

MICL

Marine Industry Combined Liability

Policy

MICL - LIU - 0811

Including Statutory Liability Extension



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LIBERTY INTERNATIONAL UNDERWRITERS

(a member company of Liberty Mutual Group)

Marine Industry Combined Liability Policy

In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements and declarations contained in the proposal or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the attached Schedule, Policy and endorsements where applicable.

1 Insuring Clause

Subject to the terms of this Policy, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of:

1.1 Injury;

1.2 Damage which includes:

1.2.1 Physical loss of or property damage to any non-owned vessel or craft (or to contents thereof) while in the Insured's temporary care, custody or control for the purpose of carrying out works thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any non-owned vessel or craft (or to contents thereof) on which the Insured is or has been working on if the physical damage or destruction arises from such work; or

1.2.2 The costs of removal of wreck that arises from a direct consequence of Damage to any non-owned vessel or craft; or

1.3 Advertising Injury;

First happening within the Geographical Limits and during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

2 Definitions

2.1 "Advertising Injury" means Injury arising out of:

2.1.1 Libel, slander or defamation, or

2.1.2 Any infringement of copyright or passing off of title or slogan; or

2.1.3 Unfair competition, piracy, idea misappropriation contrary to an implied contract; or

2.1.4 Invasion of privacy;

Committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and caused by or arising out of the Insured's advertising activities.

2.2 "Asbestos" means:

2.2.1 That group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; or

2.2.2 That group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres,

And includes Asbestos Products and Products containing Asbestos.

2.3 "Damage" means:

2.3.1 Physical damage to or destruction of tangible property including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or

2.3.2 Loss of use of tangible property that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other tangible property which first happened during the Period of Insurance. All such loss of use shall be deemed to happen at the time of the physical damage or destruction that caused it.

2.4 "Employment Practices" means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, unfair contracts, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.

2.5 "Injury" means:

- 2.5.1 Bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- 2.5.2 False arrest, wrongful detention or imprisonment, malicious prosecution;
- 2.5.3 Wrongful entry or eviction;
- 2.5.4 Assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Injury and/or Damage or eliminating danger; or
- 2.5.5 Libel, slander, defamation of character or invasion of right of privacy.

In the event of Injury claims arising from latent injury, latent sickness, latent disease, latent illness or latent disability: such injury, sickness, disease, illness or disability in respect of each claim shall be deemed to have occurred on the day such injury, sickness, disease, illness or disability was first medically diagnosed.

2.6 "Insured" wherever used in this Policy means the Insured named in the Schedule and:

- 2.6.1 Any subsidiary company of the Insured incorporated within Australia including subsidiaries thereof; or
- 2.6.2 Any other entity incorporated within Australia controlled by the Insured and over which the Insured assumes active management.
- 2.6.3 Every party including joint venture companies and partnerships to whom the Insured is obligated by virtue of any contract or agreement to provide insurance such as is afforded by this Policy; but only to the extent required by such contract or agreement and in any event only for such coverage and Limits of Indemnity as provided by this Policy.

2.7 "Insured's Business" is the business shown in the Schedule.

2.8 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, U.S.A. (The liability of members is limited).

2.9 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.

2.10 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage and/or Advertising Injury neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.

With respect to Advertising Injury, all Injury arising out of the same injurious material, regardless of the frequency of repetition or the number or kind of media used, or whether a claim is made by one or more persons, shall be deemed to arise out of one Occurrence.

2.11 "Period of Insurance" is the period shown in the Policy.

2.12 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

2.13 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).

2.14 "Terrorism" means an act or acts:

2.14.1 That are violent in nature or are dangerous to human life:

2.14.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia and that have the apparent intent of:

2.14.1.1.1 Intimidating or coercing any civilian population;

2.14.1.1.2 Influencing the policy of any government by intimidation or coercion; or

2.14.1.1.3 Affecting the conduct of any government by mass destruction, assassination or kidnapping,

Or

2.14.2 That result in:

2.14.2.1 The denial of access to or services from web sites, computer networks or telecommunication equipment; or

2.14.2.2 The malfunction or degradation of web sites, computer networks, telecommunications equipment, mechanical equipment or the interruption to the functioning of web sites or such properties,

And that have the apparent intent of intimidating or coercing any civilian population or influencing the policy of any government by intimidation or coercion.

