair that item exceeds the cost necessary to replace it with a similar property in a condition equal to, but not better or more extensive, than its condition when new.

(i) *On empty premises awaiting demolition:*

The salvage value of the building materials and/or landlord's fixtures and fittings, net of demolition costs.

## **Memoranda to Section 1**

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

### **Abandoned Undamaged Portion of a Building**

If any building is damaged and due to the exercise of statutory powers or delegated legislation or authority by any government department, local government or other statutory Authority, reinstatement of such property is carried out upon another site, then the abandoned undamaged portion of such building including foundations and services shall be deemed to have been destroyed; provided that if the presence of such abandoned undamaged portion of the property increases the sale value of the original site, the increase in sale value shall be regarded as salvage and the amount thereof shall be payable to the Insurer(s) by the Insured upon completion of any sale of the site or shall be deducted from the total amount otherwise payable by the Insurer(s) under this Policy, whichever shall occur later.

Any differences between the parties about the amount of any increase in site value, 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, the parties shall be required to submit to mediation to resolve their differences assisted by the services of a third valuer, appointed as mediator by the President of the Australian Property Institute or the Property Institute of New Zealand.

### **Branded Goods**

Any salvage of any branded goods covered by this Policy shall not be disposed of by sale without the consent of the Insured. If such salvage is not disposed of by sale, then the value of the salvage shall be the market value of the goods after brands, labels or names have been removed by or on behalf of the Insured.

### **Co-Insurance**

The Insured is required to insure for full value calculated in accordance with the appropriate Basis of Settlement Clauses, as at the commencement of the Period of Insurance and, in relation to any Property Insured acquired after the commencement of the Period of Insurance, as at the time of acquisition of that property.

In the event of a claim, the moneys otherwise payable under Section 1 of this Policy shall be the proportion that the Insured's declaration at the time of the commencement of the Period of Insurance of the value of all Property Insured at the Situation to which the damaged item or items belong bears to eighty per cent (80%) of the value of all such property as at the time of commencement of the Period of Insurance calculated in accordance with the appropriate Basis of Settlement Clauses.



This Memorandum shall not apply if the amount of the damage does not exceed 10% of the amount of the Insured's declaration of value for that Situation.

The Co-Insurance memorandum shall not apply to any claim for Burglary, Theft, Money, Glass, or Unspecified Customer's Goods for which Sub-Limits of Liability are stated in the Schedule.

For the purposes of the application of this Clause, the Insured's Declared Values at any Situation shall not include any allowance for Extra Cost of Reinstatement or for the costs and expenses referred to in the additional cover provided in Sub-Clauses (b) to (n).

Provided further that this Clause is deleted for property forming part of the Property Insured, which has been insured under this Policy for the full value stated in a Valuation prepared by an Approved Valuer not less than three years before the commencement of the Period of Insurance, and which an Approved Valuer has updated not more than twelve months prior to the commencement of the Period of Insurance.

Approved Valuer means a Certified Practising Valuer registered with the Australian Property Institute or the Property Institute of New Zealand within the relevant property discipline.

### **Constructive Total Loss**

There shall be deemed to be a constructive total loss of Property Insured specified herein or any part thereof if it 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.

Provided that if the Insurer(s) elect not to take possession of any Property Insured deemed to be a Constructive Total Loss, the Insured shall retain responsibility for such property.

### **Declared Values**

The Schedule of Declared Values at each Situation (in accordance with the applicable Basis of Settlement) shall represent the estimated cost of reinstatement of the property covered by this Policy on the day of the commencement of the Period of Insurance.

If asset movements between Situations used by the Insured have resulted in an under-declaration of value(s) at a Situation and an offsetting over-declaration of value(s) at one or more other Situation(s), then such factors shall be taken into account when calculating the test for the application of Co-insurance.

Declared values shall not include any allowance for Extra Cost of Reinstatement nor any of the costs and expenses referred to under any of the clauses, except clause (g), of The Indemnity.

### **Depreciation of Undamaged Stocks**

For goods in storage remaining after the Insurer(s) liability for any such direct loss has been determined, notwithstanding anything contained in this Policy to the contrary, in particular Property Exclusion 16 and Perils Exclusion 9, the Insurer will, to an extent not exceeding the value of the goods in storage remaining after its liability for any such direct loss has been determined and subject otherwise in all respects to the terms and conditions of this insurance, except as specifically varied hereby, also indemnify the Insured to an extent not exceeding the value of the goods in storage remaining after liability for any such direct loss has been determined, against any further loss or damage resulting from the deterioration of such goods in consequence of the Insured's inability to process them in the normal way due to the damage caused by a peril or circumstance insured by this Policy to any property used by the Insured.



### **Extra Cost of Reinstatement**

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

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of damaged Property Insured 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; subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy.

#### **Provisions**

- (i) The work of reinstatement (which may be carried out wholly or partially upon any other site(s), subject to the liability of the Insurer(s) not being thereby increased), must be commenced and carried out with reasonable dispatch, 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.

### **Floor Space Ratio Index (Plot Ratio)**

If any building(s) being Property Insured is/are damaged 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; subject to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy, 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 of any Municipal or other Statutory Authority.

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).

### **Interests of Other Parties**

The insurable 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.

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 Insurer(s) and on demand pay such reasonable additional premium as the Insurer(s) may require.

### **Landscaping**

Notwithstanding any term or provision of the Policy including Property Exclusions 7 and 9, cover is extended to include the cost of reinstating damage to landscaping (which terms shall mean lawns, gardens, plants, shrubs, trees, paths, garden edges, rockwork, ornamentation, and the like). Our liability shall not exceed the amount of the Sub-Limit of Liability stated in the Schedule against "Landscaping" for any for any one loss or series of losses arising out of any one event or occurrence.

## **Loss of Land Value**

Notwithstanding the provisions of Perils Exclusion 9 and Property Exclusion 9:

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

less any sum paid by way of compensation by such Authority arising out of the action referred to in (a) or (b) above. The liability of the Insurer(s) shall be limited to the Sub-Limit of Liability stated in the Schedule against "Loss of Land Value" for any one loss or series of losses arising out of any one event or occurrence at any one location.

## **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, that part of the claim paid in excess of the revised Land Value shall be refunded to the Insurer(s).
2. Any differences under this Memorandum relating to Land Values 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, the parties shall be required to submit to mediation to resolve their differences assisted by the services of a third valuer, appointed as mediator by the President of the Australian Property Institute or the Property Institute of New Zealand.

Our liability shall not exceed the amount of the Sub-Limit of Liability stated in the Schedule of the Policy against "Loss of Land Value".

## **Metered Water**

The Insurer(s) will indemnify the Insured for the additional costs chargeable to the Insured by a Water Authority or Company, or by a landlord as outgoings under a rental agreement for consumption of metered water at the Premises arising following:

- (a) damage to Property Insured by a peril not otherwise excluded; or
- (b) Theft or attempted Theft of property owned or used by the Insured in the operations of the Business.

Provided that where the property stolen is owned by the Insured, the value thereof has been included in the Insured's declaration of Property Insured by this Policy.

The Insurer(s) liability under this Memorandum for the total costs levied for any one loss or event shall not exceed the Sub-Limit of Liability stated in the Schedule against "Metered Water".

