

Product Disclosure Statement and Policy Wording

Plant & Machinery



Issued by ATC Insurance Solutions Pty Ltd ("ATC")
(ABN 25 121 360 978, AFS Licence No. 305802)
acting under a binder as an agent of certain
underwriters at Lloyd's ("Lloyd's")

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PRODUCT DISCLOSURE STATEMENT

ABOUT THE PRODUCT DISCLOSURE STATEMENT

This Policy document is also a Product Disclosure Statement (PDS). A PDS is a document required by the Corporations Act 2001 and contains information designed to help the Insured decide whether to buy it.

It will help the Insured:

- decide whether this insurance will meet their needs; and
- compare it with other products the Insured may be considering.

The Policy provides a number of covers which may or may not be provided to the Insured as a retail client under the *Corporations Act 2001* (Cth) depending on their circumstances. Only the parts of the Policy document relevant to cover provided to the Insured as a retail client and any other documents which We tell the Insured are included, make up the PDS for the purposes of the Act.

It is up to the Insured to choose the cover they need. We and Our representatives do not advise the Insured on whether the Policy is specifically appropriate for their objectives, financial situation or needs, the Insured should carefully read this document before deciding.

This PDS was prepared on 23 June 2021.

You should keep this PDS in a safe place for future reference, such as at the time of a claim.

We may update the information contained in this PDS when necessary. We will issue the Insured with a new PDS or a Supplementary PDS, except in limited circumstances. Where the information is not something that would be materially adverse from the point of view of a reasonable person deciding whether to acquire this insurance We may issue the Insured with a copy of any updated information in other forms or keep an internal record of such changes. You can get a paper copy of any changes free of charge by contacting ATC.

ABOUT THE INSURER

This insurance is underwritten by certain Underwriters at Lloyd's whose definitive numbers and the proportions underwritten by them, will be supplied on application. In consideration of the premium specified in the Schedule, the said underwriters are hereby bound, severally and not jointly, each for his own part and not one for another, their executors and administrators, to insure in accordance with the terms and conditions contained herein or endorsed hereon. The Insurers are referred to in the Policy as "We", "Our" and "Us" or "Insurers".

ABOUT ATC

The Policy is issued by ATC Insurance Solutions Pty Ltd (ATC) ABN 25 121 360 978 AFSL 305802 acting under a binder as Our agent on Our behalf, and not of the Insured or You.

ATC can be contacted as follows:

ATC Insurance Solutions Pty Ltd
Level 4, 451 Little Bourke Street
Melbourne VIC 3000
Telephone: 03 9258 1777
Facsimile: 03 9867 5540
Website www.atcis.com.au

FEATURES & BENEFITS

The following is a limited summary only of the significant features and benefits available under the Policy. Cover is subject to terms, exclusions, limitations and conditions that are not listed in the summary so please read the cover sections and the Policy to properly understand the cover provided.

There are three different Sections of cover available under the Policy. You are not automatically insured under each Section. Only those sections that We have agreed to provide will be operative where shown in the Schedule as “Insured”. The Sections that are not covered will be shown in the Schedule as “Not Insured”.

Section 1: Material Damage

Section 1 of the Policy provides cover for Physical Damage (including damage caused by Flood unless We tell You otherwise) which occurs during the Period of Insurance and within the Territory Limits shown in the Schedule to plant, Machines and Registered Insured Property (including motor Vehicles) that are listed in the Schedule as Insured Property.

We will pay up to the Sum Insured towards the cost of repairs or replacement of the Insured Property subject to a maximum amount not exceeding the Sum Insured for all Insured Property any one Event. Refer to Section 1.4 – Basis of Settlement for further details on the amount We may pay in specified circumstances.

Cover also includes a number or Automatic Extensions as outlined in Section 1.2 and Optional Extensions as outlined in Section 1.3 can be applied for if required. Any Optional Extensions will only be covered if these are shown as “Insured” on the Schedule.

Section 2: Road Risk Liability

Section 2 of the Policy provides cover for compensation which You become legally liable to pay to a third party for Property Damage and/or Personal Injury happening during the Period of Insurance as a result of an Occurrence which arises from the use of Registered Insured Property (including motor Vehicles) anywhere within the Commonwealth of Australia.

We will pay up to a maximum of the Limit of Indemnity specified in the Schedule.

Cover also includes a number or Automatic Extensions as outlined in Section 2.2.

Section 3: Broadform Liability

Section 3 of the Policy provides cover for compensation which You become legally liable to pay to a third party for:

- Property Damage, Personal Injury or Advertising Liability which arises out of Your Business; or
- Property Damage or Personal Injury which arises from Products,

happening during the Period of Insurance as a result of an Occurrence anywhere within the Territory Limits.

We will pay up to a maximum of the Limit of Indemnity specified in the Schedule.

Cover also includes a number or Automatic Extensions as outlined in Section 3.2 and Optional Extensions as outlined in Section 3.3 can be applied for if required. Any Optional Extensions will only be covered if these are shown as “Insured” on the Schedule.

OTHER MATTERS TO CONSIDER BEFORE TAKING OUT THIS INSURANCE

Like all insurance contracts, the Policy contains restrictions, exclusions, limitations, terms and conditions that the Insured should be aware of when considering whether to purchase this product. The following is a limited summary only of some of these provisions so please read the cover sections and the Policy to properly understand the cover provided.

Restrictions and Exclusions

The Policy contains certain restrictions and exclusions that limit the cover provided.

There are General Exclusions which apply to the whole policy. In addition to the General Exclusions there are also Specific Exclusions that apply to a cover Section and Additional Exclusions that apply to specific covers within a Section of the Policy.

The Policy exclusions are listed in Section 5 of the Policy and include:

- General Exclusions applicable to all Sections;
- Specific Exclusions applicable to Section 1 only;
- Specific Exclusions applicable to Section 2 & 3 only;
- Additional Exclusions to Section 2 - Road Risk Liability only;
- Additional Exclusions to Section 3- Public Liability only; and
- Additional Exclusions to Section 3-Products Liability only.

Conditions

The Policy has a number of terms and conditions that You must comply with. If You do not comply with a term or condition of the Policy this may entitle Us to decline or reduce any claim payment and/or cancel Your Policy.

These conditions are listed in Section 7 of the Policy and include:

- General Conditions applicable to the whole Policy;
- Additional Conditions to Section 1 only; and
- Additional Conditions applicable to Sections 2 & 3 only.

Excess

When You make a claim under the Policy You may be asked to pay an Excess. This is the amount You contribute towards the cost of Your claim.

The amount and description of the Excess and circumstances in which they are applied are outlined in the Policy and in the Schedule.

The Excess is payable for each claim unless We tell You otherwise, and until You have paid all Excesses that apply We may not be able to finalise Your claim.

Premium

When calculating the premium, We take into consideration a number of factors, including but not limited to the type of Insured Property covered, the Sum Insured of the Insured Property and the experience levels of the Operator(s).

The premium is also subject to Commonwealth and State taxes and charges including GST, stamp duty and emergency or fire services levy (as applicable).

When the Insured applies for this insurance We will advise them of the total amount payable, when it needs to be paid and how it can be paid. This amount will be set out in the Schedule, which will be sent to the Insured after the entry into the Policy. If the Insured fails to pay the premium by its due date We may be entitled to reduce or refuse any claim payment and/or cancel the Policy.

Cooling off period

The Insured has 14 days after the Policy has commenced to decide if the Policy meets their needs. The Insured may exercise their cooling off right by advising Us directly or via their insurance broker or intermediary that they wish to cancel the Policy.

If the Insured does this, We will refund any Premium paid during the cooling off period provided that You have not exercised any of Your rights or powers under the Policy (for example if You have made a claim). If We are unable to recover any charges or taxes paid or payable by Us, this will be deducted from the refund amount.

YOUR DUTY OF DISCLOSURE

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

You have this duty until We agree to insure you.

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

You do not need to tell Us anything that:

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

If You do not tell Us something

If you do not tell Us anything you are required to, We may cancel your contract or reduce the amount We will pay you if you make a claim, or both. If your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

GENERAL INSURANCE CODE OF PRACTICE

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

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

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

COMPLAINTS AND DISPUTES

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact ATC in the first instance:

ATC's Internal Dispute Resolution Officer
ATC Insurance Solutions
Email: info@atcis.com.au
Telephone: (03) 9258 1777
Post: Level 4, 451 Little Bourke Street, Melbourne VIC 3000

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

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

Lloyd's Australia Limited

Email: idlaustralia@lloyds.com
Telephone: (02) 8298 0783
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

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

Relating to a matter under SECTION 1- MATERIAL DAMAGE, you may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

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

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

Relating to a matter under SECTION 2- ROAD RISK LIABILITY and SECTION 3- BROADFORM LIABILITY, Lloyd's Australia will refer your complaint to Policyholder & Market Assistance Department at Lloyd's. Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

COMPENSATION ARRANGEMENTS

We are an insurance company authorised under the *Insurance Act 1973* (Cth) (Insurance Act) to carry on general insurance business in Australia by the Australian Prudential Regulation Authority (APRA) and are subject to the prudential requirements of the Insurance Act. The Insurance Act is designed to ensure that, under all reasonable circumstances, financial promises made by Us are met within a stable, efficient and competitive financial system.

Because of this We are exempted from the requirements to meet the compensation arrangements Australian financial services licensees must have in place to compensate retail clients for loss or damage suffered because of breaches by the licensee or its representatives of Chapter 7 of the Corporations Act. We have compensation arrangements in place that are in accordance with the Insurance Act.

PRIVACY

In this Privacy statement "we", "us" and "our" means the Insurer and ATC acting under a binder as its agent and "you" or "your" means any individual whose personal information we collect for the purposes of the Policy.

We are bound by the requirements of the *Privacy Act 1988* (Cth), which set out standards on the collection, use, disclosure and handling of personal information.

Personal information is essentially any information or an opinion about an identified individual, or an individual who is reasonably identifiable. See the Privacy Act for full details of what constitutes personal information.

Our Privacy Policy is available at www.atcis.com.au or by calling us on the number below.

We, and our agents, need to collect, use and disclose your personal information in order to consider your application for insurance and to provide the cover you have chosen, administer the insurance and assess any claim and to make special offers of other services and products provided by us or those we have an association with, that might be of interest to you. You can

choose not to provide us with some of the details or all of your personal information, but this may affect our ability to provide the cover, administer the insurance or assess a claim.

We may disclose your personal information to third parties (and/or collect additional personal information about you from them) who assist us in providing the above services and some of these are likely to be overseas recipients, including in the United Kingdom. Who they are may change from time to time. You can contact us for details. In some cases we may not be able to take reasonable steps to ensure they do not breach the Privacy Act and they may not be subject to the same level of protection or obligations that are offered by the Act. By proceeding to acquire our services and products you agree that you cannot seek redress under the Act or against us (to the extent permitted by law) and may not be able to seek redress overseas.

These third parties, which include our related entities, distributors, agents, insurers, claims investigators, assessors, lawyers, medical practitioners and health workers, Lloyd's Regulatory Division and anyone either of us appoint to review and handle complaints or disputes, any other parties where permitted or required by law and federal or state regulatory authorities, including Medicare Australia and Centrelink, will only use the personal information for the purposes we provided it to them for (unless otherwise required by law).

Information will be obtained from individuals directly where possible and practicable to do so. Sometimes it may be collected indirectly (e.g. from your representatives or co-insureds or through websites from data you input directly or through cookies and other web analytic tools). If you provide information for another person you represent to us that:

- you have the authority from them to do so and it is as if they provided it to us; and
- you have made them aware that you will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and the third parties we disclose it to will use it for, and how they can access it.