2.15 "Worker" means any person employed by the Insured or deemed to be employed by the Insured pursuant to any Workers' Compensation Law. Voluntary workers, secondees and work experience students (if any) shall not be deemed to be the Insured Workers.

2.16 "Workers' Compensation Law" means any law relating to compensation for Injury to Workers or employees.

3 Indemnity to Others

Subject to the terms of this Policy and in accordance with Insuring Clause 1, this Policy will extend to pay to or on behalf of:

- 3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.6 and arising out of the Insured's Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;
- 3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;
- 3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organisations in their respective capacity as such; or
- 3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

Provided always that all such persons or parties shall, whilst not being a party to this contract, observe, fulfil and be subject to the terms of this Policy in so far as they can apply as though they were the Insured.

4 Cross Liabilities

Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect of claims made by any of them against any other of them provided that LIU's total liability shall not exceed the Limit of Indemnity for all claims under this Policy.

5 Limit of Indemnity

LIU's liability to pay compensation shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.

The total aggregate liability of LIU for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Products shall not exceed the Limit of Indemnity stated in the Schedule.

6 Defence Costs and Supplementary Payments

With respect to the indemnity provided by this Policy, LIU will:

- 6.1 Defend in the name and on behalf of the Insured any claim or suit against the Insured alleging such Injury, Damage or Advertising Injury and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent.
- 6.2 Pay all charges, expenses and legal costs incurred by LIU and/or by the Insured with LIU's written consent:
 - 6.2.1 In the investigation, defence or settlement of such claim or suit, including loss of salaries or wages because of the Insured's attendance at hearings or trials at LIU's request, or
 - 6.2.2 In bringing or defending appeals in connection with such claim or suit.

- 6.3 Pay all charges, expenses and legal costs recoverable from or awarded against the Insured in any such claim or suit and all interest accruing on LIU's portion of any judgment until LIU have paid, tendered or deposited in court that part of such judgment which does not exceed the limit of LIU's indemnity thereon.
- 6.4 Pay expenses incurred by the Insured for:
- 6.4.1 Rendering first aid and/or surgical or medical relief to others at the time of any Injury (other than any medical expenses, which LIU are prevented from paying by any law).
 - 6.4.2 Temporary protection of damaged or undamaged property of any person or party, including temporary repairs, shoring up and/or underpinning thereof.
 - 6.4.3 Purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which the Insured must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.
- 6.5 Pay all legal costs incurred by the Insured with LIU's consent for representation at:
- 6.5.1 Any Coronial Inquest or Inquiry
 - 6.5.2 Any proceedings in any court or tribunal in connection with liability insured against by this Policy.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by LIU in addition to the applicable Limit of Indemnity of this Policy. However, in respect of any claims or suits originating in any court in the United States of America or Canada, the applicable Limit of Indemnity shown in the Schedule shall be inclusive of all Defence Costs and Supplementary Payments.

Where LIU are prevented by law or otherwise from making payments on the Insured's behalf, LIU will indemnify the Insured for legal liability incurred to the extent that such liability is covered by this Policy.

In jurisdictions where LIU may not legally be permitted to, or cannot for any other reason, defend any claim or suit against the Insured, LIU will reimburse the Insured for the expense of such defence incurred with LIU's written consent.

7 Additional Benefit

7.1 Claims Preparation Costs

In addition to the amount of cover provided by this Policy, LIU will pay up to \$20,000 for reasonable professional fees and such other expenses incurred by the Insured for the preparation of a claim under this Policy. The cover provided under this Additional Benefit operates in addition to and shall not in any way affect the cover provided under Clause 6 of this Policy.

7.2 Towing

The cover provided by this Policy is extended to include liability assumed by the Insured under contracts of customary towage for the purpose of entering or leaving port or manoeuvring within the port.

7.3 Hotwork Extension

The cover provided by this Policy is extended to include the Insured's liability in respect of or arising in connection with hotwork on any vessel or craft including those previously engaged in the carriage of the following cargoes: ammunition, explosives, bulk oil, flammable liquids in bulk or gas in bulk.

It is a condition that the rules, regulations and requirements of the port or government authorities at the place where the work is being carried out have been complied with including obtaining a gas free certificate and/or any other certificates or authorisation that may be required.