## **Notable Old Buildings Without Legal Protection**

In the case of a building with architectural features and/or structural materials possessing an ornamental or historical character or for which the original materials are not available, but which is not legally protected for preservation by national, state or local legislation or regulation, the first paragraph of Basis of Settlement clause (a) shall be deemed to be amended as follows:

- (a) If the building is damaged, the cost necessary to repair the damage and restore the damaged portion to a condition substantially the same as, but not better or more extensive than its condition when new, but not exceeding the cost of the rebuilding thereof to a condition equal to but not better or more extensive than its condition when new;
- (b) If the cost of repairing the damage and restoring the damaged portion exceeds the said cost of rebuilding the Damaged portion, the building may, at the Insured's option, be deemed to be destroyed;
- (c) If the building is destroyed, the cost necessary to replace the building with one that is no more expensive than the cost of replacing the building that existed immediately prior to the Damage occurring using modern materials but which may have equivalent or improved utility due to the use of current design techniques and modern materials.

## **Output Replacement**

Notwithstanding anything contained to the contrary in the Reinstatement or Replacement Memorandum, any property that has a measurable output and which is capable of replacement with a new item or items that perform a similar function shall be valued for insurance purposes as follows and values for the settlement of any loss or damage in respect thereof shall be on the same basis:

- (a) If property lost, destroyed or damaged is to be replaced by an item or items that have the same or a lesser total output, then the insurable value thereof is the new installed cost of such replacement item or items as would give the same total output as the property lost, destroyed or damaged.
- (b) If property lost, destroyed or damaged is to be replaced by an item or items that have a greater total output and the new installed cost of such replacement property is no greater than the replacement value of the property lost, destroyed or damaged then no deductions shall be made from any claim for the improved output.
- (c) If the property lost, destroyed or damaged is to be replaced by an item or items that have a greater total output and the new installed cost of such replacement property is greater than the replacement value of the property lost, destroyed or damaged, then its insurable value is the greater of:
  - (i) the cost of replacement with similar property in a condition equal to but not better or more extensive than its condition when new; and
  - (ii) that proportion of the new installed cost that the output of the lost, destroyed or damaged property bears to the output of the replacement item or items.

The difference between the insurable value so calculated 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 nor 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 that the Insurer(s) could have been called upon to pay if such property had been wholly destroyed.

## **Reinstatement or Replacement**

*Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (l) 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; 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, at the option of the Insured, may be carried out wholly or partially upon any other site(s) and in any manner suitable to the requirements of the Insured, but subject to the liability of the Insurer(s) not being thereby increased, must be commenced and carried out with reasonable dispatch, failing which the Insurer(s) shall 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 or assume any increased liability under Section 2 of the Policy;
- (ii) When any Property Insured to which this memorandum applies is damaged in part only, 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 for reinstatement if such property had been wholly destroyed.
- (iii) No payment beyond the amount that 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 that 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) If the Insured elects to reinstate destroyed property with dissimilar property whether or not to be used for a similar purpose as the destroyed property, the Insurer(s) shall pay the lesser of:
  - (a) the cost of the dissimilar property; or
  - (b) an amount equal to the replacement cost that would have been payable if the destroyed property had been reinstated by similar property in a condition equal to but not better or more extensive than its condition when new.
- (v) The Insured shall not be bound to reinstate any destroyed building but may, at its option, purchase an existing building or buildings to replace the destroyed building, limited to the cost that would have been incurred if the destroyed building had been reinstated in accordance with clause (a) of the definition of 'reinstatement' including the Extra Costs of Reinstatement which would have been payable under the Policy in respect in such reinstatement.
- (vi) Where any lost or destroyed property is replaced by property that is better or more extensive than its condition when new, the Insurer(s) shall pay to the Insured the cost that would have been incurred if the lost or destroyed property had been reinstated in accordance with the provisions of clause (a). of the definition of 'reinstatement' including the amount payable under the Policy for Extra Cost of Reinstatement associated with the reinstatement of the original structure. The Insured shall bear the balance of the cost of such better or more extensive property.

## **Reinstatement of Damage by the Insured**

If the Insured shall, after obtaining the consent of the Insurer(s), reinstate damaged Property Insured, the Insurer(s) payment for such reinstatement shall include the value of labour and other overhead charges expended thereon together with a reasonable margin for profit. The liability of the Insurer(s) shall not exceed the amount that would otherwise have been payable hereunder had such reinstatement been carried out by outside contractors.

## **Theft of Property in the Open Air**

Perils Exclusion 6(a) is varied to indemnify the Insured for losses arising from Theft or attempted Theft of property in the open air up to the amount of the Sub-Limit of Liability stated in the Schedule against "Theft of Property in the Open Air".

Provided that this extension of cover shall only apply to such property within the boundaries of the Insured's Premises specified in the Schedule.

**Undamaged Ancillary and/or Peripheral Equipment**

If plant and/or machinery is destroyed and 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. The 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.

**Weather Damage to Certain Property in the Open Air**

The Policy extends to include damage by wind, rainwater or hail to Property Insured otherwise excluded by Property Exclusions 13 and 14. The liability of the Insurer(s) shall be limited to the Sub-Limit of Liability stated in the Schedule against 'Weather Damage to certain Property in the open air'

Certain Property means:

- (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.

# Section 2 – Business Interruption

## Definitions Applicable to Section 2

### Annual Turnover

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

### Consolidated Period

Consolidated Period means the sum of the number of weeks specified in the Schedule produced by dividing the combined declared values under clauses (a)(i) and (a)(ii) of Item No 3 by the declared value amount based on 100% of the declared value applicable for one (1) week under clause (a)(i). If no sum appears, the Consolidated Period shall be as produced as determined within this clause.

### Gross Profit

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 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; due provision being made for depreciation.

### Indemnity Period

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

### Insured Pay-Roll

Insured Pay-Roll means the declared value of estimated Pay-Roll in respect of the Consolidated Period referred to in Item No. 3 and specified in the Schedule, declarable as at the day of commencement of the Period of Insurance.

### Pay-Roll

Pay-Roll means the remuneration paid to all employees of the Insured (including but not limited to holiday pay, sick pay, long service leave pay and bonus) plus payments for pay-roll tax, fringe benefits tax, superannuation and pension fund contributions, workers compensation insurance premiums, accident compensation levies and the like.

### Rate of Gross Profit

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

### Rate of Pay-Roll

Rate of Pay-Roll means the rate of Pay-Roll to Turnover during the financial year immediately before the date of the Damage. Adjustments shall be made to the Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Pay-Roll 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.

### Shortage in Turnover

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.

### Standard Turnover

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.



## Turnover

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 Premises including 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.

## Adjustments Clause

Adjustments shall be made to the Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Pay-Roll 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.

## The Indemnity

The Insurer(s) will pay the Insured in accordance with the applicable Basis of Settlement, subject to the Limit(s) and Sub-Limit(s) of Liability stated in the Schedule, against loss resulting from the interruption of or interference with the Business, caused by Damage (not otherwise excluded) covered by Section 1 occurring in the Period of Insurance to:

- (a) any building or any other property or any part thereof used by the Insured at the Premises for the purpose of the Business;
- (b) any property belonging to the Insured or property for which the Insured is responsible, while such property is at any storage premises within Australia or New Zealand or at any situation in Australia or New Zealand where the Insured is undertaking work or has any process or work carried out by others;
- (c) land based premises or property in Australia or New Zealand of any company or authority producing, supplying, providing or delivering electricity, gas, water, sewerage or communication services to:
  - (i) the Insured's Business; or
  - (ii) the Insured's direct suppliers and/or direct customers or the direct supplier of commodities, materials, components, goods or services to any of those parties;
- (d) computer installations, including ancillary equipment and data processing media utilised by the Insured anywhere in Australia or New Zealand;
- (e) property in the vicinity of the Premises which shall prevent or hinder the use of or access to the Premises whether the Premises or any property of the Insured shall be damaged or not;
- (f) property in any complex of which the Premises forms part or in which the Premises are contained which prevents or hinders the use of or access to the Premises, which results in a cessation or diminution of trade of the Business due to temporary falling away of potential custom, whether the Premises or property of the Insured shall be damaged or not;
- (g) roads, bridges and railway lines infrastructure on which the Business depends for the conveyance of goods, property and/or potential customers to and from the Premises. Property Exclusions 10 and 11 are varied to give effect to the indemnity provided by this clause (g);
- (h) property at the premises, anywhere in Australia or New Zealand, of any direct supplier or direct customer of the Insured; or property at the premises of their direct supplier(s) or direct customer(s).