If it is sensitive information we rely on you to have obtained their consent on these matters. If you have not done or will not do either of these things, you must tell us before you provide the relevant information.

By providing us with personal information, you and any person you provide personal information for, consent to these uses and these disclosures unless you tell us otherwise. If you wish to withdraw your consent, including for things such as receiving information on products and offers by us or persons we have an association with please contact ATC on 03 9258 1777 or write to us at the address given above.

ELECTRONIC COMMUNICATION

Pursuant to the *Insurance Contracts Act 1984* (Cth), a notice or other document may be given by electronic communication in accordance with the *Electronic Transactions Act 1999* (Cth) and any regulations made under that Act. Amongst other things, this means that We can communicate with the Insured by email.

By providing Us with their nominated email address the Insured consents to Us delivering documents electronically to that email address, unless they tell us otherwise. Any documents sent by email will be considered to have been received by the Insured twenty-four hours from the time We send them to the relevant email address.

Please ensure that any email address provided to Us is up to date and let Us know promptly if the email address changes.

FURTHER INFORMATION AND CONFIRMATION OF TRANSACTIONS

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

POLICY WORDING

PREAMBLE

Where We agree to enter into a Policy with You, We will indemnify You according with the terms of the Policy in consideration of the payment of, or agreement to pay, the premium and in reliance on the contents of the proposal and any other information submitted by the Insured or on its behalf.

The Policy consists of this document, the Schedule, and any Endorsement or other document issued, or intended to be issued, by Us at the commencement of or during the Period of Insurance that amends the terms of cover. These documents are to be read together and should be kept in a safe place for future reference. When You enter into the Policy You confirm and warrant that You have read or will read the policy documents when provided to You.

You are not automatically insured under each Section. You are only covered for the Sections that are shown as being insured in the Schedule.

PREVENTING OUR RIGHT TO RECOVERY

Our liability to indemnify You for loss, damage or liability under the Policy may be excluded or limited if You enter into a contract, arrangement or understanding that excludes or limits Our rights or ability to recover compensation in respect of that loss, damage or liability from any other person or entity.

SECTION 1 - MATERIAL DAMAGE

1.1 INSURING CLAUSE

We will indemnify You if the Insured Property suffers Physical Damage during the Period of Insurance and while it is within the Territory Limits shown in the Schedule, provided that Our liability under this Section shall not exceed the Sum(s) Insured or other amounts specified in the Schedule or the Policy wording (as applicable).

1.2 AUTOMATIC EXTENSIONS

If We agree to indemnify You under Section 1 of the Policy, then We will extend such cover for costs and expenses necessarily and reasonably incurred by You or on Your behalf.

1.2.1 Expediting expenses

for effecting temporary repairs or for the purpose of expediting repairs or replacement. Unless otherwise agreed by Us, such costs and expenses are limited to costs and expenses for:-

- a) Express delivery within Australia.
Provided that express delivery will include only carriage by air freight within Australia by the use of licensed airline(s) operating a regular scheduled service, but not Aircraft chartered specifically for such carriage.
- b) Your travel costs.
Provided that such travel costs are for regular service fares within Australia, but not Aircraft chartered specifically for such travel.
- c) Labour costs
Overtime or penalty rates of labour and other related allowances or accommodation and boarding costs, including meals and other costs associated with them.

Our liability for all expediting expenses under this Automatic Extension shall be limited to the lesser amount of:

- a) fifty percent (50%) of the amount payable by Us under Insuring Clause 1.1; or
- b) \$50,000 for any one Event unless otherwise noted in the Schedule.

1.2.2 Accessories etc

for Physical Damage to accessories, tools and spare parts supplied by the manufacturer of the Insured Property that were attached to or within the Insured Property (but not included in the item's Sum Insured noted in the Schedule) at the time of the Physical Damage.

Our liability for all accessories, tools and spare parts under this Automatic Extension shall be limited to the lesser of:

- a) \$5,000 in respect of all such accessories, tools or spare parts; or
- b) 5% of the Sum Insured of the Insured Property lost or damaged,

for any one Event.

1.2.3 **Sign writing**

for restoring any sign writing, advertising sign and the like that formed a permanent part of the Insured Property at the time of the Physical Damage.

1.2.4 **Tyre Replacements**

for the replacement of any damaged tyre that formed a part of the Insured Property at the time of the Physical Damage and that cannot be safely used again, with a new tyre similar in make and specification, provided that immediately before the Physical Damage the damaged tyre -

- a) was not a recap or a retread; and
- b) had a remaining thread depth that complied with the relevant legal requirements.

1.2.5 **Protection and Removal**

for the cost of protecting and removing:

- a) damaged Insured Property to the nearest repairer or place of safety, or to any other location that We approve; or
- b) Insured Property to a place of safety following it becoming bogged, immobilised or stranded, without Physical Damage having occurred.

This Automatic Extension does not extend to provide costs for the search, location and/or retrieval of lost or damaged Insured Property unless We give Our prior written consent to such costs being incurred.

Further, this Automatic Extension does not extend to cover Insured Property that is underground.

Our liability under this Automatic Extension for these protection and removal expenses shall be limited to a maximum of:

- a) \$50,000 in the aggregate during any one Period of Insurance for Insured Property that has not sustained Physical Damage; and
- b) \$250,000 in the aggregate during any one Period of Insurance for Insured Property that has sustained Physical Damage.

1.2.6 **Locks and Keys**

for replacing locks and keys that are lost or damaged or believed to have been duplicated.

Our liability for this Automatic Extension shall be limited to the lesser amount of \$5,000 per set of locks and keys or \$10,000 any one Event.

1.2.7 **Personal Effects**

for Physical Damage to Personal Effects belonging to You or Your employee driver(s) that were contained in Your lost or damaged Insured Property at the time of the Physical Damage.

Our liability for this Automatic Extension shall be limited to \$500 any one item of Personal Effects and \$1,000 in total for all Personal Effects any one Event.

1.2.8 **Windscreen Replacement**

for the repair or replacement of a damaged windscreen provided that:

- a) the damaged windscreen is not part of Insured Property working within the forestry or demolition industries; and
- b) the damaged windscreen is the only Physical Damage incurred the Insured Property during the identifiable Event.

Our liability under this Automatic Extension for windscreen repairs and/or replacements shall be limited to a maximum of \$10,000 in the aggregate during any one Period of Insurance and no Excess shall be applicable to such repair or replacement.

1.2.9 Finance Gap Protection

in the event that -

- a) Insured Property sustains Physical Damage covered under Section 1 of the Policy; and
- b) the Market Value for the lost or damaged item(s) of Insured Property, at the time of the Physical Damage is less than the amount owed by You under a valid hire purchase, leasing or other financial agreement,

We will pay You for the difference between the Market Value at the time of the Physical Damage and the amount owed, less:

- a) any finance payments, finance charges and interest in arrears at the date of Physical Damage; and
- b) any discount in respect of finance charges and interest for the unexpired term of such hire purchase or leasing or other financial agreement calculated at a date not exceeding 30 days after the date of the Physical Damage.

Provided that:

- a) You are not more than 30 days in arrears with any payments at the date of the Physical Damage; and
- b) Our limit of liability under this Automatic Extension shall not exceed 30% of the Market Value of the Insured Property at the time of the Physical Damage.

1.2.10 Ongoing Hire Costs

in the event that Insured Property that is hired in by You, or that You hire out on Dry Hire, sustains Physical Damage covered by Section 1 of the Policy, We will pay You for the continuing hire costs necessarily incurred or owed under the terms of the hire agreement (but not a hire purchase, leasing or other financial agreement covered under the Finance Payment Protection Automatic Extension below) while the lost or damaged hired Insured Property is being repaired or replaced, provided that:

- a) You will pay the first seven (7) calendar days (following the Physical Damage) of hire costs by way of an additional Excess; and
- b) the amount payable under this Automatic Extension in the aggregate in any one Period of Insurance shall not exceed \$50,000 unless otherwise specified in the Schedule.

1.2.11 Finance Payment Protection

in the event that:

- a) Insured Property sustains Physical Damage covered under Section 1 of the Policy; and
- b) You are making payments under a valid hire purchase, leasing or other financial agreement (but not a hire agreement covered under the Ongoing Hire Costs Automatic Extension above) on such lost or damaged Insured Property at the date of Physical Damage,

We will indemnify You for such payments, by paying You the equivalent of the daily proportion of Your "Actual Finance Payments", from the time of the Physical Damage until Your Insured Property is replaced, repaired or cash settled, provided that:

- a) You will pay ten percent (10%) of the Actual Finance Payments by way of additional Excess;
- b) the period of indemnity under this Automatic Extension is limited to a maximum of six (6) months from the time of Physical Damage;
- c) You take all reasonable precautions to comply with all reasonable requests from Us to minimise the period of time between the Physical Damage and the repair, replacement or cash settlement of the Insured Property; and
- d) the amount payable under this Automatic Extension in the aggregate in any one Period of Insurance shall not exceed \$50,000 unless otherwise specified in the Schedule.

"Actual Finance Payments" for the purpose of this Automatic Extension means the actual finance payments due and paid by You, less any balloon or residual payments, which fell due during the period of time between the Physical Damage and the repair, replacement or cash settlement of the Insured Property.

1.2.12 **Substitute Hire Cost**

to hire a substitute machine in place of the Insured Property that has suffered the Physical Damage covered under Section 1 of the Policy provided that:

- a) Our liability under this Automatic Extension will not exceed three (3) months hiring charges unless otherwise specified in the Schedule; and
- b) You will pay the first seven (7) calendar days of the hire costs by way of an additional Excess; and
- c) the amount payable under this Automatic Extension in the aggregate in any one Period of Insurance shall not exceed \$50,000 (fifty thousand dollars) unless otherwise specified in the Schedule.

1.2.13 **Dry Hire**

for Physical Damage to Insured Property while it is on Dry Hire, provided that:

- a) the hire agreement does not include a damage waiver or any conditions restricting Our rights of subrogation against the hirer;
- b) the Insured Property is being used within the Commonwealth of Australia;
- c) the Physical Damage occurs during the Period of Insurance; and
- d) You have ensured, as far as can be reasonably expected, that all relevant licences, permits, tickets and knowledge of statutory obligations are held by the hirer and any person employed by the hirer to operate Your Insured Property.

1.2.14 **Appreciation of Insured Property Value**

in the event that:

- a) Insured Property sustains Physical Damage covered under Section 1 of the Policy; and
- b) the Market Value of the lost or damaged item(s) of Insured Property at the time Physical Damage is sustained is greater than its Sum Insured noted in the Schedule;

We will pay the Market Value up to a maximum limit of 120% of the Sum Insured noted in the Schedule for the lost or damaged Insured Property, provided that the Sum Insured noted in the Schedule was not less than 90% of the Market Value for the item at the commencement of the Period of Insurance.

1.2.15 **Damage to Lifted Goods**

for the sudden and unexpected physical damage or destruction of goods in Your physical or legal care, custody, possession or control occurring during the Period of Insurance and within the Territory Limits while the goods are being suspended from, lifted or lowered by a Machine.

There shall be no indemnity under this Automatic Extension against:

- a) damage or destruction of the goods caused directly or indirectly by or arising from a defect in or the fragility of the goods or their container; or
- b) any other legal liability of whatsoever nature.

Our total liability under this Automatic Extension will not exceed \$250,000 in the aggregate during any one Period of Insurance, unless otherwise specified in the Schedule.

1.2.16 **Dual Crane Operation**

for Physical Damage occurring during the Period of Insurance and within the Territory Limits which is caused by or arises out of the operation of any Insured Property in connection with dual crane operation, provided that all such operations are carried out in accordance with the relevant Australian Standard current at the time of the happening of such Physical Damage.