Hotwork means any work conducted by the Insured or on the Insured's behalf which involves the use of oxy-acetylene torches, welding or oil tank cleaning equipment.

8 Exclusions

This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

- 8.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:
- 8.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
 - 8.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with

any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;

- 8.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
 - 8.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon; or
 - 8.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 8.2 Damage to property in the Insured's physical or legal care, custody or control; but this exclusion shall not apply with regard to:
- 8.2.1 The personal property, tools and effects of any of the Insured's directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of the Insured's visitors.
 - 8.2.2 Premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by the Insured for the purpose of the Insured's Business, but no cover is provided by this Policy if the Insured have assumed the responsibility to insure such premises.
 - 8.2.3
 - 8.2.3.1 Premises (and/or their contents) temporarily occupied by the Insured for the purpose of carrying out work in connection with the Business,
 - or
 - 8.2.3.2 Any other property temporarily in the Insured's possession for the purpose of being worked upon;

But no indemnity is granted for damage to that part of any property upon which the Insured is or has been working if the damage arises solely out of such work.
 - 8.2.4 Any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by the Insured, whilst any such Vehicle is in a car park owned or operated by the Insured; provided that the Insured does not operate the car park for reward, as a principal part of the Insured's business.
 - 8.2.5 Any property (except property owned by the Insured) not mentioned in Clauses 8.2.1 to 8.2.4 above whilst in the Insured's physical or legal care, custody or control where the Insured has accepted or assumed legal liability for such property. Provided that LIU's limit of indemnity under this Clause 8.2.5 shall not exceed \$250,000 in respect of any one claim or series of claims arising out of any one Occurrence.
- 8.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of the Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 8.4 Damage to the Insured's Products if such Damage is attributable to any defect therein or harmful nature or unsuitability thereof. Provided this Exclusion 8.4 applies only to that part of the Insured's Products which is defective.
- 8.5 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 8.6 Liability assumed under the terms of a contract, agreement or warranty unless:
- 8.6.1 The Insured would have been liable in the absence of such contract, agreement or warranty, or
 - 8.6.2 Agreed in writing by LIU.
- 8.7 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.
- 8.8 Any Product which is incorporated into the structure, machinery or controls of any aircraft or aerial device.
- 8.9 8.9.1 For Injury to any Worker in respect of which the Insured is or would be entitled to indemnity under any policy of insurance, fund, scheme or self insurance pursuant to or required by any legislation relating to Workers' Compensation of Accident Compensation whether or not such policy, fund, scheme or self insurance has been effected.

Provided that this Policy will respond to the extent that the Insured's liability would not be covered under any such policy, fund, scheme or self insurance arrangement had the Insured complied with its obligations pursuant to such law.

8.9.2 Imposed by:

8.9.2.1 The provisions of 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 such industrial award or agreement or determination or contract of employment or workplace agreement.

8.9.2.2 Any law relating to Employment Practices.

8.10 Libel, slander and/or other defamation:

8.10.1 Made prior to the commencement of the Period of Insurance; or

8.10.2 Made at the Insured's direction or with the Insured's authority or with knowledge of its falsity.

8.11 The loss of use of tangible property which has not been physically damaged or destroyed resulting from:

8.11.1 A delay in or lack of performance by or on behalf of the Insured of any contract or agreement; or

8.11.2 The failure of any Product to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by the Insured but this exclusion does not apply to loss of use of other tangible property directly or indirectly caused by, arising out of or in any way connected with or resulting from the sudden and accidental physical damage to or destruction of the Product after such Product has been put to use by any person or organisation other than the Insured.

8.12 Any change in the nature of the Insured's Business which:

8.12.1 Occurred during the currency of this Policy; and

8.12.2 Was known by the Insured, or would have been known by a reasonable person in the circumstances, to be likely to increase the risk of Injury or Damage for which indemnity is provided by this Policy.

For the purposes of this exclusion, where the Insured is a corporate body, the knowledge of any director or officer of the Insured shall be deemed to be the knowledge of the Insured.

8.13 The rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by the Insured or any person covered by Clause 3 of this Policy.

Provided that this exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.

8.14 8.14.1 For Injury and/or Damage directly or indirectly arising out of the discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any water course or body of water.