However, this cover does not apply to any claim caused by, arising from or in any way connected with a Natural Disaster to any Situations that are located within the New Zealand regions of Wellington, Canterbury or Marlborough.

The liability of the Insurer(s) under this endorsement, in respect of any one loss or series of losses arising out of any one event or occurrence at any one premises, shall not exceed the amount of the Sub-Limit of Liability stated in the Schedule against Unspecified Suppliers and/or Customers Premises.

For the purposes of this clause, the term “premises of a producer” refers to premises, other than those described in the Public Utilities Extension to Section 2 of the Policy, at which any of the goods or services used directly by the Insured are produced, assembled or stored. The term ‘premises of a merchant’ refers to premises to which the Insured directly provides goods or services.

For the purposes of this clause, the term “Natural Disaster” refers to earthquake, hydrothermal and geothermal activity, natural landslip, subterranean fire, volcanic eruption, tsunami and fires resulting from these perils;

- (i) notwithstanding Property Exclusion 6, registered vehicles and/or trailers whilst such vehicles or trailers are at the Premises owned or occupied by the Insured; provided always that this Policy does not cover loss resulting from physical loss, destruction of or damage to such vehicles and/or trailers whilst they are being used on any public highway or thoroughfare.

Provided that the Insurer(s) will not be liable for any loss under this Section 2 unless:

- (i) the Insured’s property lost, destroyed or damaged is insured against such Damage (loss arising out of destruction or damage by the explosion, implosion, rupture, collapse, bursting, cracking or overheating of any Boiler used for domestic purposes any Boiler, economiser or other Pressure Vessel, including pipes, valves and other apparatus forming part of any of these and in respect of any of which a certificate is required to be issued under the terms of any statute or regulation being excepted from this provision) and the insurer or insurers by which such property is insured shall have paid for or admitted liability in respect of such Damage other than indemnity not applying only because of the application of the Deductible; and
- (ii) in the case of non-owned property which suffers Damage, that Damage must occur in circumstances in which the indemnity would apply as if that property was insured under Section 1 of this Policy, other than indemnity not applying only because of the application of a Deductible. Such Damage being deemed by the Insurer(s) to be Damage to property used by the Insured at the Premises.

## **Basis of Settlement**

Applicable only in respect of those items included in the coverage as stated in the Schedule.

### **Item No. 1 – Loss of Gross Profit**

The insurance under this item is limited to actual 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 actual 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.

- (b) *In respect of Increase in Cost of Working:*

The additional expenditure necessarily and reasonably incurred 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.

Provided that if the estimated value of Gross Profit declared at the commencement of the Period of Insurance is less than eighty per cent (80%) of the sum produced by applying the Rate of Gross Profit to the Annual Turnover (appropriately increased if the Indemnity Period exceeds twelve months) which would have been achieved if the Damage had occurred on the day of commencement of the Period of Insurance, the amount payable hereunder shall be proportionately reduced.

However, this provision shall not apply:

- (a) If the amount of the loss does not exceed ten per cent (10%) of the Insured's declaration of value of Gross Profit on the day of commencement of the Period of Insurance; or
- (b) If the Gross Profit (after the application of the Adjustments Clause) which the Business would have earned in the Indemnity Period had the Damage not occurred is less than eighty (80) percent of the Insured's Declaration of Gross Profit (appropriately increased if the Indemnity Period exceeds twelve (12) months at the commencement of the Period of Insurance); or
- (c) Where the Insured's declaration of Gross Profit at the commencement of the Period of Insurance has been stated in a Valuation prepared by LMI Group, MSM Loss Management, Martin Minett Claims Preparation or a qualified professional approved by the Insurer.

#### **Item No. 2 – (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 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. 3 – Pay-Roll**

When Payroll is not insured under Gross Profit, the insurance under this item is limited to loss in respect of Pay-Roll 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 Schedule: The sum produced by applying the Rate of Pay-Roll 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 Pay-Roll paid.
  - (ii) During the remaining portion of the Indemnity Period: The sum produced by applying the Rate of Pay-Roll 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 Pay-Roll paid; but not exceeding the sum produced by applying the percentage of the Rate of Pay-Roll specified in the 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 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 Shortage in Turnover under the provisions of Clauses (a)(i) and (ii) of this item had such expenditure not been incurred.

Provided that if the estimated value of Insured Pay-Roll declared at the commencement of the Period of Insurance is less than eighty per cent (80%) of the amount produced by applying the Pay-Roll Limits set out in the Schedule to the amount produced by applying the Rate of Pay-Roll to the Annual Turnover (or its appropriately increased multiple if the Indemnity Period exceeds twelve months) which would have been achieved if the Damage had occurred on the day of commencement of the Period of Insurance, the amount payable hereunder shall be proportionately reduced.

This provision shall not apply:

- (a) if the amount of the loss does not exceed ten per cent (10%) of the estimated value of Insured Pay-Roll declared at the commencement of the Period of Insurance; or
- (b) If the value of Insured Pay-Roll Limits (after the application of the Adjustments Clause) in the Indemnity Period is less than eighty (80%) per cent of the Insured's declaration of Pay-Roll at the commencement of the Period of Insurance; or
- (c) Where LMI Group, MSM Loss Management, Martin Minett Claims Preparation or a qualified professional approved by the Insurer.

#### **Item No. 4 – Claim 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, for preparation of claims under the Insured's Material Damage and Business Interruption insurance policies and the Insurer(s) shall indemnify the Insured for such reasonable fees and expenses.

#### **Item No. 5 – Additional Severance pay**

The insurance under this item is limited to such further additional expenditure beyond that recoverable under Item 1 or Item 3 of Section 2 of this Policy 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 – Rent Receivable**

The insurance under this item is limited to the loss of rent receivable which term shall include amounts payable by the tenant as outgoings in accordance with the rental agreement or payable by the tenant for services rendered. The amount payable as indemnity hereunder shall be the amount by which rent (including amounts payable as outgoings or for services rendered) received or payable during the Indemnity Period shall fall short of the amount which it may be reasonably estimated would have been received or paid during that period had the Damage not occurred including the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of rent (including amounts for services rendered and recoverable expenses), less any sum saved during that period in respect of the charges or expenses payable out of rent as may cease or be reduced in consequence of the Damage.

#### **Item No. 7 – Contractual Damages**

The Insurance under this item is limited to fines and/or damages for breach of contract and the amount payable hereunder shall be such sum or sums as the Insured shall be legally liable to pay in discharge of fines and/or damages incurred in consequence of the non-completion or late completion of orders, the inability to meet contract specifications or cancellation or orders.

#### **Item No. 8 – Accounts Receivables**

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 Insurer(s) will also pay:

- (a) interest charges at the Reserve Bank of Australia rates on any loan to offset impaired collections pending repayment of such amounts rendered uncollectible in consequence of the Damage;
- (b) interest lost by the Insured in consequence of such impaired collections;
- (c) additional expenditure necessarily and reasonably incurred in tracing and establishing the amounts of accounts receivable; and
- (d) 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:

- (i) 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.
- (ii) 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.
- (iii) The amount determined under paragraph (i), increased or decreased by the percentage calculated in accordance with paragraph (ii) shall be deemed to be the total amount of accounts receivable outstanding at the time and date of the Damage.
- (iv) The amount determined under paragraph (iii) 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.