We will not cover the Physical Damage under this Automatic Extension if any Insured Property is:

- a) being operated by any person in contravention of any relevant legislation or statutory requirement relating to the operation being performed;
- b) loaded in contravention of the maximum capacity requirements as set out in the relevant Australian Standard current at the time of the happening of Physical Damage; or
- c) being operated without radio communication between Operators that are dual lifting or sharing loads.

1.2.17 **Hired-In items**

for damage to hired-in plant, equipment, attachments or registered items that are not otherwise Insured Property occurring during the Period of Insurance and within the Territory Limits. However, the maximum cover granted under this Automatic Extension is \$50,000 in the aggregate for all hired-in items during any one Period of Insurance.

1.2.18 **Non-Owned Trailer in Control**

for repairing or replacing any Physical Damage that occurs during the Period of Insurance to trailers that:

- a) are in Your physical or legal control; and
- b) are not owned, leased or hired by You; and
- c) are used in conjunction with Registered Insured Property,

at the time of such Physical Damage. The amount payable under this Automatic Extension is up to a maximum of \$100,000 in the aggregate during any one Period of Insurance.

We will not cover You for any amount if such trailer is:

- a) a temperature controlled trailer; or
- b) a tanker trailer.

Each claim made under this Automatic Extension is subject to double the Material Damage Excess shown in the Schedule.

1.2.19 **Fire Brigade and/or Emergency Services Costs**

for costs and expenses necessarily and reasonably incurred by You or on Your behalf in relation to an Event that occurs during the Period of Insurance for fire extinguishment costs charged by the Fire Brigade or Emergency Service costs. for the amount payable under this Automatic Extension will be limited to \$20,000 in the aggregate in any one Period of Insurance.

1.2.20 **Owners Protection Plus**

This Automatic Extension applies to Machines operated by You or hired out by You on Dry Hire or Wet Hire terms.

General Exclusions 5.1.5 - 5.1.9 will not apply to the cover provided under Section 1 if You did not know or could not reasonably have known of the relevant circumstances giving rise to a claim, but We will not indemnify nor waive Our right of subrogation against the driver or Operator.

There shall be no indemnity under this Automatic Extension if, at the time of Physical Damage, the driver, Operator, hirer, or person engaged in the operation of the Machine was:

- a) an owner of the Machine;
- b) You; or
- c) a director or partner of Yours.

1.3 **OPTIONAL EXTENSIONS TO SECTION 1**

The following are Optional Extensions to Section 1 of the Policy and will only apply, in each case, if they are shown as being insured on the Schedule. Such Optional Extensions are subject to all the terms, conditions and exclusions of the Policy.

1.3.1 **Loss of Revenue**

If Your Business is interrupted or interfered with as a result of Physical Damage to the Insured Property and We have accepted indemnity for such Physical Damage under Section 1 of the Policy, We will pay the demonstrated Loss of Revenue incurred by You, provided that:

- a) the amount that We will pay will be the actual, direct Loss of Revenue in consequence of the Insured Property suffering Physical Damage; and
- b) We will not be liable for:
 - (i) costs incurred between the date of the Physical Damage and the cessation of normal working hours on the final day of the Time Deductible; or
 - (ii) costs incurred outside of the Indemnity Period; or
 - (iii) costs that exceed the Loss of Revenue Optional Extension limit shown in the Schedule for any one item of Insured Property and in the aggregate for all items of Insured Property any one Event; and

- c) You agree to do, concur in doing and permit to be done all things which are considered reasonably practical to minimise, avoid or diminish Our liability under this Optional Extension, including but not limited to the hiring in of a substitute item.

1.3.2 Increased Cost of Working

We will pay for the increase in the Cost of Working incurred for the purpose of avoiding or diminishing the reduction in revenue and/or resuming and/or maintaining normal Business operations and/or services, which arises out of Physical Damage to the Insured Property for which We have accepted indemnity under Section 1 of the Policy provided that:

- a) the amount that We will pay, will be the actual increase in the Cost of Working incurred in consequence of the Insured Property suffering Physical Damage up to the limit noted in the Schedule any one Event;
- b) We will not be liable for:
- (i) costs incurred between the date the Physical Damage is sustained and the cessation of normal working hours on the final day of the Time Deductible, or
 - (ii) costs incurred outside of the Indemnity Period, or
 - (iii) costs that exceed the Increased Cost of Working Optional Extension limit shown in the Schedule for any one Event.

You agree to do, concur in doing and permit to be done all things which are considered reasonably practical to minimise, avoid or diminish Our liability under this Optional Extension, including but not limited to the hiring in of a substitute item.

1.3.3 Removal of Co-insurance / Average clause

Clause 1.5.1 Co-Insurance / Average is deleted.

1.3.4 Agreed Value

In the event that Insured Property sustains Physical Damage covered under Section 1 of the Policy, for which We decide that settlement by repair is not viable, then We will pay the "agreed value" on any item of damaged Insured Property where an agreed value has been specified in the Schedule for that item, provided that:

- a) the agreed value was supplied by a registered valuer (approved by Us) prior to the Period of Insurance; and
- b) the valuation is not more than two (2) years old at the commencement of the Period of Insurance.

In the event that no agreed value has been specified in the Schedule, We will indemnify You in accordance with clause 1.4.3.

1.3.5 Extended Dry Hire (Damage Waiver Cover)

We will indemnify You or persons using Your Insured Property with Your consent, for Physical Damage of Your Insured Property when it is hired out on Dry Hire provided that :

- a) You have ensured, as far as can be reasonably expected, that all relevant licences, permits, tickets and knowledge of statutory obligations are held by the hirer and any person employed by the hirer to operate Your Insured Property;
- b) the hirer has agreed to observe the terms of the Policy (a copy of which is to be supplied by You upon request of the hirer); and
- c) the Physical Damage was caused by the Operator's error and You prove that You provided the hirer with a reasonable standard and level of operating instructions.

Provided that You have complied with a) above, then a failure by the Operator or hirer to comply with the licences, permits, tickets or statutory obligations referred to in a) above will prevent the Operator or the hirer, but not You, from being indemnified under this Optional Extension.

1.3.6 Hired-In items (Increased Limits)

Automatic Extension 1.2.17 Hired-In Items is deleted and replaced with the following: -

We will provide cover under Section 1 for damage to hired-in plant, equipment, attachments or registered items that are not otherwise Insured Property occurring during the Period of Insurance and within the Territory Limits up to the amount shown in the Schedule per Event.

1.3.7 Breakdown

We shall indemnify You in the event of Breakdown of a Machine during the Period of Insurance. Specific Exclusions to Section 1 Only 5.2.1 a) shall not apply to this Optional Extension. The indemnity under this Optional Extension shall not exceed the lesser of the following:

1. the reasonable cost in total of doing the following:
 - a) of dismantling and transporting the Machine if necessary to repair the part,
 - b) repairing (or replacing, if necessary) the part to a condition equal to its condition immediately prior to the Breakdown, and
 - c) re-commissioning, re-erecting and/or re-installing the Machine following the repair (or replacement) of the part;
2. the Market Value of the Machine immediately prior to the Breakdown;
3. an amount that indemnifies You for the Breakdown; or
4. the Sum Insured.

We will at Our option decide which of the above will be paid.

If a part that is to be replaced is no longer available, the indemnity will not exceed the manufacturer's or supplier's last published price for that part.

The Excess shall apply to each Machine for each Breakdown.

The following exclusions apply to this Optional Extension in addition to the General Exclusions and the Specific Exclusions to Section 1 Only.

We shall not indemnify You under this Optional Extension for:

1. Breakdown of tyres caused by the application of brakes or bursting, puncturing, cutting or wearing;
2. Breakdown caused by failure of batteries;
3. Breakdown of safety devices as a consequence of their operation or use;
4. the cost of preventative maintenance work, alterations, additions, improvements or overhauls, replacement or restoration following gradual deterioration, or restoring loose connections or joints where no other component failure has occurred; or
5. Breakdown arising out of the Machine being subjected to tests involving abnormal stresses, intentional overloading, or occurring prior to successful initial commissioning.

1.3.8 Plant and Equipment on Watercraft

Notwithstanding anything contained to the contrary in the Policy, Physical Damage to Insured Property whilst mounted on any watercraft in the Territory Limits is not excluded, provided that any mounted plant or transit of plant has been certified by a qualified marine surveyor as seaworthy and the carrying watercraft has all the necessary and legally required certifications of seaworthiness.

1.4 BASIS OF SETTLEMENT

We may, at Our option, provide an indemnity in respect of Physical Damage to Insured Property by payment of cash, replacement or repair in the manner set out below up to the Sum Insured specified for the relevant item of Insured Property, and subject to a maximum amount not exceeding the Sum Insured for all Insured Property any one Event.

1.4.1 Where damage is repairable

Where damage is repairable, and the costs of repair is less than the Market Value of the damaged item(s) of Insured Property, settlement shall be made on the basis of the costs of restoration to a working order and/or condition that existed immediately prior to the Event by using normal work practice and comprising the value of replacement parts, labour charged at standard rates of wages, transport costs at ordinary rates and customs duties, dues or other impost(s) if levied.

Further:

- a) No deduction shall be made for depreciation in respect of parts replaced.
- b) If You carry out repairs at Your situation or Your own workshop, We will pay the cost of replacement parts, wages and transport costs at ordinary rates and customs duties and other imposts, incurred for the purpose of

carrying out the repairs plus a reasonable mark-up for overheads, provided that the person carrying out the repairs is qualified to do so.

- c) If it is necessary to replace parts that are unavailable or obsolete, We will not pay more than the estimated cost for similar parts for similar types of Insured Property currently available. Should similar parts prove to be unprocurable, We shall not pay more than the manufacturer's or supplier's latest listed price.
- d) The costs of provisional repairs will be borne by Us only if such repair costs constitute part of the final repair costs and do not increase the total repair costs.
- e) We will deduct the residual value of any salvaged residual part from the amount otherwise payable by way of indemnity.

1.4.2 Where damage is not repaired

If any item of lost or damaged Insured Property is not repaired within a period of one (1) year from the date of Physical Damage We will only pay the lesser of:

- a) the estimated cost of carrying out repairs at or shortly after the date of Physical Damage; or
- b) the difference in Market Value of the Insured Property immediately prior to and immediately after the Event.

1.4.3 Total Loss

If the cost of repair is greater than the Market Value of the Insured Property immediately prior to the Event, settlement shall be made on the following basis as a Total Loss.

- a) Replacement Item or Market Value.
If the Insured Property is less than 2 years old from the date of original commissioning We will at Our option either:
 - (i) pay You the Sum Insured; or
 - (ii) replace it with a brand new item.

If the Insured Property is two (2) years old or more from the date of original commissioning, We will at Our option either:

- (i) supply an equivalent replacement item similar in type, capacity and condition to the Insured Property immediately prior to the Event; or
 - (ii) pay You the Sum Insured for the Insured Property; or
 - (iii) if the Market Value of the Insured Property immediately prior to the Physical Damage is less than 85% of the amount of the Sum Insured for that Insured Property, pay You the Market Value plus an additional 15% of the Market Value.
- b) We will deduct the residual value of any damaged salvaged part(s) of Insured Property from the amount otherwise indemnified.
 - c) We will also pay any necessary and reasonable costs covered by clause 1.2 Automatic Extensions previously specified, but Our liability for such Automatic Extensions will be limited to the Sum(s) Insured or other amounts specified for such costs within the Policy wording or in the Schedule.

We will also pay any Automatic Extensions provided by any specific Endorsement issued by Us in writing.

1.4.4 Excess

Where only one item of Insured Property is lost or damaged then the Excess applicable shall be that noted in the Schedule for a single item.