8.14.2 For the cost of testing and monitoring for, removing, nullifying, or cleaning up of Pollutants.

Provided that, with respect to any such liability which may be incurred anywhere other than the United States of America or Canada, Exclusions 8.14.1 and 8.14.2 shall not apply where such discharge, dispersal, release or escape is caused by a sudden, identifiable, unintended and unexpected event from Insured's standpoint which takes place in its entirety at a specific time and place.

The total aggregate liability of LIU for all claims covered in any one Period of Insurance in respect of the proviso in Exclusion 8.14 shall not exceed the Limit of Indemnity shown in the Schedule.

8.15 8.15.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion; or

8.15.2 Nuclear weapons material.

8.16 And regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

8.16.1 War and military action which includes without limitation the following:

8.16.1.1 War, including undeclared or civil war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;

- 8.16.1.2 Warlike action by military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 8.16.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- 8.16.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:
 - 8.16.2.1 Alone or on behalf of or in connection with any organisation; or
 - 8.16.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.
- 8.16.3 Action taken to prevent or defend against an act of Terrorism.

If an act of Terrorism involves chemical or biological weapons, this Terrorism exclusion will still apply.

If an act of Terrorism involves nuclear reaction, nuclear radiation or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or nuclear radiation or radioactive contamination in place of Exclusion 8.15.
- 8.17 The ownership, maintenance, operation, possession or use by or on behalf of the Insured of any aircraft or aerial device.
- 8.18 The Deductible and/or self insured retention shown in the Schedule.
- 8.19 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of \$500,000 or 10% of the Limit of Indemnity whichever is the lesser.
- 8.20 Asbestos.
- 8.21 8.21.1 Claims made and actions instituted within the United States of America or Canada and their respective territories and protectorates, and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or
- 8.21.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.
- 8.22 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.
- 8.23 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.
- 8.24 Navigation of any self-powered vessel or craft owned, chartered by or leased to the Insured.
- 8.25 Advertising Injury resulting from:
 - 8.25.1 Failure of performance of contract but this shall not relate to claims for unauthorised appropriation of ideas based upon breach of an implied contract;
 - 8.25.2 Infringement of trade mark, service mark, trade name or patents;
 - 8.25.3 Incorrect description of any article or commodity; or
 - 8.25.4 Mistake in advertised price.

9 General Conditions

- 9.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.
- 9.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.

- 9.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.
- 9.4 The amount shown within the Schedule as a Deductible and/or self insured retention is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured or any person covered by Clause 3 of this Policy.
- 9.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:
- 9.5.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Policy;
 - 9.5.2 The total amount sought by the claimant for such claim; or
 - 9.5.3 The total amount for which such claim can be settled,
And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 6 of this Policy.

Upon such payment, LIU shall relinquish conduct or control of such claim and be under no further liability under this Policy in connection with such claim including but not limited to Defence Costs.

- 9.6 This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws.
- 9.7 The Insured must:
- 9.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;
 - 9.7.2 Take all reasonable precautions to:
 - 9.7.2.1 Prevent Injury, Damage and Advertising Injury;
 - 9.7.2.2 Prevent the manufacture, sale or supply of defective Products; and
 - 9.7.2.3 Comply and ensure that its Workers, servants and agents comply with all statutory obligations, by laws or regulations imposed by any public authority for the safety of persons or property;
 - 9.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and
 - 9.7.4 Assist and co-operate fully and promptly with LIU in the investigation, settlement or defence of any claim or matters relating or in connection thereto.

The amount of any benefit under this Policy for any liability caused or contributed to by the lack of such precautions, measures and compliances shall be reduced by the amount that fairly represents the extent to which LIU's interests have been prejudiced thereby.

- 9.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.
- 9.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 9.9.1 It is entitled to do so pursuant to either the Insurance Contracts Act 1984 or the Marine Insurance Act 1909 (including any amendments to either Act) as may be applicable;
 - 9.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy;
- or
- 9.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace

this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.

Where the Insured comprises more than one person or company, it is agreed that the Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies or others indemnified by Clause 3 for the purposes of receiving any notice of cancellation pursuant to this General Condition, or any other notice, statement, document or information relating to this Policy.

Where the Insured has a broker, nothing shall restrict LIU's right to notify the broker as agent of the Insured.