## **Memoranda to Section 2**

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

### **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.

### **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.

### **Departmental Clause**

If the Business is conducted in departments or business units 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 or unit affected by the Damage.

### **Infectious or Contagious Diseases; Vermin, Pests or Defective Sanitary Arrangements; Food or Drink Poisoning; Murder, Suicide**

Loss as insured by Section 2 of 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 Insured Premises by order of a competent public authority consequent upon:

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

shall be deemed to be loss resulting from Damage to property used by the Insured at the Insured Premises.

Provided that paragraph (a) will not indemnify loss resulting from interruption of or interference with the Business directly arising from or in connection with Highly Pathogenic Avian Influenza in Humans or any other diseases declared to be quarantinable diseases under the Biosecurity Act 2015 (Cth) and/or any Infectious Notifiable Disease declared under the Health Act 1956 (NZ), including any subsequent amendments.

Indemnity under this endorsement shall not exceed the Sub Limit of Liability per event and in the annual aggregate expressed in the Schedule.

#### **Interdependency – Australia and New Zealand**

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 or New Zealand 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.

Our liability shall not exceed the amount of the Sub-Limit of Liability stated in the Schedule against “Interdependency”.

#### **Isolation by landslide or Flood**

Notwithstanding Property Exclusion 9 and Perils Exclusions 3 and 7(c), any loss resulting from interruption of or interference with the Business in consequence of blockage of roads or railway lines, bridges or tunnels caused by landslide or Flood and which prevents or hinders the use of or access to the Premises shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

#### **New Business**

In the event of Damage occurring at the Premises 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 Pay-Roll” shall bear the following meanings and not as within stated:

##### **Rate of Gross Profit**

The rate of Gross Profit earned on the Turnover during the period between the date of the commencement of the Business and the date of the Damage.

##### **Annual Turnover**

The proportional equivalent, for a period of 12 months, of the Turnover realised during the period between the commencement of the Business and the date of the Damage.

##### **Standard Turnover**

The proportional equivalent, for a period equal to the Indemnity Period, of the Turnover realised during the period between the commencement of the Business and the date of the Damage.

##### **Rate of Pay-Roll**

The rate of Pay-Roll to Turnover during the period between the date of the commencement of the Business and the date of the Damage.

Adjustments shall be made to the Rate of Gross Profit, Annual Turnover, Standard Turnover and Rate of Pay-Roll 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.

#### **Other Contributing Properties**

Any loss resulting from interruption of or interference with the Business in consequence of Damage to any other property (not more specifically mentioned in this Policy) at any situation in Australia or New Zealand not owned or operated by the Insured, but which wholly or partly prevents delivery of materials, goods or services to the Insured and/or to the Insured's customers shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.



### **Prevention of Access – Public Authority Order**

Loss as insured by Section 2 of the Policy resulting from an interruption of the Insured's Business that is caused by any legal authority preventing or restricting access to your Premises or ordering the evacuation of the public as a result of damage to or threat of damage to property or persons within a 50 kilometre radius of any Premises covered by this Policy shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

### **Reduced Margin**

If, in consequence of Damage giving rise to a claim under this Policy, Turnover is maintained at a reduced Rate of Gross Profit, an equitable allowance shall be made for the loss of Gross Profit resulting from an increase in the ratio to Turnover of stock usage or purchases (adjusted for stock variations). No allowance shall be made for an increase in the ratio to Turnover of any other uninsured expenses.

### **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 this Section 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.”*

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

***“Shortage in Turnover***

*Shall mean: The amount by which the Turnover during a period (less the 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 Pay-Roll paid out of the proceeds of the salvage sale.“*

Loss as insured by Section 2 of the Policy resulting from interruption of or interference with the Business due to curtailment of any trade exhibition anywhere in the world in consequence of Damage thereat and/or to property exhibited therein by the Insured shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

Provided that the liability of the Insurer(s) shall be limited to the Sub-Limit of Liability stated in the Schedule of the Policy against “Trade Exhibitions”.

### **Turnover Elsewhere After Damage**

If during the Indemnity Period goods shall be sold or services shall be rendered elsewhere than at the Premises for the benefit of the Business either by the Insured or by 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.

### **Turnover/Output Alternative**

If it gives a more equitable result in determining the actual loss sustained by the Insured, 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 Premises. 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:

(a) 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 Premises 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”.*

(b) the memorandum titled "Accumulated Stocks" shall be altered to read as follows:

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

## Exclusions

### Property Exclusions

This Policy does not cover physical loss, destruction of, or damage to the following property or loss under Section 2 resulting therefrom:

1. Property (except Money) whilst in transit (other than during the movement of such property within situations occupied by the Insured where such property is not otherwise insured). This Exclusion shall not apply during temporary removal of property (other than stock and/or merchandise), including unregistered motor vehicles other than where used as stock and/or merchandise of the Business, to any situation within Australia or New Zealand and whilst at such situation. Whilst such property is in transit (excluding loading, unloading and storage in transit), cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest.

Our liability shall not exceed the amount of the Sub-Limit of Liability stated in the Schedule against "Temporary Removal" for any one loss or series of losses arising out of any one event or occurrence.

For the purposes of Property Exclusion 1, The term 'temporary removal' means removal for a particular purpose, other than insured property out on hire, with the intention that the property be returned to the place from which it has been removed when that purpose has been served.

2. Money:

- (a) whilst being carried by professional money carriers, professional carriers or common carriers which is insured by any person or entity other than the Insured except to the extent of any Damage in excess of the amount of that insurance.

Provided that where in the ordinary course of business the Insured enters into an agreement with 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 of which has been left at the Situation outside Business Hours, unless such key or combination details have been properly secured;
- (d) where the loss is not discovered within fifteen (15) working days of the event;
- (e) where the loss arises out of:
  - (i) kidnapping;
  - (ii) bomb threat;
  - (iii) hoax;
  - (iv) extortion;or any attempt thereat.

3. Jewellery, furs, bullion, precious metals or precious stones other than as stock and/or merchandise of the Business. This exclusion does not apply to jewellery and furs which are the personal property of employees or directors of the Insured where loss or damage occurs at the Insured's premises.

4. 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.
5. 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.
6. 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 premises occupied or used by the Insured.
7. Standing timber, growing crops and pastures.
8. Livestock, animals, birds or fish (other than birds or fish contained in an aviary or aquarium and used solely for decorative purposes where the damage results from a peril or event other than Unspecified Damage covered by his Policy) unless covered a stock in trade of the Business. Our liability shall not exceed the amount of the Sub-Limit of Liability stated in the Schedule against "Decorative Livestock".
9. Land, unmined or unrecovered oil, gas and mineral deposits, provided that this exclusion shall not apply to:
  - (a) structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy;
  - (b) to the cover provided under Memorandum to Section 1 – 'Landscaping' and under clauses p(ii) and p(iii) of The Indemnity.
10. Bridges and tunnels (except where such infrastructure is included as Property Insured at the Premises), roadways (other than driveways, vehicle parking or maneuvering areas and other paved areas at the Premises used or occupied by the insured for the purposes of its business), and canals, dams and reservoirs (other than tanks) and their contents.
11. Railway tracks (other than on the premises occupied or used by the Insured for the purpose of its business).
12. Docks, wharves and piers not forming part of any building.
13. Textile blinds, awnings, shade house and fibre glass houses caused by wind, rainwater or hail.
14. Property in the open air other than stated above in Exclusion 13 caused by wind, rainwater or hail, unless such property comprises or forms part of the permanent structure designed to function without the protection of walls or roof.
15. Mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy.
16. Property as a result of, its processing unless the physical loss destruction or damage results from an intervening cause not otherwise excluded under this Policy.
17. (a) Property included in a project of construction, erection, alteration or addition, including the partial dismantlement of existing structures, where the total contract value of all work to be carried out at any one situation during such activity exceeds \$2,000,000. Provided that this Exclusion 17(a) shall apply only to the works comprising such construction, erection, alteration or addition and not to any original or existing structures;
- (b) Empty premises upon which demolition work has commenced.
18. Oil and gas drilling and/or production rigs whilst offshore.
19. 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 or non-operation of whatsoever kind.