Where more than one item of Insured Property is lost or damaged then the Excess applicable to the highest valued item will apply for any one Event, unless otherwise shown in the Schedule.

Our liability to indemnify You for loss or damage under the Policy shall be reduced by the amount of the Excess(es) applicable.

You will not be required to contribute any Excess towards a claim if:

- a) You can satisfy Us that the claim involves a collision with another machine or motor Vehicle and the collision which gave rise to the claim was totally the fault of the operator or driver of another machine or motor Vehicle; and
- b) You provide Us with the identification / registration number of the other machine or motor Vehicle and the full name, license number and address of the other operator or driver; and

- c) We are legally able to recover the amount of any loss including any applicable Excesses from the third party.

Where the operator or driver of the other machine or motor Vehicle disputes who was at fault, You must pay any Excess which applies but We will refund it if We are successful in establishing that the other operator or driver was at fault.

1.5 LIMIT OF LIABILITY

1.5.1 Co-insurance / Average

Where the Sum Insured appearing against the Insured Property that is lost or damaged is less than 90% of the Market Value of that item (at the commencement date of the Period of Insurance), We will only pay that portion of the Basis of Settlement, described above, that the declared Sum Insured noted in the Schedule bears to 90% of the Market Value of the lost or damaged Insured Item(s), except in the event of a Total Loss.

1.5.2 Limit of Liability

Our total liability for any claim arising out of any one Event or series of Events arising out of one source or original course shall not exceed:

- a) per Item -
 - (i) the Sum Insured noted in the Schedule set against the lost or damaged Insured Property item less the Excess; plus
 - (ii) any cover provided under Automatic Extensions allowed under the Policy.
- b) per Event -
 - (i) the Sum Insured noted in the Schedule as the maximum for any one Event, less any Excess applicable; plus
 - (ii) any cover provided under Automatic Extensions allowed under the Policy.

SECTION 2 - ROAD RISK LIABILITY

2.1 INSURING CLAUSE

We will only cover You under this Section 2 if We have agreed to do so and accepted the cover by including a Limit of Indemnity for the corresponding item in the Schedule.

Road Risk Liability

We will indemnify You in respect of compensation which You shall become legally liable to pay to a third party for:

- a) Property Damage; and/or
- b) Personal Injury,

happening during the Period of Insurance as a result of an Occurrence which arises from the use of Registered Insured Property anywhere within the Commonwealth of Australia.

2.2 AUTOMATIC EXTENSIONS

In respect of Section 2 - Road Risk Liability, the following specific Automatic Extensions are provided. These Automatic Extensions are included in, and not payable in addition to, the Limit of Indemnity shown in the Schedule and We will only pay the lesser of the amount specified below or the Limit of Indemnity.

2.2.1 Asbestos Clean-Up

Notwithstanding Exclusion 5.3.7 of Specific Exclusions To Sections 2 & 3 Only where the Dangerous Goods are Asbestos, We will pay for removal of debris costs in relation to the Asbestos up to a maximum amount of \$100,000 any one Occurrence.

2.2.2 Substitute Vehicles

Registered Insured Property shall include registered items of plant or machinery that are not owned by You, but are in Your possession as a substitute item while Your item of plant or machinery is undergoing repairs or is being serviced.

2.2.3 **Movement of Other Machines**

We will indemnify You all amounts that You become legally liable to pay as compensation arising out of Property Damage happening during the Period of Insurance, within the location specified in the Schedule, caused by You having moved or attempted to move, any other machine that was parked in a position which prevented or impeded the loading, unloading or lawful passage of Your Registered Insured Property.

2.2.4 **Removal of Debris**

We will indemnify You for costs necessarily incurred in cleaning up or removing debris resulting from an Occurrence covered under this Section 2 where goods have fallen or leaked from Your Registered Insured Property. However, Our liability under this Automatic Extension in respect of any one Occurrence shall be limited to \$50,000.

2.2.5 **Sea Transportation**

We will indemnify You for general average and salvage charges incurred as a result of an Occurrence covered under this Section 2 involving Your Registered Insured Property while in transit by sea between places in Australia.

2.2.6 **Towing Disabled Vehicles**

We will indemnify You for any Occurrence to any disabled machine being towed by Registered Insured Property, but not if it was being towed for any type of reward.

2.2.7 **Trailers**

We will indemnify You for any Occurrence in connection with the use of any trailer attached to Your Registered Insured Property.

2.2.8 **Hired-In Items**

We will provide cover under Section 2 of the Policy for Personal Injury and Property Damage arising during the Period of Insurance as a result of an Occurrence involving the use of hired-in plant, equipment, attachments or Registered Insured Property. However,

- a) the maximum cover granted under Section 2 for hired-in items is the Limit of Indemnity shown in the Schedule; and
- b) We will not be liable for any Property Damage to the hired-in plant, equipment, attachments or Registered Insured Property.

SECTION 3 - BROADFORM LIABILITY

3.1 **INSURING CLAUSE**

We will only cover You under this Section 3 if We have agreed to do so and accepted the cover by including a Limit of Indemnity for the corresponding item in the Schedule.

Public Liability

We will indemnify You in respect of compensation which You shall become legally liable to pay to a third party for:

- a) Property Damage;
- b) Personal Injury; and/or
- c) Advertising Liability,

happening during the Period of Insurance as a result of an Occurrence which arises out of Your Business anywhere within the Territory Limits.

Products Liability

We will indemnify You in respect of compensation which You shall become legally liable to pay to a third party for:

- a) Property Damage; and/or
- b) Personal Injury,

happening during the Period of Insurance as a result of an Occurrence which arises from Product(s) anywhere within the Territory Limits.

3.2 AUTOMATIC EXTENSIONS

In respect of SECTION 3- BROADFORM LIABILITY, the following specific Automatic Extensions are provided. These Automatic Extensions are included in, and not payable in addition to, the Limit of Indemnity shown in the Schedule and We will only pay the lesser of the amount specified below or the Limit of Indemnity.

3.2.1 Property in Your Physical or Legal Control (Including Hook Liability)

Notwithstanding Exclusion 5.3.2 of Specific Exclusions To Sections 2 & 3 Only, We will cover You, under Section 3 of the Policy, for Your legal liability to pay compensation in respect of Property Damage to any property not belonging to You or the Operator that is in Your or the Operator's physical or legal possession or control, which is caused by an Occurrence within the Territory Limits in connection with Your Business during the Period of Insurance.

Our maximum liability under this Automatic Extension shall not exceed \$250,000 in any one Period of Insurance.

3.2.2 Vibration and Removal of Support

Notwithstanding Exclusion 5.3.12 of Specific Exclusions To Sections 2 & 3 Only, We will cover You under Section 3 of the Policy for Your legal liability to pay compensation in respect of Property Damage that is caused by an Occurrence within the Territory Limits in connection with Your Business during the Period of Insurance and which is caused by or arises from:

- a) vibration; or
- b) removal or weakening of, or interference with support to land, buildings or any other property.

Our maximum liability under this Automatic Extension shall not exceed \$1,000,000 in the aggregate in any one Period of Insurance.

3.3 OPTIONAL EXTENSIONS

The following are Optional Extensions to Section 3 of the Policy and will only apply, in each case, if they are shown as being insured on the Schedule. Such Optional Extensions are subject to all the terms, conditions and exclusions of the Policy.

3.3.1 Property in Your Physical or Legal Control (Including Hook Liability) - Increased Sub Limit

Section 3 Automatic Extension 3.2.1 Property in Your Physical or Legal Control (Including Hook Liability) is deleted and replaced with the following:

"Notwithstanding Exclusion 5.3.2 of Specific Exclusions To Sections 2 & 3 Only, We will cover You, under Section 3 of the Policy, for Your legal liability to pay compensation in respect of Property Damage to any property not belonging to You or the Operator that is in Your or the Operator's physical or legal possession or control, which is caused by an Occurrence within in the Territory Limits in connection with Your Business during the Period of Insurance.

Our maximum liability under this Optional Extension shall not exceed in the aggregate in any one Period of Insurance is the amount specified in the Schedule as the sub-limit for Property in Your Physical or Legal Control;

3.3.2 Vibration and Removal of Support - Increased Sub limit

Section 3 Automatic Extension 3.2.2 - Vibration and Removal of Support is deleted and replaced with the following:

"Notwithstanding Exclusion 5.3.12 of Specific Exclusions To Sections 2 & 3 Only, We will cover You under Section 3 of the Policy for Your legal liability to pay compensation in respect of Property Damage that is caused by an Occurrence within the Territory Limits in connection with Your Business during the Period of Insurance and which is caused by or arises from:

- a) vibration; or*
- b) removal or weakening of, or interference with, support to land, buildings or any other property.*

Our maximum liability under this Optional Extension shall not exceed in the aggregate in any one Period of Insurance the amount specified in the Schedule as the sub-limit for Vibration and Removal of Support Extension."

3.3.3 Railways and Rail-works or Rail Activities

Notwithstanding anything contained herein to the contrary the Policy is extended to cover legal liability directly or indirectly arising from Insured Property whilst working on railways or rail-works or rail activities. Specific Exclusion 5.3.11 a) (ii) shall not apply to this Optional Extension.

3.3.4 Assumed Liability Inclusion

We will extend cover under this Section 3 to liability assumed under those contracts which You notify Us of and that We agree to include as Incidental Contracts where shown in the Schedule.

SECTION 4 - EXTENSIONS TO ALL SECTIONS INSURING CLAUSE

4.1 AUTOMATIC EXTENSIONS TO ALL SECTIONS

4.1.1 Automatic Inclusion/Deletion

If You purchase a replacement or additional item(s) of Insured Property valued at not more than \$500,000 per item of a similar type to those of Insured Property specified in the Schedule during the Period of Insurance, We will insure that replacement or additional item under the Policy provided We are notified of the purchase within 30 days from the date on which You purchase it. If We are not notified within 30 days of the date of purchase, no cover applies to those item(s).

If You dispose of or sell any Insured Property, or pass any Insured Property from Your care, custody or control with the intention of disposing of, or selling it, cover for such item will cease at the time of any such disposition, sale or passing of property from Your care custody or control. If the sale or disposal dates back beyond 30 days, proof of sale must be provided.

An appropriate adjustment of the premium will be made upon receipt by Us of the notification of the acquisition or disposal.

4.1.2 LPG Conversion

The Policy will not be prejudiced by modification of Insured Property to operate on liquefied gas, provided that the modification has been carried out in accordance with all relevant statutory and regulatory standards.

4.1.3 Other Interested Parties

In the event of any Physical Damage to Insured Property which is the subject to a lease or other financing arrangement whereby a financier retains security over the Insured Property, We agree to treat the financier as an interested party in accordance with s49 of the *Insurance Contracts Act 1984* (Cth) but only to the extent of the financier's remaining interest in the Insured Property at the time when the Physical Damage is suffered.

4.1.4 Hold Harmless (Subrogation Waiver)

We will waive any right or remedies or relief to which We may become entitled to by way of subrogation against any person or organisation where You have been required by contractual agreement to release such person or organisation from liability. However, this extension does not apply to Dry-Hire arrangements or contracts.

4.2 OPTIONAL EXTENSIONS TO ALL SECTIONS

The following Optional Extensions will be added for Your benefit under the Policy, if the Schedule indicates that such options have been requested and accepted.

Such Optional Extensions are subject to all the terms, conditions and exclusions of the Policy.

4.2.1 Underground Risks

Notwithstanding anything contained herein to the contrary, the Policy is extended to cover:

- a) Physical Damage to Insured Property whilst underground. This Optional Extension shall exclude the cost of recovery to the surface of the Insured Property. Further, it is a condition for cover under this Optional Extension that the damaged Insured Property is recovered to the surface at Your own cost; and
- b) Legal liability directly or indirectly arising from Insured Property whilst working underground

General Exclusion 5.1.11- Underground Risks shall not apply to this Optional Extension.