- 9.10 Where this Policy provides indemnity to the Insured which is prohibited by law, this Policy shall be varied by operation of this General Condition so that this Policy does not respond to the extent that indemnity is prohibited by law.
- 9.11 9.11.1 Words importing persons shall include corporations and other legal entities;
- 9.11.2 References in the singular shall be deemed to include the plural and vice versa; and
- 9.11.3 Words depicting any gender include reference to all other genders.

10 Release

Where the Insured is required by contractual agreement to release any Government or Public or Local Authority or other Statutory Authority or any landlord or any other persons or parties from liability for loss, destruction or damage or legal liability insured against under this Policy, such release is allowed without prejudice to this insurance.

Notwithstanding General Condition 11 and Exclusion 8.7 of this Policy, LIU agree to waive all rights of subrogation against any such Authority or persons or parties in the event of any Occurrence for which a claim for indemnity may be made under this Policy.

11 Subrogation and allocation of the proceeds of recoveries

Subject to General Condition 12 'Subrogation Waiver', any corporation, organisation or person claiming under this insurance shall, at LIU's request and expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by LIU for the purpose of enforcing any rights and remedies, or for obtaining relief or indemnity from any other organisation(s) or person(s), to which LIU shall be or would become entitled upon paying for or indemnifying the Insured in respect of legal liability under this insurance.

Should the Insured incur any legal liability which is not covered by this insurance:

- 11.1 Due to the application of an Excess; and/or
- 11.2 Where the amounts of any judgments or settlements exceed the applicable Limit of Indemnity;

The Insured will be entitled to the first call on the proceeds of all recoveries made, by either the Insured or LIU, on account of such legal liability until fully reimbursed for such uninsured amount or amounts (less the actual costs of making such recoveries where those costs are incurred by LIU) and any remaining amount(s) will be applied to reimburse LIU.

12 Subrogation waiver

Notwithstanding General Condition 11 We hereby agree to waive all LIU's rights of subrogation under this Policy against:

- 12.1 Each of the parties described under Clause 2.6.
- 12.2 Any corporation, organisation or person which or who owns or controls the majority of the capital stock of any corporation or organisation to which or to whom protection is afforded under this Policy.

Where such corporation, organisation or person is protected from liability insured against hereunder by any other policy of indemnity or insurance, LIU's right of subrogation is not waived to the extent and up to the amount of such other policy.

Signed on behalf of Liberty International Underwriters
on the date stated in the Schedule.



N MacCarthy
Senior Vice President, Casualty – Asia Pacific

This Policy is valid only if attaching to a signed and current Policy Schedule including any applicable endorsements and it is signed and dated by a person duly authorised by Liberty International Underwriters.

LIBERTY INTERNATIONAL UNDERWRITERS

(a member company of Liberty Mutual Group)

STATUTORY LIABILITY EXTENSION

(Applicable only where the extension is confirmed in the schedule)

Preamble

In consideration of the premium being paid by the Insured to LIU and in reliance upon the written statements, declarations contained in the proposal form or insurance broker's quotation submission, LIU agrees to indemnify the Insured in accordance with the following extension wording.

1. Notice to the Insured

This extension provides cover on a Claims made and notified basis.

- 1.1 A Claim must be made against the Insured during the Period of Insurance; and
- 1.2 The Insured must notify LIU in writing of such Claim during the Period of Insurance.

2. Insuring Clause

Subject to the terms and conditions of the Policy and this extension, LIU will pay to or on behalf of the Insured any Loss arising from any Claim in respect of a Wrongful Breach that occurs after the Retroactive Date.

3. Definitions

- 3.1 "Act" means any Act of the Parliament of Australia and any Act of the Parliaments of the States or Territories of Australia, including any subordinate or delegated legislation made under those Acts; and any amendment, consolidation or re-enactment of any of the above Acts or legislation.
- 3.2 "Business" means the business conducted by the Insured as described in the Schedule.
- 3.3 "Claim" means the receipt by the Insured of any written or verbal notice which alleges a Wrongful Breach and claims that the Insured is liable to pay a Penalty.
- 3.4 "Consumer Protection Act" means any of the following:
 - Fair Trading Act 1985 (VIC)
 - Fair Trading Act 1987 (NSW)
 - Fair Trading Act 1987 (SA)
 - Fair Trading Act 1987 (WA)
 - Fair Trading Act 1989 (QLD)
 - Fair Trading Act 1990 (TAS)
 - Fair Trading Act 1992 (ACT)
 - Consumer Affairs and Fair Trading Act 1996 (NT)
 - Trade Practices Act 1974 (Cth)

And any amendment, consolidation or re-enactment of any of those Acts.