Provided that Property Exclusion 19 shall not apply to any subsequent loss, destruction of or 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 19, "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 but does not include a boiler, economiser or other pressure vessel including pipes, valves and other apparatus thereof.

## Perils Exclusions

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

1. Physical loss, destruction of or damage to the Property Insured caused directly or indirectly, occasioned by or happening through or in connection with:
  - (a) war, invasion, act of foreign enemies, hostilities or war like operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power;
  - (b) any Act of Terrorism;
  - (c) confiscation, nationalisation, requisition or damage to property by or under the order of any Government or Public or Local Authority unless such order involves the demolition of property deemed unsafe following damage by any peril not otherwise excluded by this Policy.

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

Notwithstanding 1(c) above, the Insurer(s) will indemnify the Insured for loss, destruction, damage, cost or expense to Property Insured and for the reasonable cost of removal of sound property including Damage resulting from such removal, in each case for the purpose of preventing or diminishing imminent Damage by, or inhibiting the spread of, fire or any other cause not excluded under this Policy;

2. Physical loss, destruction of or damage to the Property Insured, or any legal liability of whatsoever nature directly or indirectly caused by or contributed to or arising from:
  - (a) ionising radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;
  - (b) nuclear weapons materials;

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

This exclusion does not apply to any radiations emitted by spectrometers, x-ray units, diathermy machines, equipment for radio and television broadcasting, telecommunications equipment, radar installations or industrial and commercial appliances used for sealing plastics or for welding, heating, drying and cooking.

3. Physical loss, destruction or 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 loss, destruction or damage is caused by or arises out of:

- (i) an earthquake or seismological disturbance or seismological disturbance; or
- (ii) cyclone or storm and tempest having a wind force scale 11 or greater on the "Beaufort Scale of Wind Force";

4. Physical loss, destruction or damage to Property Insured due to:
  - (a) smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom) moths, termites or other insects, vermin, rust or oxidation, mildew, mould, wet or dry rot, corrosion, change of colour, dampness of atmosphere;
  - (b) variations in temperature, evaporation, disease, inherent vice or latent defects, loss of weight, change in flavour texture or finish,
  - (c) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good;
  - (d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration
  - (e) error or omission in design, plan or specification or failure of design;
  - (f) faulty materials or faulty workmanship provided that this exclusion shall not apply to Boiler Explosion and/or Boiler Collapse not otherwise excluded.

Provided that:

- (i) Exclusions 4(a) to 4(d) shall not apply where the circumstance listed therein is caused by or results from the operation of a peril or event covered by this Policy;
  - (ii) the Insurer(s) will indemnify the Insured for any loss, destruction of or damage to Property Insured occasioned by a peril (not otherwise excluded) notwithstanding that such loss, destruction of or damage may in turn have been caused by circumstances listed Exclusions 4(a) to 4(f);
5. Physical loss, destruction or damage occasioned by or happening through:
- (a) incorrect siting of building consequent upon:
    - (i) error in architectural design or specification;
    - (ii) faulty workmanship; or
    - (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. Physical loss, destruction or damage to any boiler, economiser or other pressure vessels including pipes, valves and other apparatus thereof consisting of or caused by:
- (a) cracks, fractures, blisters, laminations, flaws or grooving even when accompanied by leakage or damage to tubes, headers or other parts of the plant caused by over-heating or leakage at seams, tubes or other parts of the plant;
  - (b) slowly developing deformation or distortion of any part of the plant;
  - (c) wearing away or wasting of the material of the plant whether by leakage, corrosion or by action of the fuel or otherwise;
  - (d) failure of joints;
  - (e) mechanical malfunction or breakdown;

Provided that the Insurer(s) will cover subsequent loss, destruction of or damage to such plant and Property Insured including boiler explosion resulting therefrom, excepting where at the time of the explosion or collapse:

- (i) The pressure plant was being subject to a hydraulic test and the damage was occasioned thereby; or
  - (ii) The load on the safety valve or safety valves of the pressure equipment was in excess of the manufacturer's specifications or the load permitted by the latest certificate issued in accordance with the Boiler Inspection Regulations; or
  - (iii) Any safety valve limiting the pressure is removed or rendered inoperative;
  - (iv) Where certificates of inspection are required by a Government Department for the operation of such equipment and the item of plant was not so certified
7. Physical loss, destruction or damage occasioned by or happening through:
- (a) Theft of property in the open air.
- Provided further that the Insurer(s) will indemnify the Insured for:
- (i) Theft of money in transit;
  - (ii) Theft or attempted Theft or parts of the building or fixed plant in the open air; or
  - (iii) any Damage to Property Insured caused directly by any circumstances not excluded under Section 1 of this Policy, notwithstanding that these circumstances may in turn have been occasioned by or happening through 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) spontaneous combustion;
- (d) spontaneous fermentation or heating or any process involving the direct application of heat.

Provided that Perils Exclusions 7(c) and 7(d) shall be limited to the item or 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;

8. Physical loss, destruction or 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 7(a) shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of the Insured.

Provided further that the term "dishonest acts", in relation to any of the Insured's employees, shall not be deemed to mean acts of arson or vandalism for the purposes of this exclusion;

- (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 8(b)(i) and 8(b)(ii) shall not apply in respect of physical loss, destruction or damage directly caused by strikers, locked out workers or similar persons;

- (c) erosion, subsidence, earth movement or collapse resulting therefrom.

Provided that this Exclusion 8(c) shall not apply if damage is caused by or arises out of an earthquake, seismological disturbance, cyclone, storm and tempest having a wind force of scale 11 or greater on the "Beaufort Scale of Wind Force", Flood or water escaping from a water main owned by a water supply authority or company;

- (d) kidnapping, bomb threat, threat of Contamination, hoax, extortion or any attempt thereat.; Provided that this exclusion shall not apply to loss caused by hold-up and/or theft or any attempt thereat.

Provided that Exclusions 8(a) to (d) shall not apply to subsequent loss, destruction or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion;

9. Any legal liability of whatsoever nature other than as herein provided;

10. 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 herein provided in Section 2.

11. Pollution or Contamination, except where directly arising from damage to property or any part thereof used by the Insured at the Premises for the purpose of the Business, which is sudden, unexpected and accidental and results from an insured peril or event covered by this Policy, and where otherwise provided under clauses (p)(ii) and p(iii) of 'The Indemnity'.



# Exclusions Applicable to all Sections

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

## 1. **Electronic Data**

Physical loss, destruction, or damage occasioned by or happening through:

- (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;
- (c) Total or partial inability or failure to receive, send, access or use Electronic data for any time or at all from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

Electronic Data means any facts, concepts and/or information converted to a form usable for communications and/or displays and/or distribution and or processing by electronic and/or electromechanical data processing and/or electronically controlled equipment which includes but is not limited to programs and/or software and/or other coded instructions for such equipment.