SECTION 5 - EXCLUSIONS

5.1 GENERAL EXCLUSIONS

Except as otherwise provided in the Policy, We shall not be liable and will not indemnify You under any Section of the Policy for loss or damage or legal liability:

5.1.1 War etc

directly or indirectly caused by, occasioned by or through or in consequence of any of the following -

- a) war, invasion, act of foreign enemy, hostilities, or war-like operations (whether war be declared or not), civil war;
- b) rebellion, revolution, insurrection, mutiny, civil-commotion assuming the proportions of or amounting to a popular rising, military or usurped power, a group of malicious persons acting on behalf of or in connection with any political organisation,
- c) riot, strike, lock-out;
- d) conspiracy, confiscation, commandeering, or
- e) requisition or destruction or damage by order of any government de jure or de facto or by any public authority.

5.1.2 Nuclear

directly or indirectly caused by or contributed to by or arising from or aggravated by any of the following:

- a) ionizing radiation from a contamination by radioactivity from a nuclear fuel or from nuclear waste or from the combustion of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; and/or
- d) radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

5.1.3 Inventory Losses

discovered only at the time of taking an inventory or during routine servicing.

5.1.4 Wilful Acts

directly or indirectly caused by, or arising out of, or aggravated by, the wilful act or wilful negligence of You or Your representative.

5.1.5 Licensed or Permitted Operator

occurring while You are, or anyone with Your consent, is operating Insured Property without being the holder of a current licence, except where that person is permitted to so operate the Insured Property by law.

5.1.6 Alcohol and Drugs

caused by or arising out of the use, operation or preparation for operation of any Insured Property by anyone who, at the time of the Event/Occurrence:

- a) was under the influence of any prohibited drug or intoxicating liquor; or
- b) had a percentage of alcohol in their breath, blood or urine in excess of the percentage permitted by law in the State or Territory where the Event/Occurrence took place; or
- c) who subsequently refused to provide or allow the taking of a sample of breath, blood or urine for testing; or
- d) had a trace of a prohibited drug in their breath, blood, saliva or urine in excess of the limit permitted by law in the State or Territory where the Event/Occurrence took place.

However, We will indemnify You if You did not know or could not reasonably have known of the above circumstances but We will not indemnify nor waive Our right of subrogation against the Operator.

5.1.7 Overloading

occurring while Insured Property is overloaded or loaded and/or configured in a manner other than that for which the Insured Property was designed at the time of such Event/Occurrence whilst being used by a licensed Operator, but this exclusion will not apply provided that You (being the owner of the Insured Property) are able to prove :

- a) that such overloading, or loading or configuration was unintended and not deliberate by the Operator; and
- b) that the actions of the Operator or any of Your employees involved, leading up to the loss or damage or liability fell within generally accepted industry practice; and
- c) that the Operator had been provided with a standard of training and operating instructions in the use of plant and equipment that was within generally accepted industry practice and that You had no knowledge of the Operator's actions which had caused the loss, damage or liability and that You were not the Operator.

5.1.8 Unroadworthy Condition

caused or contributed to by the unsafe or unroadworthy condition of Insured Property unless You could not have reasonably detected that condition.

5.1.9 Improper Use

which occurs as the result of the use of Insured Property:

- a) for any illegal purpose with Your knowledge and consent;
- b) for any race, trial, test, contest or in preparation for any of these; or
- c) for any purpose other than that for which it was designed.

5.1.10 Requisition

caused by the lawful seizure or requisition of Insured Property or by other operation of law arising from any breach of contract, agreement or obligation.

5.1.11 Underground Risks

occurring while the Insured Property is underground unless otherwise specifically agreed in the Schedule.

5.1.12 Damages, Fines and Penalties

- a) for any fines or penalties imposed by law;
- b) for any liquidated damages;
- c) for any aggravated or punitive or exemplary damages;
- d) for any damages resulting from the multiplication of compensatory damages;
- e) for any penalties (contractual or otherwise) for non-completion or delay in completion, non compliance with any contract conditions or extra cost of working;
- f) for force majeure (whether declared or not); or
- g) for any other consequential financial loss.

5.1.13 Electronic Data

arising directly or indirectly out of:

- a) any total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- b) any error in creating, amending, entering, deleting or using Electronic Data;
- c) any total or partial inability or failure to receive, send, access or use Electronic Data for any time or at all; and/or
- d) any Business interruption losses resulting from any event referred to in a) to c) above,

regardless of any other contributing cause or Event, whenever it may occur, unless such loss or damage or legal liability arises as a direct consequence of Physical Damage to Insured Property which is otherwise insured under the Policy.

However, any accidental Physical Damage to Insured Property, which originates directly from an action of You to Your own property, and which causes or is caused by any of the matters referred to in a) to c) above, are all covered, subject to all the other provisions of the Policy.

For the purpose of this Exclusion only -

Electronic Data means - facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

5.1.14 **Terrorism**

or costs or expense directly or indirectly caused by, contributed by, resulting from, or arising out of or in connection with Any Act of Terrorism, regardless of any other cause or Event contributing concurrently or in any other sequence to the loss.

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

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

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

The Policy is one where the *Terrorism Insurance Act 2003* (Cth) may apply. We will provide cover as may be required by the Act, notwithstanding the exclusion contained herein.

5.2 **SPECIFIC EXCLUSIONS TO SECTION 1 ONLY**

In addition to the General Exclusions applicable to all Sections of the Policy, and except as otherwise provided in the Policy, We shall not be liable and will not indemnify You for loss or damage or legal liability for any of the following under Section 1:

5.2.1 **Electrical or Mechanical Breakdown**

due to or resulting from -

- a) electrical or mechanical breakdown, failure, breakage or derangement;
- b) freezing of coolant or other fluid;
- c) defective lubrication or lack of oil or coolant;
- d) explosion of any boiler or pressure vessel subject or internal steam or fluid pressure or of any internal combustion engine.

However, if any Event causing damage which is otherwise insured under the Policy causes any of a) or b) or c) or d) above We will indemnify You for such consequential loss or damage.

Specific Exclusion 5.2.1 a) above shall not apply to SECTION 1 Optional Extension 1.3.7-Breakdown.

5.2.2 **Marine Exposure**

- a) due to the total or partial immersion of Insured Property in water from an incoming tide whilst left unattended after becoming bogged or stranded (unless the Insured Property was left unattended for the purpose of obtaining help to remove it from being bogged or stranded);
- b) to a waterborne vessel or craft;
- c) whilst Insured Property is used for Trade Use on any watercraft or floating vessel; or
- d) whilst Insured Property is in the course of ocean marine transit,

unless otherwise agreed to by Us and acknowledged in writing by specific Endorsement.

5.2.3 **Wear and Tear and General Maintenance**

- a) due to wear, tear, corrosion, erosion, oxidation or gradual deterioration due to atmospheric conditions or otherwise;
- b) to replaceable or exchangeable tools or parts and attachments such as (but not limited to) cutting tools, knives, crushing, pulverizing, pressing and punching tools, drills, bits, drills, blades, saw blades and edges;
- c) to or from dies, moulds, patterns, templates, surfaces, screen and sieves

- d) to or from replacement parts and commodities such as (but not limited to) fuels, bulbs, x-ray tubes, filters, seals, ropes, belts, caterpillar tracks, chains, elevator and conveyor bands, roller covering links, jointing, packing materials, connecting wires, regularly replaced, hoses, flexible pipes, batteries, tyres, tracks, heating elements, electrical contacts, and any other part or parts which require periodic or frequent replacement;
- e) to or from overload, fuses, shear pins, rupture plates or similar protective devices; or
- f) for costs relating to the normal maintenance service or adjustment of Insured Property.

However, any Physical Damage incurred under any of paragraphs a) to e) (inclusive) shall not be excluded if such Physical Damage occurred as a direct result of a sudden or unforeseen external Event otherwise covered under the Policy.

5.2.4 **Minor Visual Damage**

to Insured Property that only has a visual effect. This means Physical Damage that:

- a) does not increase the risk of material damage to the Insured Property; or
- b) does not decrease the output of the Insured Property.

5.2.5 **Relinquished Custody**

to or from Insured Property -

- a) where You have entrusted any Insured Property to anyone posing as a prospective buyer; or
- b) where You have entrusted any Insured Property under any hire purchase or lease agreement, and do not have legally enforceable conditions of hire in place making the hirer or lessee responsible loss or damage; or
- c) where You have entrusted any Insured Property under any hire purchase or lease agreement and the conditions of hire or lease include any damage waiver or any conditions restricting Our rights of subrogation, unless otherwise agreed to by Us and acknowledged in writing by specific Endorsement.

5.2.6 **Security for Debt**

to or from Insured Property where the Insured Property stands as security for a debt and is the subject of repossession or seizure by any financier.

5.2.7 **Warranty and Maintenance Agreements**

for which the supplier or manufacturer is responsible by law or under contract, a sale or warranty condition, or which is covered under a Maintenance Agreement.

5.2.8 **Design**

arising directly or indirectly from any defect, fault or failure in or of the design or specification of the Insured Property.

5.2.9 **Plant Operation**

- a) that occurred while Insured Property was undergoing a test of any kind except as required by law;
- b) that occurred while Insured Property was used, operated or prepared for operation in any manner or for any purpose other than for which it was designed. However, if You have given instructions or taken precautions that are adequate to prevent such use and did not know or could not reasonably be expected to know that the Operator was using the Insured Property in that manner, then We will not deny the claim under this exclusion (b), but We will not waive Our rights of subrogation against the Operator;
- c) caused by the failure to provide Insured Property with adequate or appropriate fuel, oil, lubricant or coolant;
- d) occurring while any crane insured by the Policy is being used in a lifting operation in which the load is shared or rigged for sharing with other cranes, unless otherwise agreed to by Us and acknowledged in writing by specific Endorsement; or
- e) occurring while Insured Property is used beyond the manufacturer's recommended safe working limits.

5.2.10 **Down Hole Items**

to Down Hole Items while in the ground unless:

- a) specified as insured with a specific Sum Insured shown in the Schedule; or
- b) otherwise agreed to by Us and acknowledged in writing by specific Endorsement.

5.2.11 **Known Faults or Defects**

due to any faults or defects existing at the time of commencement of the Policy within the knowledge of You or Your representative, whether such faults or defects were known to Us or not.

5.2.12 **Abandonment**

for the cost of retrieving and/or removing any Insured Property abandoned by you.

5.3 **SPECIFIC EXCLUSIONS TO SECTIONS 2 & 3 ONLY**

In addition to the General Exclusions applicable to all Sections of the Policy, and except as otherwise provided in the Policy, We shall not be liable and will not indemnify You under Section 2 & /or 3 (as applicable) for loss or damage or legal liability for any of the following:

5.3.1 **Employment Liability**

for Personal Injury to any Employee arising out of or in the course of their employment with You;

- a) caused by, arising from, or in any way connected with, any provision of any applicable Workers' or Workmen's Compensation or Accident Compensation legislation of any State or Territory; or
- b) caused by, arising from, or in any way connected with, any industrial award or agreement or determination or any contract of employment or workplace agreement, where such liability would not have been imposed in the absence of any such industrial award or agreement or determination or contract of employment or workplace agreement; or
- c) for which You are or would have been entitled to seek indemnity under any policy of insurance, fund, scheme or self insurance arrangement, required pursuant to any legislation relating to Workers' or Workmen's Compensation or Accident Compensation legislation of any State or Territory (whether such insurance is effected or not).