- 3.5 "Deductible" means the amount specified in the Policy Schedule.
- 3.6 "Employee" means any person employed by the organisation described in the Schedule.
- 3.7 "Insured" means:
 - 3.7.1 The organisation named as the Insured in the Schedule, including any past, present or future Officer, Employee or work experience student whilst acting in the performance of their duties or employment;
 - 3.7.2 Any subsidiary company of the Insured named in the Schedule which is:
 - 3.7.2.1 Incorporated within Australia including subsidiaries;
 - 3.7.2.2 Controlled by the Insured and over which the Insured assumes active management;

3.7.3 Outside Directorship held by an Officer;

Provided that:

- 3.7.3.1 Coverage shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and
- 3.7.3.2 Coverage shall not apply to any part of any Loss covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.

- 3.8 "Joint Venture" means any enterprise undertaken jointly by the Insured and any other party.
- 3.9 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA. (The liability of members is limited).
- 3.10 "Loss" means any Penalty and Defence Costs.
- 3.11 "Officer" means any past, present or future director, executive officer (as defined by the Corporations Act) or company secretary of the Insured.
- 3.12 "Outside Directorship" means an executive position held by an Officer of the Insured in connection with the Business at the specific request of the Insured in any corporation, joint venture, partnership, trust or other enterprise which is not included in the Definition of the Insured. In this Definition, a reference to Insured shall mean the Insured as defined in Clauses 3.7.1 and 3.7.2.
- 3.13 "Penalty" means any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act for a Wrongful Breach by the Insured but excluding:
 - 3.13.1 Any amounts payable as compensation;
 - 3.13.2 Any compliance, remedial, reparation or restitution costs;
 - 3.13.3 Any damages, including any exemplary or punitive damages;
 - 3.13.4 Any consequential economic loss;
 - 3.13.5 Any legal costs and associated expenses.

Notwithstanding Clause 3.13.5, LIU will pay any reasonable legal costs and associated expenses payable by the Insured to any Regulatory Authority upon the imposition of a Penalty covered by this Policy. Provided that where the proceedings that lead to the imposition of the Penalty also include proceedings in respect of any of the matters set out in Sub-Clauses 3.13.1 to 3.13.4, LIU will not be liable for that proportion of the legal costs and associated expenses that may be reasonably attributed to the proceedings in respect of those matters set out in Sub-Clauses 3.13.1 to 3.13.4.

- 3.14 "Period of Insurance" means the period of insurance specified in the Policy Schedule.
- 3.15 "Reasonable Grounds for Defence" means:
 - 3.15.1 the Insured has reasonable prospects of success in avoiding the quantum of any Penalty alleged in the Claim; or
 - 3.15.2 the Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim,

and that having regard to the likely legal costs incurred in defending the Claim it is reasonable for the Claim to be defended. Provided that in either scenario 3.15.1 or 3.15.2 above the Claim is not capable of being avoided or mitigated by a settlement into which a reasonable person in the position of the Insured, properly advised, would enter.

In the event that an agreement on reasonable prospects for success cannot be reached between LIU and the Insured, a Senior Counsel (to be mutually agreed upon by LIU and the Insured) shall, as an expert and not an arbitrator, make such determination. Until the Senior Counsel has made a determination LIU may, in its absolute discretion, pay such legal costs and/or expenses or any other amount insured under this Policy as it considers appropriate.

In the event that agreement on the appointment of a Senior Counsel cannot be reached, such Senior Counsel shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

- 3.16 “Regulatory Authority” means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorized to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.
- 3.17 “Retroactive Date” means the date specified in the Policy Schedule.
- 3.18 “Territorial Limits” means anywhere in Australia.
- 3.19 “Wrongful Breach” means any act, error or omission which occurs in connection with the Business, within the Territorial Limits and after the Retroactive Date, whereby:
- 3.19.1 the Insured contravenes an Act or is involved in the contravention of an Act;
- 3.19.2 the Insured commits an offence pursuant to an Act; or
- 3.19.3 such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.