However, in the event that a peril listed below (being a peril caused by this Policy but for this exclusion) is caused by any of the matters described in paragraph (a) above, this Policy, subject to all its provisions, will insure physical loss of or damage or destruction to Property Insured directly caused by such listed peril, and/or consequential loss insured by this Policy.

Further this Exclusion does not apply in the event that a peril listed below (being a Peril insured by this Policy but for this exclusion) causes any of the matters described in paragraph (a) above:

Unspecified Damage (other than non-physical damage) Fire, Explosion including the explosion or collapse of any Boilers and/or Pressure Vessels, Implosion, Collapse, Lightning, Storm and Tempest, Windstorm, Hail, Tornado, Cyclone, Hurricane, Earthquake, Volcano, Tsunami, Flood, Freezing, Weight of Snow, Impact by Meteorite, Aircraft and/or other aerial devices and/or other debris or objects dropped therefrom, Sonic Boom, Impact by any Road Vehicle or Animal, the Acts of Persons taking part in Riots or Civil Commotions or of Strikers, Locked out Workers or the acts of Other malicious Persons, Rainwater, Water or other Liquids or Substances Bursting Overflowing Discharging or Leaking from Apparatus or Pipes or other Systems at the Premises or elsewhere, or Theft of Electronic Data solely where such Theft is accompanied by Theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data.

For the purposes of the basis of Settlement provision in this Policy, computer system records include Electronic data as defined above.

Any terrorism exclusion in this Policy or any endorsement thereto prevails over this exclusion.

## 2. **Sanction Regulation**

Payment of any claim or to provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would contravene any sanction prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom the United States of America, Australia or New Zealand.

# Memoranda Applicable to all Sections

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

## 1. Acquired Property and Companies

This Policy extends to include:

- (a) property located in Australia or New Zealand acquired by the Insured for the purpose of the Business; or
- (b) property located in Australia or New Zealand belonging to companies and other organisations in which a controlling interest in which is acquired by the Insured during the Period of Insurance provided that the business of the acquired companies or organisations is similar to the Business of the Insured stated in the Schedule. A controlling interest in the case of a company means the acquisition of shares carrying more than 50% of votes capable of being cast at a general meeting of all shareholders in the company;
- (c) property located in Australia or New Zealand for Damage to which such companies or other organisations are legally responsible or for which they have assumed responsibility to insure prior to the occurrence of any Damage; and
- (d) any loss suffered by any such companies or organisations which is the subject of indemnity under Section 2 of this Policy.

The Insured must, within sixty (60) days of acquisition, declare in writing to the Insurer(s):

- (i) the name of the company or other organisation and the nature of its business;
- (ii) the nature and extent of the property to be insured;
- (iii) the value of the indemnity provided, calculated in accordance with the relevant basis of settlement clauses; and
- (iv) must pay any additional premium required and comply with any reasonable directions of the Insurer(s) with respect to the security or safety of that property.

All such property shall be Property Insured for the purpose of the Adjustment of Premium Memorandum and the Insured shall make declarations with respect to it accordingly and with respect to the indemnity provided under Section 2.

## 2. Adjustment of Premium

(a) The Premium shown is provisional and is calculated on the Declared Values of:

- (i) Property Insured;
- (ii) Gross Profit and Insured Pay-Roll;

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:

- (i) the value of the 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 Pay-Roll 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;

The Insured shall also make such declarations to the Insurer(s) under paragraph (b)(i) in respect of acquisitions of Property Insured, provided that no such declaration shall be required upon acquisition when the value of the acquisition does not exceed the amount stated in the Schedule against "Declarations of Acquired Property".

Notwithstanding the acceptance of a total variation in the Declared Values up to the amount stated in the Schedule of the Policy against "Declaration of Acquired Property" under Sub-Limit(s) of Liability, Section 1: Material Damage, nothing here shall be construed as automatically noting or providing an increase in the Limit of Liability under the Policy.

- (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 percent (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.
- (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 loss, destruction or damage in respect of which a claim has been paid or is payable under this Policy.
- (f) If any claim paid or payable under Section 1 and/or 2 of the Policy in respect of Damage occurring during the period of insurance is reduced due to under-insurance in accordance with the provisions of a Co-insurance or Average clause or clauses, the insurer(s) shall waive any additional premium for that period of insurance, which would otherwise be payable in accordance with this memorandum.

### **3. Amount of Policy not Reduced by Loss**

Unless the Insured requests otherwise, the Insurance under each section and/or item of this Policy and the Indemnity Period shall be automatically reinstated in the event of any loss in consideration of the payment by the Insured upon request by the Insurer(s) of a pro-rata additional premium calculated on the amount of the loss settlement at the rate(s) agreed for the Period of Insurance.

Provided that automatic reinstatement shall not apply in respect of any Limit or Sub-Limit of Liability stated to be in the annual aggregate during any one Period of Insurance unless agreed in writing by the Insurer(s).

### **4. Event**

Only for the purpose of the application of any Deductible: all loss, destruction or damage resulting from earthquake, volcanic eruption, subterranean fire, bushfire or atmospheric disturbance occurring during each period of seventy-two (72) consecutive hours shall be considered as one event whether continuous or sporadic in its sweep and/or scope and whether the loss, destruction or damage was due to the same seismological or meteorological conditions. Each event shall be deemed to have commenced on the first happening of any such loss, destruction or damage not within the period of any previous event.

### **5. Goods & Services Tax**

Where settlement is made under Section 1 of this Policy wholly or partly by way of:

- (a) Payment for the acquisition of goods, services or other supply;
- (b) Payment for compensation instead of payment for the acquisition of goods, services or other supply, the Insurer shall reduce the settlement amount by:
  - (c) The amount of any input tax credit that the Insured is or will be entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to the acquisition of such goods, services or supply;
  - (d) The amount of any input tax credit that the Insured would be entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the monetary compensation been applied to acquire such goods, service or supply.

**6. Incidental Contracts**

The Insured may, without prejudicing its position under this Policy:

- (a) release any statutory governmental, semi-governmental or municipal authority from any liability if required by any contract to do so;
- (b) agree to enter into a contract for storage of goods or merchandise even if the terms of the contract include a disclaimer clause; and
- (c) agree to enter into a lease for occupancy of any building or part of a building or a lease or hiring of property where the terms of the lease or hiring include a disclaimer clause in favour of the lessor or the owner.

**7. Subrogation Waiver**

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

Any party described in the Memorandum to Section 1 headed "Interests of Other Parties" unless the Insured expressly agrees to the pursuit of recovery action against that party.

# Conditions Applicable to all Sections

## 1. Alteration

Subject to Section 54 of the Insurance Contracts Act 1984, 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 Premises other than as provided under the terms of Property Exclusion 1;
- (b) in the trade or processes of manufacture carried on at the Premises or whereby the nature of the occupation or other circumstances affecting the Premises and/or the Insured's property therein contained shall be changed in such a way as to increase the risk of loss, destruction or damage;
- (c) whereby any premises containing any Property Insured hereunder shall become unoccupied, and so remain for a period of more than sixty (60) 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.

Provided further that paragraphs (a) and (b) of this Condition 1 shall not apply if such alteration(s) are neither known to nor made by an officer of the Insured who is responsible for Insurance.