For the purpose of this exclusion Employee means any person engaged under a contract of service or apprenticeship with You but does not include any person employed under such a contract who is excluded from the definition of 'worker' under any applicable Workers' or Workmen's Compensation or Accident Compensation legislation of any State or Territory.

5.3.2 **Property in Your Physical or Legal Control (Including Hook Liability)**

for Property Damage to the following property that is not owned by You but which is in Your physical or legal control:

- a) any Aircraft or watercraft;
- b) any Vehicle or item of plant, equipment or tool leased by You;
- c) any Vehicle in a car park owned or operated by You for reward as a principal part of Your Business; and/or
- d) that part of any property that You are working directly upon when the Property Damage results from Your work.

This exclusion d) does not apply to Property Damage to other property that is in Your physical or legal control, including third party's goods while in the course of being lifted, lowered or otherwise moved by a lifting device operated by You. However, Our liability to indemnify You for Property Damage to any such property will be limited to \$ 250,000 any one Occurrence and in the aggregate during the any one Period of Insurance unless otherwise specified in the Schedule.

5.3.3 **Property Owned by You**

- a) for Property Damage to property that You own, or
- b) directly or indirectly arising out of Your tenant's or lessees' activities (whether business activities or otherwise); or
- c) arising from Your failure to properly maintain property that You own, unless You could not have known that maintenance was required.

5.3.4 **Professional Services**

for Property Damage or Personal Injury arising directly or indirectly from:

- a) Your giving or failing to give any professional advice for a fee;
- b) any design, plan, specification, formula or pattern that You provide for a fee; or
- c) any error or omission associated with any such advice, design, plan, specification, formula or pattern.

5.3.5 **Watercraft and Aircraft**

for Property Damage and Personal Injury caused by or arising directly or indirectly out of or in connection with:

- a) any watercraft exceeding eight (8) metres in length where such watercraft is not owned by You but is used by You for Business entertainment;
- b) the ownership, repair, construction, maintenance or servicing of any Aircraft or installation of any property in or on any Aircraft;
- c) the ownership, use or control of any area on which Aircraft take off, land, load/ unload, taxi, are housed, maintained or refuelled.

5.3.6 **Pollution**

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

This exclusion shall not apply to Property Damage and Personal Injury that arose from an unexpected, unintended sudden and instantaneous cause which took place at a clearly identified point in time during the Period of Insurance.

5.3.7 **Asbestos**

- a) for Personal Injury directly or indirectly arising out of:
 - (i) the inhalation of;
 - (ii) fears of inhalation of;
 - (iii) the consequences of exposure to or inhalation of, Asbestos, Asbestos fibres or any derivatives of Asbestos; and/or
- b) for that part of any loss, cost or expense for the cost of cleaning up, or of removal of, or damage to, or loss of use of property arising out of any Asbestos, Asbestos fibres or any derivatives of Asbestos except as allowed in 2.2 AUTOMATIC EXTENSIONS- 2.2.1 Asbestos Clean-up.

5.3.8 **Assumed Liability**

assumed by You under any warranty, guarantee, contract, agreement, arrangement or understanding except to the extent provided under the Automatic Extensions to All Sections- 4.1.4 Hold Harmless (Subrogation Waiver) and any Incidental Contract.

5.3.9 **Internet Operations**

for any liability directly or indirectly caused by or arising from Your Internet Operations.

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

5.3.10 **Admission of Liability**

for any liability assumed by You as a result of any admission made by You whether oral or in writing.

5.3.11 **Types of Work**

for Property Damage or Personal Injury arising directly or indirectly out of:

- a) the construction, alteration, repair, restoration, extension, installation, demolition or dismantling of buildings, runways or structures (whether permanent or not), including lighting, power supply, gas supply, fire protection, security and communications systems, testing and commissioning, site clearance, earthmoving, excavation, tunnelling, boring, laying of foundations/footings, landscaping and the provision of roadways and other access works forming or to form part of any:
 - (i) area of any airport where Aircraft, airships and airplanes take off and land, taxi and load/unload. This includes runways, the aprons adjacent to runways, airbridges and Aircraft standing areas. This does not include the interior of the airport terminal to which the public and the airport staff have normal access.
However, this part of this exclusion does not exclude Property Damage and Personal Injury directly or indirectly arising out of vehicular movements within the airport perimeter, provided such movements are conducted within the guidelines and regulations as established by the relevant regulatory authority;

- (ii) railway, rail works, or rail activities; and/or
- (iii) oil, gas, chemical or petro-chemical plants; and/or
- b) the demolition of buildings or structures involving the use of explosives or implosion techniques, unless such costs are otherwise agreed to by Us and acknowledged in writing by specific Endorsement.

5.3.12 **Vibration, Removal or Weakening of Supports**

for Personal Injury or Property Damage directly or indirectly caused by or arising out of the vibration, removal, or weakening of support of any land, buildings or any other property unless:

- a) the work that vibrated, weakened or removed the support was carried out in strict conformance with plans and specifications for such which were not prepared by You;
- b) the work was carried out at the direction of a suitably qualified engineer who was not an employee of You; and
- c) a condition or dilapidation report was made on the existing condition of the affected surrounding properties before the work was started.

5.4 **ADDITIONAL EXCLUSIONS TO – SECTION 2 ONLY**

In addition to the General Exclusions applicable to all Sections of the Policy and Specific Exclusions applicable to Section 2 and 3, and except as otherwise provided in the Policy, We shall not be liable and will not indemnify You under Section 2 of the Policy for loss or damage or legal liability for any of the following:

5.4.1 **Trade Use**

arising directly or indirectly from Insured Property being used or operated for Trade Use.

5.4.2 **Compulsory Personal Injury Legislation**

for Personal Injury incurred where You are partly or wholly insured under any compulsory statutory insurance scheme, or would have been so insured but for Your failure, or the failure of someone acting on Your behalf, to

- a) insure or register the Insured Property; or
- b) lodge a claim; or
- c) notify the relevant authority of the Event; or
- d) comply with any term or condition of any such scheme.

5.4.3 **Dangerous Goods**

occurring while the Registered Insured Property is in use for, or is attached to, any other machine in use for the commercial carriage of any substance to which the Australian Code for the Transport of Dangerous Goods by Road or Rail applies, unless the Code has been complied with. In respect of an Occurrence arising out of such use, Our liability under Section 2 of the Policy shall not exceed \$ 1,000,000 any one Occurrence any one item of Insured Property carrying dangerous goods unless noted otherwise in the Schedule.

5.4.4 **Registered Vehicles in the Northern Territory**

to pay compensation in respect of Personal Injury arising as a result of the use of any item of Registered Insured Property that is registered in the Northern Territory of Australia.

5.4.5 **Driver, Employee and Family Members**

arising out of Personal Injury to anyone operating or in charge of the Insured Property who, at the time of the Occurrence, was:

- a) Your employee; or
- b) a member of Your immediate family.

5.4.6 **Loading and Unloading**

caused directly or indirectly by or in connection with any operation of loading, unloading, delivery or collection to or from Your Registered Insured Property, except for the operation of loading or unloading Products onto or from Your Registered Insured Property direct to a fixed place of rest beside Your Registered Insured Property.

5.5 **ADDITIONAL EXCLUSIONS TO SECTION 3 – PUBLIC LIABILITY ONLY**

In addition to the General Exclusions applicable to all Sections of the Policy and Specific Exclusions applicable to Section 2 and 3, and except as otherwise provided in the Policy, We shall not be liable and will not indemnify You under Section 3 - Public Liability of the Policy for loss or damage or legal liability for any of the following:

5.5.1 Vehicles

for Property Damage or Personal Injury directly or indirectly arising out of the use of any Vehicle that is legally, or which is by law required to be, registered or required to have third party bodily injury insurance.

This exclusion shall not apply where such Vehicle is unregistered, or is registered however the third party bodily injury insurance that has been effected does not provide cover, and is at the time of the Occurrence:

- a) on or within 250 metres from a project site; or
- b) within 250 metres of the place where it is normally stored.

5.5.2 Advertising Liability

for Advertising Liability that is caused by or arises out of:

- a) a breach of contract, other than misappropriation of advertising ideas contrary to an implied contract;
- b) an infringement or passing off of a trade mark, service mark, copyright item or trade name on any Products, goods or services sold, offered for sale or advertised, other than an infringement of titles or slogans;
- c) the incorrect description of the price of Products, goods or services;
- d) the failure of Products, goods or services to conform with advertised performance, quality, fitness or durability criteria.

5.5.3 Defamation

for Personal Injury caused by:

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

5.5.4 Insured Property on Rails

occurring while Insured Property is on rails, other than as cargo.

5.5.5 Products Liability

for any Occurrence that is caused directly or indirectly by or arises out of any of Your Product(s).

5.5.6 Faulty Workmanship

for the costs or expenses of performing, completing, or rectifying any work or service undertaken or provided by You or on Your behalf. However, this exclusion does not apply to Personal Injury or Property Damage resulting from or caused by faulty workmanship.

5.6 ADDITIONAL EXCLUSIONS TO SECTION 3 - PRODUCTS LIABILITY ONLY

In addition to the General Exclusions applicable to all Sections of the Policy and Specific Exclusions applicable to Section 2 and 3, and except as otherwise provided in the Policy, We shall not be liable and will not indemnify You under Section 3 - Products Liability of the Policy for loss or damage or legal liability for any of the following:

5.6.1 Repair, Replacement and Recall of Your Products

- a) for the inspection, repair, removal or replacement of Your Product(s) or Property Damage to Your Products other than Property Damage to Your Product(s) that is caused directly by You while repairing, servicing or treating Your Product(s); or
- b) for the recall of -
 - (i) any or all of Your Product(s);
 - (ii) work performed by You or for You;
 - (iii) property that incorporates or has incorporated any of Your Product(s);
 - (iv) property worked on by You or worked on by others for You; or
- c) for any liability assumed by any warranty or guarantee given by You, other than any warranty as to the safety of Your Product(s) implied by legislation.

5.6.2 Lack of Maintenance

for Property Damage or Personal Injury arising directly or indirectly from lack of maintenance of Your Product(s).

5.6.3 Faulty Workmanship

for the costs or expenses of performing, completing, or rectifying any work or service undertaken or provided by You or on Your behalf. However, this exclusion does not apply to Personal Injury or Property Damage resulting from or caused by faulty workmanship.

INTERPRETATION

6.1 DEFINITIONS

Unless the context otherwise clearly indicates:

Advertising Liability - means injury arising out of:

- a) defamation;
- b) infringement of copyright or passing off of title or slogan;
- c) unfair competition, piracy or idea misappropriation contrary to an implied contract; or
- d) invasion of privacy,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast arising out of any activities conducted by You in the course of advertising Your Products goods or services.

Aircraft - means any craft or object designed to travel through air, atmosphere or space, other than model aircraft.

Asbestos - means any of the following minerals -chrysotile, amosite, crocidolite, tremolite, anthophyllite and actinolite and includes any product in which any of these minerals has been used.

Breakdown - means sudden and unexpected breaking, distortion, seizing, malfunction, or failure of any mechanical, electrical or electronic part of a Machine that occurs during the course of the normal operation of the Machine that prevents the normal use of the Machine and necessitates immediate repair or replacement to allow its normal use.

Business - means all Your business activities and operations including -

- a) ownership and tenancy of premises;
- b) the provision or management of canteen, social, sports, welfare, child care organisations for Your employees;
- c) internal first aid and ambulance services,

directly associated with the Business described in the Schedule.

Cost of Working means the actual cost of running the Insured Property during that period in the twelve months immediately prior to Physical Damage to the Insured Property that corresponds with the Indemnity Period.

Down Hole Items - means drill pipes, drill rods, drill shanks, jointing sleeves, collars, rock bits and reamers.