4. Limit of Indemnity and Deductible

LIU’s liability under this extension in respect of all Losses arising out of all Claims covered by this extension shall not exceed the Limit of Indemnity specified in the Policy Schedule any one Claim and in the aggregate during the Period of Insurance.

All Losses arising out of any one Wrongful Breach or interrelated Wrongful Breaches are deemed to be one Loss.

The Deductible is the first amount for each and every Claim which is to be borne by the Insured.

5. Defence Costs

LIU agrees to pay all legal costs and expenses, excluding wages, salaries or other remuneration of the Insured, incurred with LIU’s prior written consent in connection with any Claim for which indemnity is available under this extension, provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this extension. Provided that LIU shall not be obliged to provide such consent unless LIU is satisfied that the Insured has Reasonable Grounds for Defence. Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this extension.

6. Exclusions

- 6.1 This Policy does not provide indemnity in respect of any Claim:
- 6.1.1 Based upon, attributable to or in consequence of:
- 6.1.1.1 Any wilful, intentional or deliberate Wrongful Breach;
- 6.1.1.2 A wilful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any Act;
- 6.1.1.3 Any Wrongful Breach caused by gross negligence or recklessness by the Insured;
- 6.1.1.4 A dishonest, fraudulent or malicious act or omission of the Insured, provided that cover is provided to any Insured who is innocent of and has no prior knowledge of such conduct. Such Insured shall as soon as practicable after becoming aware of such conduct, advise LIU in writing of all relevant facts.
- 6.1.1.5 The Insured gaining any personal profit or advantage or receiving any remuneration to which he/she was not legally entitled;
- 6.1.1.6 Any Wrongful Breach in connection with any strike, lockout, picket line, stand down or industrial dispute. This exclusion does not apply to Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;
- 6.1.1.7 A Wrongful Breach of any Consumer Protection Act. This exclusion does not apply to Officers and Employees for Claims arising in the proper performance of their duties as Officers and Employees;
- 6.1.1.8 Any Wrongful Breach pursuant to Sections 182, 183, 601FE or 601JD of the Corporations Act; and any amendment, consolidation or re-enactment of any of those Sections;
- 6.1.1.9 A Wrongful Breach in connection with a requirement to pay taxes, rates, duties, levies, charges, fees or any other revenue or impost;
- 6.1.1.10 A Wrongful Breach relating to the regulation of vehicular, air or marine traffic;

- 6.1.1.11 Asbestos, asbestos products and/or products containing asbestos;
- 6.1.2 Made, threatened or in any way intimidated against the Insured prior to the Period of Insurance;
- 6.1.3 Arising from any matter disclosed to any insurer, including LIU, prior to the Period of Insurance as either a Claim or fact which may give rise to a Claim against the Insured;
- 6.1.4 Arising from any facts of which the Insured was aware prior to the commencement of the Period of Insurance and which the Insured knew, or ought reasonably to have known, to be facts which may give rise to a Claim;
- 6.1.5 Arising from any Wrongful Breach where the Insured knew, or ought reasonably to have known, prior to the Period of Insurance that there had been such a Wrongful Breach;
- 6.1.6 For any Loss or part of any Loss which is attributable to the period after the Insured knew, or ought reasonably to have known, that its conduct was a Wrongful Breach;
- 6.1.7 Deliberately or intentionally solicited by the Insured. This exclusion does not apply to Officers and Employees where such Claims arise in the discharge of their duties as Officers and Employees;
- 6.1.8 Any Defence Costs incurred or paid before the consent of LIU has been given in accordance with the provisions of this Policy;
- 6.1.9 For any Loss or part of any Loss arising from or which is attributable to the Insured's participation in any Joint Venture. Provided that this exclusion shall not apply to Outside Directorship as defined in Definition 3.12;
- 6.1.10 For any Penalty:
 - 6.1.10.1 Imposed pursuant to any law of any country, state or territory outside the Territorial Limits;
 - 6.1.10.2 Imposed within the Territorial Limits but arising out of any act or omission occurring outside the Territorial Limits, and any Defence Costs associated with such Penalty.
- 6.2 LIU shall not be liable to pay the amount of the Deductible in respect of each Loss.