## 2. Breach of Conditions

Any breach of condition or any unintended and/or inadvertent error, omission or misdescription of the risk, interest or Property Insured under the Policy, failure to advise the Insurer(s) of any change of risk, interest or Property Insured or failure to comply with any statutory requirement without the knowledge or consent of the Insurance Officer of the Insured shall not prejudice or invalidate this insurance, provided that the Insured's Insurance Officer responsible for insurance shall, upon becoming aware of any such breach of Condition or unintended and/or inadvertent act, error or omission, inform the Insurer(s) as soon as reasonably practicable and that the Insured shall, upon request, pay any reasonable extra premium to the Insurer(s) from the date of the increase in risk.

## 3. Cancellation

- (a) This Policy may be cancelled at any time at the request of the Insured, in which case the Insurer(s) will be entitled to a pro rata proportion of the premium, subject to any adjustment in accordance with the Adjustment of Premium Memorandum, 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 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) 4:00pm 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.

#### **4. 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, subject to the provisions of the Insurance Contracts Act 1984, be entitled to refuse to pay such claim.

#### **5. Headings**

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

#### **6. 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, including reporting the matter to the police and any other responsible authority.

#### **7. Insurer(s) Rights**

On the happening of any loss, destruction or 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 admitting 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 premises where the loss, destruction or 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 anyone 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.

#### **8. Misrepresentation and Non-Disclosure**

If the Insured:

- (a) failed to disclose any matter which the Insured was under a duty to disclose 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.



**9. Notification of Claims**

On the happening of any loss, destruction or damage, the Insured shall forthwith give notice thereof in writing to the Insurer(s) and shall as soon as reasonable practicable deliver to the Insurer(s) a claim, in writing containing as particular an account as may be reasonably practicable of the items of property lost, destroyed or damaged and of the amount of Damage having regard to their value at the time this occurred and of the amount of any claim under Section 2 of this Policy, together with details of any other insurances which may also afford the Insured an indemnity against such damage and/or loss.

The Insured shall use due diligence and do and concur in doing all things reasonably practicable to minimise any interruption of or interference with the Business or to avoid or diminish the loss and shall also 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.

No claim under this Policy shall be payable unless the Insured has complied with the terms of this condition.

**10. Observance of Terms and Conditions**

The due observance and fulfilment of these Conditions and the other terms of this Policy by the Insured, insofar as the same are capable of being construed as such, are conditions precedent to any liability of the Insurer(s) to make any payment under this Policy.

**11. Precautions to Prevent Loss**

The Insured shall take all reasonable precautions to prevent loss, destruction or damage to the Property Insured by this Policy.

**12. Progress Payments**

Provided that liability has been admitted, 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.

**13. Proper Law**

The Insurer and the Insured hereby submit to the jurisdiction of all Australian Courts in relation to all matters arising under this Policy.

**14. 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 of Liability.

**15. Sprinkler Installations**

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

Where Premises are protected or 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 Premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

The Insured undertakes that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS1851 (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.

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.

Where the sprinklered Premises are 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.

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 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 loss, destruction or 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 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).

## **16. 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) Notwithstanding Section 67 of the Insurance Contracts Act 1984 (Cth), unless a specific Subrogation Agreement is entered into by the parties, monies recovered in subrogation proceedings whether effected by the Insurer(s) or the Insured shall be applied, net of the expense of such recovery:
  - (i) first to the satisfaction of the Insured's loss in excess of the claim paid under this Policy (disregarding the amount of any Deductible applicable);
  - (ii) second to the Insurer(s) in reimbursement of the amount(s) paid in settlement of the Insured's claim;
  - (iii) third to the Insured in satisfaction of any Deductible amount applicable; and
  - (iv) any excess amount remaining will be disbursed to the Insured.
- (c) Nothing contained in this Condition shall prevent the Insurer(s) and the Insured entering into a specific agreement for insured and uninsured losses following a claim under this Policy, in which both parties agree to share legal costs, expenses and the allocation of monies recovered on a different basis.

## **17. Termination of Cover under Section 2**

If during the currency of the policy the Insured:

- (a) permanently discontinues or ceases to carry on the Business or if the Insured's proprietary interest in the Business ceases otherwise than by death; or
- (b) (being a corporation) is placed in liquidation, provisional liquidation, under official management, under the control of a receiver and manager or if control over its assets is assumed by a receiver; or
- (c) (being a natural person) becomes bankrupt;

then the insurance under Section 2 shall cease unless its continuance is admitted in writing by the Insurer(s). Such termination of cover shall not apply if any of the events stated in clauses (a), (b) or (c) are caused by loss, insured by Section 2 of the Policy, resulting from interruption of or interference with the Business in consequence of Damage to property used by the Insured at the Premises.

# Optional Endorsements Applicable to this Policy

Endorsements listed in this part shall only apply to the Policy when requested by the Insured and are subject to the Insurer(s) agreement to underwrite the additional risk and the Insured's undertaking to pay the additional premium required by Insurer(s).

Those Optional Endorsements included in the indemnity and the Sub-Limit(s) of Liability applicable will be stated in the Schedule.

For the avoidance of doubt, any conflict between the printed words of the Policy and the wording of any Optional Endorsement will be decided in the Insured's favour.

## 1. Flood

Paragraph (a) of Perils Exclusion 3 is deleted.

## 2. Royalties Receivable

Loss of royalties' receivable in consequence of Damage to property at the specified premises anywhere in the world of any company, firm or person identified in the Schedule against 'Royalties Receivable' shall be loss resulting from Damage to property used by the Insured at the Premises.

## 3. Fusion

The Policy extends to indemnify the Insured against loss, destruction of or damage to switchboards and electrical sub-stations at the Situation and resultant damage to Property Insured caused by electrical current artificially generated. Property Exclusion 19 shall not apply to the cover granted by this memorandum.

The Insurer(s) shall not be liable under this endorsement for:

- (a) loss of use, depreciation, wear and tear.
- (b) loss, destruction of or damage to:
  - (i) lighting or heating elements, fuses or protective devices;
  - (ii) electrical contacts at which sparking or arcing occurs in ordinary working.

## 4. Unspecified Suppliers' and/or Customers' Premises – (World Wide) – Item 9

Notwithstanding anything contained in this Policy to the contrary, loss resulting from interruption of or interference with the business in consequence of Damage (as herein defined) to property at any situation anywhere, which affects any direct supplier and/or direct customer of the Insured shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises. The liability of the Insurer(s) under this endorsement, in respect of any one loss or series of losses arising out of any one event or occurrence at any one premise's, shall be limited to the Sub-Limit of Liability stated in the Schedule, in respect of any one loss or series of losses arising out of any one event or occurrence.

It is understood and agreed that:

- (a) Supplier is any person, body or entity from which the Insured obtains supplies of commodities, material, components, goods or services other than those services referred to under the Utilities Extension;
- (b) A customer is a person, body or entity to which the Insured supplied or provides commodities, materials, components, goods or services;
- (c) Suppliers and customers based in the following countries are excluded:

Afghanistan, Albania, Algeria, Angola, Armenia, Azerbaijan, Belarus, Benin, Botswana, Burkina-Faso, Republic of Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Republic of the Congo, Democratic Republic of the Congo, Crimea/Sevastopol district (formerly part of the Ukraine), Cuba, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Georgia, Haiti, Iran, Iraq, Ivory Coast, Kazakhstan, Kenya, Kyrgyzstan ( Kirghizia), Laos, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mayotte, Moldova, Mongolia, Montenegro, Mozambique, Myanmar (Burma), Namibia, Republic of Niger, Nigeria, Democratic People's Republic of Korea (North Korea), Pakistan, Palestine, Reunion, Rwanda, Sao Tomé and Príncipe, Senegal, Sierra Leone, Somalia, Republic of South Sudan, Republic of Sudan, Swaziland, Syria, Tajikistan, Tanzania, Tibet, Togo, Turkmenistan, Uganda, Uzbekistan, Western Sahara, Republic of Yemen, Zambia, Zimbabwe.