Dry Hire - means the hiring out of an item of Insured Property without a driver/Operator.

Endorsement - means a written document headed as such from time to time issued in writing by Us to You during the Period of Insurance and noting the terms and conditions upon which We have agreed to alter or vary the cover provided under the Policy.

Event - means an event, including continuous and repeated exposure to substantially the same general conditions, which results in Physical Damage to Insured Property.

For the purposes of the Policy, all such Physical Damage that occurs during each period of 72 consecutive hours shall be considered as one Event if it arises from the same meteorological or seismological conditions, whether continuous or sporadic in their sweep or scope. Further, each event shall be deemed to have commenced on the first happening of any such Physical Damage not within the period of any previous event.

Excess - means the amount shown in the Schedule, being the first amount of each type of loss, damage or liability that You must contribute as the first payment or bear for each Event in respects to Physical Damage or each Occurrence in respect to Personal Injury or Property Damage payable under the Policy.

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.

Goods and Services Tax. - for the purpose of the Policy GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning given to these expressions in a *New Tax System (Goods and Services Tax) Act 1999* and related legislation as amended from time to time.

Taxable Percentage is Your entitlement to an Input Tax Credit on Your premium as a percentage of the total GST of that premium.

Incidental Contract - means

- a) any written contract where the liability would have attached to You at law in the absence of such contract or agreement;
- b) any written rental agreement or lease for real or personal property not requiring an obligation to insure such property or to be strictly liable for such property regardless of fault;
- c) any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, water disposal facilities, telephone and telecommunication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- d) those contracts designated in the Schedule as per Optional Extension 3.3.4.

Indemnity Period means the period beginning at the time of the Event giving rise to the Physical Damage and ending at the earlier of:

- a) the number of months shown in the Schedule after the Event occurred; or
- b) the time when the results of the Business are no longer affected by the Physical Damage.

Insured - means the person shown as the Insured on the Schedule. They are the contracting insured.

Insured Property - means mobile and stationary items of plant or any Machine or Registered Insured Property specifically noted in the Schedule as Insured Property.

Insurer - means the insurers of the Policy, who are certain underwriters at Lloyd's.

Limit of Indemnity - means the amount shown in the Schedule.

Internet Operations means any of the following -

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

Loss of Revenue means the amount by which Revenue is reduced during the Indemnity Period less:

- a) any amount earned from use of a substitute item during the Indemnity Period; and
- b) any reduction in the Cost of Working for the substitute item during the Indemnity Period when compared to that period in the twelve months immediately prior to Physical Damage to the Insured Property that corresponds with the Indemnity Period.

Machine - means an item of machinery identified in the Schedule for the purpose of Section 1, and includes any attachment to the Machine whether permanently attached or not, provided the Insured can prove the attachment is included in the Sum Insured for that Machine.

Maintenance Agreement - means an agreement that provides for the repair of faults and/or Breakdowns that happen in the course of normal operation, including the cost of all parts and labour.

Market Value - means the value of Insured Property at a normal sale at the time an insured Event covered by the Policy occurs or, if that value cannot be established, the value We determine in Our absolute discretion taking profit expectations and factors such as age, wear and tear, location, obsolescence and usability into account.

North America - means the United States of America or Canada (or any other territory coming within or subject to the jurisdiction of the United States of America or Canada).

Occurrence - means:

- a) An event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage that is neither expected nor intended (other than in the circumstances set out in paragraph (d) of definition of Personal Injury) from the standpoint of a reasonable person.
- b) Continuous or repeated exposure to a particular set of conditions does not constitute damage unless consequential Physical Damage occurs.
- c) All Occurrences of a series consequent upon or attributable to one source or original cause occurring over a period of no more than 72 hours shall be deemed to be one Occurrence.
- d) All Advertising Liability arising out of the same injurious material or act (regardless of the frequency or repetition thereof, the number and kind of media used or to the number of claimants) shall be deemed to be one Occurrence.

Operator - means an appropriately licensed driver or an appropriately licensed operator of Insured Property.

Period of Insurance - means the period that You are insured for as shown in the Schedule, unless the Policy ends earlier in accordance with its terms.

Personal Effects - means personal property generally carried or worn excluding cash, negotiable instruments, mobile phones, lap top computers, personal computers, electronic organizers, portable music players, video recorders, cameras or tools and equipment.

Personal Injury - means bodily injury, death, sickness, personal injury, disease, illness, disability, shock, fright, mental anguish and mental injury including loss of consortium or services resulting there from. Without limiting the foregoing Personal Injury may arise as a result of:

- a) false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- b) wrongful entry or wrongful eviction or other invasion of privacy;
- c) the publication or utterance of defamatory or derogatory material, or publication of utterance in violation of any individual's right of privacy except:
 - (i) when the first such publication or utterance is related to any publication or utterance prior to the commencement of the Policy; or
 - (ii) when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by You or on Your behalf; or
- d) assault and battery not committed by or at the direction of You unless committed for the purpose of preventing, eliminating or mitigating the effects or actual or possible danger to persons or property.

Physical Damage - means accidental, sudden and unforeseen loss, theft, damage and/or destruction of or to Insured Property (including damage caused by Flood) which occurs during the Period of Insurance.

Policy - means -

- a) this document;
- b) the Schedule attached hereto and provided by Us to the Insured at the time of issue of the Policy, or from time to time issued by Us to the Insured in substitution thereof; and

- c) any written Endorsement or Endorsements issued by Us to the Insured which may vary or amend the terms of cover provided.

Pollutants - means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, chemicals or waste, and includes legionnaires disease or any other air-borne disease or virus into or onto any land, soil, vegetation, crop, foodstuff, stockfeed, building, structure, watercourse, underground water supply, aquifer, body of water, or into the atmosphere. Provided that waste for these purposes shall include but not be limited to all materials which have been or are intended to be recycled, reconditioned or reclaimed.

Product(s) - means anything that is not in Your physical custody or in Your legal control that has been manufactured, grown, extracted, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, treated, installed, assembled, erected or constructed by You in the course of Your Business including any packaging and containers (other than a Vehicle) used to package or contain Your product(s).

Products Liability - means any liability for an Occurrence that is caused by or arises out of Your Products.

Property Damage - means:

- a) physical loss, destruction or damage to tangible property, including the loss of use thereof at any time resulting there from; and/or
- b) the loss of use of tangible property that has not been physically lost, destroyed or damaged, provided that any such loss of use is caused by or arises out of an Occurrence.

Registered Insured Property - means the Insured Property (including motor Vehicles) and associated attachments that

- a) are registered; or
- b) are for public road use where -
 - (i) a conditional registration or permit is held, or
 - (ii) an unconditional registration or permit is legally required to be held and is so held.

Revenue - means the amount earned in the conduct of the Business and adjusted for any seasonal or other trends in the Business during that period in the twelve months immediately prior to Physical Damage to the Insured Property that corresponds with the Indemnity Period.

Schedule - means the Schedule attached to the Policy and headed as such and any substitute document headed as such from time to time issued by Us to the Insured.

Sum Insured - means both-

- a) the sum set opposite an item of Insured Property in the Schedule; and
- b) the total sum of all items of Insured Property.

Territory Limits - means the Commonwealth of Australia unless otherwise specified in the Schedule.

Time Deductible - means the number of days shown in the Schedule during which You must bear the loss before any benefits are payable by Us under the Policy.

Total Loss - means when We decide that it is uneconomical to repair the Insured Property.

Trade Use - means use in excavating, digging, grading, scraping, drilling, lifting, pumping, spraying, loading and unloading, vacuuming and the like including the process of setting up for such operations and reverting from such operative format to travel/transit configuration. It does not include transit to or from a worksite but does include travel within a worksite if simultaneously used for work.

Vehicle - means any machine, including attachments, that is designed to travel on wheels or on self-laid tracks and to be propelled by a power source other than manual or animal power.

We/Our/Ours/Us - means the Insurer shown in the Schedule.

Wet Hire - means the hiring out of an item of Insured Property with a driver/Operator.

Worker to Worker Liability - means any claim (including but not limited to common law and Workers' Compensation recovery claims) directly or indirectly caused by or arising out of Personal Injury to any contractor, subcontractor, sub contractor or labour hirer engaged by You, or any of their employees. Worker to Worker Liability does not include claims arising out of Personal Injury to such persons when engaged by You specifically for the purposes of maintaining Your own plant, machinery, equipment or Business premises.

You/Your/Yours - means.

- a) For all Sections of the Policy, 'You', 'Your' means the Insured named in the Schedule.
- b) For – ROAD RISK LIABILITY, 'You', 'Your' also includes:
 - (i) anyone using or in charge of Registered Insured Property with the Insured's consent and including hirers;
 - (ii) any authorised passenger of Registered Insured Property;
 - (iii) Your employer or principal where Registered Insured Property was, at the relevant time, driven or used on their behalf with Your consent, but excluding hirers.
- c) For SECTION 3 – PUBLIC LIABILITY, 'You', 'Your' also includes:
 - (i) any of Your directors, executive officers or employees but only while acting within the scope of their duties in such capacity;
 - (ii) any principal but only for the principal's vicarious liability that arises out of work performed by You for that principal provided that :
 - i. the work was carried out by You in an attempt to comply with a contract to perform work that was made between You and the principal; and
 - ii. Our liability shall not exceed the required amount specified in the contract documentation.
- d) any office bearer of member of any of the following organisations that are formed with Your consent:
 - (i) a canteen, social, sports, welfare or child care organisation that is for Your employees; or
 - (ii) an internal first aid, fire brigade or ambulance service,but only while those persons are acting within the scope of their duties in such capacity.
- e) For SECTION 3 – PRODUCTS LIABILITY 'You', 'Your' also includes:
 - (i) any of Your directors, executive officers or employees while acting within the scope of their duties in such capacity;
 - (ii) any office bearer of member of any of the following organisations that are formed with Your consent:
 - i. a canteen, social, sports, welfare or child care organisation that is for Your employees; or
 - ii. an internal first aid, fire brigade or ambulance service,but only while those persons are acting within the scope of their duties in such capacity.

CONDITIONS

7.1 GENERAL CONDITIONS

These General conditions apply to all Sections of the Policy unless otherwise stated. Please remember that if You do not comply with any term or condition, We may (to the extent permitted by law) decline or reduce any claim payment and/or cancel Your Policy.

7.1.1 Misrepresentation and Non-disclosure

If You have:

- a) failed to disclose any matter which You were under a duty to disclose to Us; or
- b) made a misrepresentation to Us before the Policy was entered into,

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

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

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

7.1.2 **Observance of Terms and Conditions**

Each of the following conditions must be complied with:

- a) the observance of the terms, conditions and Endorsements of and to the Policy by any person or entity insured under it so far as they relate to anything to be done or complied with by any persons or entities insured;
- b) any verbal and written statements made to Us by any of the persons or entities insured or their representatives or agents prior to entering into the Policy must be truthful;
- c) the notification to Us as soon as practical by any of the persons or entities insured of any alteration of risk which materially affects this insurance.

7.1.3 **Reasonable Care**

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

- a) take all reasonable precautions to prevent or minimise loss or damage;
- b) comply with all reasonable recommendations made by Us to prevent or minimise loss or damage;
- c) comply with all statutory requirements and recommendations of manufacturers and suppliers; and
- d) prevent the Occurrence of Personal Injury and Property Damage insured against under the Policy.

7.1.4 **Entitlement**

Each person, entity or organisation entitled to insurance under the Policy will be separately subject to its terms as if such person, entity or organisation were You.

7.1.5 **Claims Co-operation**

On the happening of an Event for which a claim is made or may be made under the Policy We may at Our election:

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

7.1.6 **Subrogation**

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

7.1.7 **Alteration of Risk**

- a) *Material Alteration*
You or Your agents must notify Us as soon as possible in writing of any material alteration(s) to Our exposure under the Policy.
- b) *Minimisation of Risk and Compliance with Directions*
Where Our exposure under the Policy is altered, You must at Your own expense take such additional precautions as may be necessary to minimise the risk of any claim arising under the Policy and must comply with any of Our reasonable directions and requirements.
- c) *Agreement to Material Alterations*
No material alteration will be made or allowed by Us whereby the risk is increased unless first agreed to by Us in writing and provided You pay or agree to pay any additional premium We may require.

7.1.8 **Inspection**

We or Our employees or agents will at any reasonable time have the right to inspect and examine at any location, any item, plant or piece of equipment associated directly or indirectly with the risk insured, the subject matter of the Policy, and You must provide to Us, Our employees or agent all details and information that We may reasonably require for that purpose.

7.1.9 Defective Product(s)

You will, at Your own expense, trace, recall and modify any of Your Product(s) that You know to, or You reasonably suspect may, contain any defect or deficiency.

7.1.10 Other Insurances

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

7.1.11 Assignment

No interest in this insurance can be transferred to anyone other than an existing Insured party under the Policy without Our written prior consent.

7.1.12 Reinstatement of Sum Insured

Following any claim being paid or settled under the Policy We will reinstate the Sum(s) Insured under Section 1, provided that You pay or agree to pay any additional premium that may be reasonably required by Us.

7.1.13 Goods and Services Tax

The amount of premium payable by You for the Policy includes an amount on account of the GST on the premium.

When We pay a claim, Your GST status will determine the amount We pay.

When You are:

- a) not registered for GST, the amount We pay is the Sum Insured/ Limit of Indemnity or the other limits of cover including GST;
- b) registered for GST, We will pay the Sum Insured/ Limit of Indemnity or the other limits of insurance and where You are liable to pay an amount of GST in respect of an Acquisition relevant to Your claim (such as services to repair a damaged item insured under the Policy) We will pay the GST amount.

We will reduce the GST amount We will pay by the amount of any Input Tax Credit to which You are or would be entitled if You made the relevant Acquisition. In these circumstances, the Input Tax Credit may be claimable through Your Business Activity Statement (BAS).

You must advise Us of Your Australian Business Number and Taxable Percentage.

Any GST liability arising from Your incorrect advice is payable by you.

Where the settlement of Your claim is less than the Sum Insured/ Limit of Indemnity or the other limit of insurance cover, We will only pay the amount of GST (less Your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover Your loss, We will only pay the GST relating to Our settlement of the claim.

We will (where relevant) pay You on Your claim by reference to the GST exclusive amount of any supply made by any Business of Yours which is relevant to Your claim.

7.1.14 Payment of Premium

You will promptly pay the premium under the Policy together with any adjustments of premium and other amounts charged for the Policy and for any renewal, extension or Endorsement thereof.

7.1.15 Cancellation

In addition to the cooling off rights, the Policy may be cancelled:

- a) by You at any time by giving notice in writing to Us. Such cancellation will be effective from the date upon which We physically receive Your notice. Upon receipt of such notice You will be entitled to a pro rata refund

of premium for that portion of the Policy not utilised, less 10% of the premium amount, any administration fees and any Government taxes or duties we are unable to recover;

- b) by Us in accordance with the provisions of the Insurance Contracts Act 1984. You will be entitled to a pro rata refund of premium for that portion of the Policy not utilised less any administrative fees and any Government taxes or duties we are unable to recover.

Subject at all times to Us retaining any minimum Policy premium amount in force at the time of cancellation.

In the event that You have made a claim or notification under the Policy, You will not be entitled to a pro-rata refund for any unused portion of the premium.

7.1.16 Jurisdiction

The Policy is governed by the laws of Australia. Any dispute relating to this Policy will be submitted to the exclusive jurisdiction of the court within the State or Territory in which the Policy was issued.

7.1.17 Service of suit

The Underwriters accepting this Insurance agree that:

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

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

who has authority to accept service on the Underwriters' behalf;

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

In the event of a claim arising under this Insurance immediate notice should be given to:

ATC Insurance Solutions Pty Ltd
Level 4, 451 Little Bourke Street
Melbourne VIC 3000
Telephone: 03 9258 1777
Facsimile: 03 9867 5540
Website www.atcis.com.au

7.1.18 Multiple Insureds - Cross Liability

- a) It is noted and agreed that if You are comprised of more than one insured party each operating as a separate and distinct entity then (save as described in this Multiple Insureds Clause) cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that Our total liability to all of the insured parties collectively shall not exceed the Sums Insured and/or Limits of Indemnity including any inner limits set by memorandum or Endorsement stated in the Policy.
- b) It is understood and agreed that any payment or payments by Us to any one or more such insured parties shall reduce to the extent of that payment Our liability to all such parties arising from any one Event giving rise to a claim under the Policy and (if applicable) in the aggregate.
- c) It is further understood that the insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of loss or damage.
- d) It is further understood and agreed that We shall be entitled to reduce or avoid liability to the extent permitted by law, or (as may be appropriate) claim damages, from any of the insured parties in circumstances of fraud,

material misrepresentation, material non-disclosure or breach of any warranty or condition of the Policy each referred to in this clause 7.1.18 - Multiple Insureds as a "Vitiating Act".

- e) It is however agreed that (save as described in this clause 7.1.18 - Multiple Insureds) a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- f) We hereby agree to waive all rights of subrogation which We may have or acquire against any insured party except where the rights of subrogation or recourse are required in consequence of or otherwise following a Vitiating Act in which circumstances We may enforce such rights notwithstanding the continuing or former status of the vitiating party as an insured party.

7.1.19 **Third Party Beneficiaries**

- a) Such persons included in the definition of You at paragraphs b) to e) inclusive, other than the Insured, can make a claim for benefits under the Policy entered into by the Insured in accordance with the Policy terms and conditions. This right arises solely by operation of section 48 of the *Insurance Contracts Act 1984* (Cth). They do not enter into any agreement with Us and are not charged by Us for the right to make a claim for those benefits. Neither We nor You hold anything on trust for, or for the benefit or on behalf of such persons;
- b) such persons have no right to cancel or vary the Policy or its cover - only the Insured (as the contracting party) and We can do this. If We cancel or vary the Policy or its cover, We do not need to obtain such person's consent to do so; and
- c) We do not provide any notices in relation to this insurance to such persons as they are not a contracting party to the Policy. We only send notices to the Insured as the only person We have contractual obligations to under the Policy.

7.1.20 **Multiple Excess(es)**

Where an Excess is shown for Section 1 and Section 2, only the highest Excess will apply to the Event/Occurrence.

7.1.21 **Sanction Limitation and Exclusion Clause**

We shall not be deemed to provide cover and We shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or Australia.

7.1.22 **Several Liability Clause**

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

7.2 **ADDITIONAL CONDITIONS TO SECTION 1 ONLY**

7.2.1 **Notice of Claims**

In the event of a claim under Section 1 of the Policy the following Additional Conditions apply:

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

7.2.2 Dismantling Costs

Where You make a claim for loss or damage, We may in some circumstances, require You to:

- a) dismantle Your Insured Property; or
- b) authorise Us to dismantle Your Insured Property,

so We can assess Your claim for the relevant loss or damage and/or decide if it is valid.

If You do not agree We may refuse to assess or pay Your claim.

Where We determine that the claimed loss or damage to Your Insured Property is:

- a) not covered by the Policy, You will be responsible for the costs of the above dismantling as well as any costs associated with the dismantling (including but not limited to any diagnosis, reassembly, repair and/or replacement costs).
- b) covered by the Policy, We will settle Your claim in accordance with the terms and conditions of the Policy.

7.3 ADDITIONAL CONDITIONS APPLICABLE TO SECTION 2 & 3 ONLY

7.3.1 Notice of Claims

In the event of any Occurrence likely to give rise to a claim under Section 2 and/or Section 3 of the Policy You must:

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

7.3.2 Underground Services

With respect to Section 3 (Public Liability), for any liability for Property Damage to underground services an Excess of \$5,000 will be applicable for each Occurrence unless You have first ascertained from the relevant authorities the actual position of such services, in which case the Excess will be \$ 1,000 for each Occurrence, unless otherwise shown in the Schedule.

For the purpose of this Additional Condition Underground Services means sewers, water pipes, gas pipes, electric, fibre optic or telecommunications wires or cables and their support structures.

7.3.3 Defence of Claims or Suits

General

With respect to the indemnity provided by Section 2 and 3 of the Policy, We will:

- a) defend in Your name and on Your behalf any claim or suit against You alleging Personal Injury or Property Damage and seeking damages on account thereof even if any allegation(s) made in any such claim or any such suit is or are groundless, false or fraudulent;
- b) pay all, charges, expenses and legal costs incurred by Us and/or You with Our prior written consent:
 - (i) in the investigation, defence or settlement of any such claim or suit, including loss of salaries or wages because of Your attendance at hearings or trials at Our request; and/or
 - (ii) in bringing or defending appeals in connection with such claim or suit;
- c) pay all charges and legal costs recoverable from or awarded against You in any such claim or suit and all interest accruing on Our portion of any judgment until We have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of Our liability under the Policy;
- d) pay expenses incurred by You for:
 - (i) rendering first aid and/or surgical or medical relief to others at the time of Personal Injury (other than any medical expenses that We are prevented from paying by any law);
 - (ii) temporary protection of damaged property and undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof; and/or
 - (iii) purchasing and/or hiring and/or erecting and dismantling or hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide to comply with the requirements of any Government, Local Government or other Statutory Authority;
- e) pay all legal costs incurred by You with Our prior written consent for Your representation at:
 - (i) any Coronial inquest or inquiry; and/or

- (ii) any proceedings in any court or tribunal in connection with the liability insured under Section 2 and 3 of the Policy.

Any amounts We pay pursuant to sub-paragraphs a) to e) above shall constitute "Defence Costs" for the purposes of the Policy.

The amount of such Defence Costs incurred, except payments made in settlement of claims and suits, are payable by Us in addition to the applicable Limit of Indemnity shown in the Schedule.

North America Clause

For any claims or suits originating in any courts in North America, the applicable Limit of Indemnity shown in the Schedule shall be inclusive of all Defence Costs.

Provided that:

- a) We shall not be obliged to pay any claims or judgment or to defend any suit after Our Limit of Indemnity has been exhausted by payment or judgment or settlement;
- b) if payment exceeding Our Limit of Indemnity has been made to dispose of a claim, Our liability for any Defence Costs in connection with it shall be limited to such portion of the said Defence Costs as the Limit of Indemnity bears to the amount paid to dispose of the claims.

In no event shall Our liability in respect of Defence Costs exceed fifty percent (50%) of the Limit of Indemnity stated in the Schedule or a maximum of \$ 5,000,000, whichever is the lesser amount.

7.3.4 Limit of Liability

Except where otherwise specifically provided to the contrary Our Limit of Indemnity shall not exceed the amount stated as the Limit of Indemnity in the Schedule for any one Occurrence.

Our total aggregate liability during any one Period of Insurance for Product Liability claims shall not exceed the Limit of Indemnity noted in the Schedule.

In respect of payments made under Sections 2 or 3 We shall not be liable for the amount of the Excess shown in the Schedule in respect of each and every Occurrence.

The Excess that applies in respect of each and every Occurrence giving rise to a Worker to Worker Liability claim under Section 3 of the Policy will be the standard Excess shown in the Schedule unless a Worker to Worker Liability Excess is otherwise specified in the Schedule (in which case the Worker to Worker Liability Excess applies).