It is understood and agreed that the following peril exclusions will apply to overseas customers and suppliers:

- (i) Flood in locations outside the Commonwealth of Australia;
- (ii) Hurricane, Cyclone or Typhoon occurring on all countries;
- (iii) Earthquake, volcanic eruption and resultant fire damage occurring in the USA, Greece, Italy, Japan, Turkey, Malaysia, Caribbean, Mexico, Jordan, Lebanon, Chile, Venezuela, Argentina, Colombia, Costa Rica, El Salvador, Ecuador, New Zealand, Taiwan, India, Pakistan, Philippines, Indonesia, People's Republic of China, Philippines and Vietnam;
- (iv) National Catastrophes in France, Norway, Spain and Spanish Territories;
- (v) Storm Surge in Germany (Sturmflut)/Foreseeable flooding.

**5. Gross Rental Specification – Item 10**

Gross Rental Specification will be shown as Item 10 in the Schedule when included in the insurance.

In interpreting cover under Section 2, this Endorsement assumes that the indemnity for Gross Rentals Specification replaces and is in substitution for Item 1 of Section 2 and is to be interpreted accordingly.

Where Section 2 of the Policy also includes cover for loss of Gross Profit under Items 1 of the Policy the original provisions and Definitions in the base wording shall apply with full force and effect to claims that relate to settlements under Items 1.

The following clauses are deleted from the Policy:

- Item No. 1 (Loss of Gross Profit)
- Item No. 3 (Pay-Roll)

Definitions of:

- Gross Profit
- Turnover
- Pay-Roll
- Shortage in Turnover
- Rate of Gross Profit
- Annual Turnover
- Standard Turnover
- Rate of Pay-Roll

Memoranda entitled:

- Accumulated Stocks
- Departmental Clause
- New Business
- Salvage Sale
- Turnover elsewhere after the Damage
- Turnover/Output Alternative

and replaced by the following clauses:

### **Item No. 1**

The Insurance under this Item is limited to loss of Gross Rentals due to a Reduction in Gross Rentals and an Increase in Cost of Working and the amount payable as indemnity thereunder shall be:

- (a) in respect of reduction in Gross Rentals: The amount by which the Gross Rentals during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Gross Rentals;
- (b) in respect of Increase in Cost of Working: The additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Gross Rentals which but for that expenditure would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the loss of Gross Rentals thereby avoided;

less any sum saved during the Indemnity Period in respect of such charges and expenses of the Business as may cease or be reduced in consequence of the Damage.

Provided that if the estimated value of Gross Rentals declared at the commencement of each Period of Insurance is less than 80% of the Annual Gross Rentals (or the appropriate multiple if the Indemnity Period exceeds twelve months), the amount payable hereunder shall be proportionately reduced.

This provision shall not apply:

- (i) if the amount of the loss does not exceed 10% of the value of Annual Gross Rentals declared at the commencement of the Period of Insurance; or
- (ii) where the Insured's declaration of Gross Rent receivable at the commencement of the Period of Insurance has been stated in a Valuation prepared by LMI Group, or by a qualified professional approved by the Insurer(s).

### **Definitions applicable to this endorsement**

**Gross Rentals:** The money paid or payable to the Insured by tenants or paid by the tenant to others as outgoings under the terms of the rental agreement for rental of the premises and for services rendered by or on behalf of the Insured.

**Standard Gross Rentals:** The Gross Rentals during that period in the (12) twelve months immediately before the date of the Damage which corresponds with the Indemnity Period.

*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.*

**Annual Gross Rentals:** The Gross Rentals earned during the twelve (12) months immediately before the commencement date of the Period of Insurance.

### **Memoranda**

**Gross Rentals elsewhere after Damage:** If during the Indemnity Period the Business shall be conducted elsewhere than at the Premises, the Gross Rentals derived from such other premises shall be brought into account in arriving at the Gross Rentals 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 No. 1 shall apply separately to each department affected by the Damage.

**New Business:** In the event of Damage occurring at Premises before completion of the first year's trading of business, the terms "Standard Gross Rentals" and "Annual Gross Rentals" shall bear the following meanings and not as within stated:

**Standard Gross Rentals:** The proportional equivalent for a period equal to the Indemnity Period, of the Gross Rentals realised during the period between the commencement of the Business and the date of the Damage.

**Annual Gross Rentals:** The proportional equivalent, for a period of twelve (12) months of the Gross Rentals realised during the period between 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.*

**Premium Adjustment Memoranda – Gross Rentals**

The following alteration is made to the Premium Adjustment Memorandum:

It is agreed that the words “Gross Rental” shall be substituted for “Gross Profit” in the provisions that relate to the ‘Adjustment of Premium’ in ‘Memoranda Applicable to All Sections’.

**6. Additional Increase in Cost of Working – Gross Rentals – Item 11**

Where this additional coverage is required this cover will be included in Section 2 as Item 11 in the Schedule.

**Item 11: Additional Increase in Cost of Working – Gross Rentals**

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 in consequence of the Damage for the purpose of avoiding or diminishing reduction in Gross Rentals and/or maintaining normal operations and/or services.

**Working Expenses Insured for a Percentage of Fixed Sum**

When calculating the Insured’s claim entitlements, it is agreed that the Rate of Gross Profit shall exclude all figures for Uninsured Working Expenses including those insured for a percentage or fixed sum. The latter Working Expenses shall be known as “Partially Insured Working Expenses”.

Claims for “Partially Insured Working Expenses” when insured by the Policy will be calculated separately in accordance with the following example:

Rate of Gross Profit for Partially Insured Working Expenses multiplied by the Shortage in Turnover		\$A
Less savings in the Partially Insured Working Expenses during the Indemnity Period i.e.		
Pre-damage payment value in the corresponding period	\$	
Less post-damage payment value in the Indemnity Period	\$	\$B
Actual Gross loss applicable to Partially Uninsured Working Expenses		\$A – B

Insured Limit: The amount payable not to exceed the insured percentage or fixed sum applicable to the Partially Insured Working Expenses as shown in the Schedule.



### Example

(After the application of the Adjustments Clause to provide for trends and other circumstances affecting the business during the Indemnity Period)

#### Financial information

• Partially Insured Working Expenses insured percentage	=	10%
• Annual Turnover	=	\$1,000,000
• Turnover in the Indemnity Period	=	\$100,000
• Shortage in Turnover	=	\$900,000
• Gross value of Partially Insured Working Expenses in last Financial Year	=	\$200,000
• Rate of Partially Insured Working Expenses to Turnover	=	20%
• Partially Insured Working Expenses expenditure in Indemnity Period	=	\$35,000

#### Claim Adjustment

(a) Rate of Gross Profit for the Partially Insured Working Expense multiplied by the Shortage in Turnover	=	\$180,000 A
(20% X \$900,000)		
(b) Less Savings in the Partially Insured Working Expense during the Indemnity Period, i.e.:		
(i) Pre-damage payment value in the corresponding period	=	\$200,000
(ii) Less post-damage payment value in the Indemnity Period	=	\$35,000      \$165,000 B
(c) Actual Gross loss applicable to Partially Insured Working Expenses	=	\$15,000 A-B

Insured Limit – The Amount payable is not to exceed 10% of (a) or the Fixed Sum when applicable, viz., 10% of \$180,000 (A).

The loss of \$15,000 falls within the Insured limit of \$18,000 and is payable in full.

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