7. Continuous Cover

If the Insured was aware of any facts that might give rise to a Claim prior to the commencement date of the Period of Insurance and had not notified LIU of such facts prior to the commencement date of the Period of Insurance, then Exclusion 6.1.4 will not apply to the notification of a Claim resulting from such facts, provided that:

- 7.1 The failure to notify such facts was not a fraudulent misrepresentation or fraudulent non-disclosure by the Insured; and
- 7.2 The Insured has been insured continuously under a Statutory Liability Policy with LIU and was so insured by LIU at the time the Insured first became aware of such facts; but
- 7.3 Indemnity will be considered under the terms and conditions of the Policy (including limits of liability and deductibles) in force when the Insured first became aware of such facts; and
- 7.4 LIU will reduce its liability to the extent of any prejudice suffered as a result of the Insured's failure to notify such facts giving rise to a Claim prior to the commencement date of the Period of Insurance.

8. Conditions

- 8.1 In the event of a Claim, the Insured must give immediate notice in writing to LIU of such Claim and such information as LIU may require to reasonably investigate the Claim and to enable LIU to determine its liability under this Policy.
- 8.2 The Insured must take all reasonable care and do and concur to do all things reasonably practicable to avoid or prevent a Wrongful Breach, or diminish a Loss.
- 8.3 The Insured shall not make any admission, offer, promise or payment in respect of any Claim, or agree to pay any Penalty or consent to any order directing the Insured to pay any Penalty without the prior written consent of LIU.

LIU shall not be liable for any such Penalty incurred without its consent, and such consent will not be unreasonably withheld by LIU.

- 8.4 LIU shall be entitled, but not obligated, to take over the conduct in the name of the Insured the investigation, defence (including appeal and resisting appeal) and settlement of any Claim. Any amount incurred by LIU shall be deemed part of Defence Costs.
- 8.5 If LIU grants indemnity under this Policy in respect of any Claim, then LIU shall be subrogated to all the Insured's rights of recovery in respect of such Claim whether or not payment has in fact been made and whether or not the Insured has been compensated in full for their loss. Each Insured must, at its own cost, provide all reasonable assistance to LIU (including, but not limited to giving information, signing documents and giving evidence) to help enforce those rights.

The Insured must not do anything that may prejudice LIU's position or its potential or actual rights of recovery against any party. Any amounts recovered by LIU shall be allocated in the following order – recovery costs, uninsured loss, Limit of Indemnity and Deductible.

- 8.6 Where LIU recommends to the Insured to pay any Penalty, consent to any order directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then LIU is entitled to reduce its liability to the Insured to the extent of any prejudice suffered by LIU by reason of the Insured's failure to so agree.
- 8.7 If the Insured continues to defend a Claim where LIU has refused to provide consent in accordance with Clause 5 and the Insured is successful in respect of that Claim, then consent as set out in Clause 5 shall be deemed to have been given at the time it was first requested by the Insured. For the purpose of this condition, "successful" means that the outcome of the Claim established that at the time at which LIU refused consent, the Insured has Reasonable Grounds for Defence.
- 8.8 This Policy shall be interpreted in accordance with the laws of Australia or any State or Territory as applicable, and all claims for indemnity under this Policy shall be decided in accordance with those laws.
- 8.9 The Insured shall comply with any lawful notice or direction received from, or any enforcement action taken by any appropriate Regulatory Authority under any Act within the time specified or, if no time is specified, within a reasonable time.
- 8.10 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

- 8.10.1 It is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments;
- 8.10.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or
- 8.10.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the third business day after the date on which notice was given to the Insured by LIU (whichever is the earlier).

- 8.11 Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies for the purposes of receiving any notice of cancellation pursuant to Clause 8.10, or any other notice, statement, document or information relating to this insurance Policy. Where the Insured has an insurance broker, nothing in this paragraph shall restrict LIU's right to notify the broker as agent of the Insured.
- 8.12 Except to the extent that the Insured is compelled by law to do so, the Insured shall not release to any third party or otherwise publish details of :
- 8.12.1 the nature of the liabilities insured by this Policy;
- 8.12.2 the extent of cover provided by this Policy; or
- 8.12.3 the amount of the premium specified in the Schedule,
- without the written consent of LIU.
- 8.13 Where this Policy provides any indemnity to the Insured which is prohibited by law, this Policy shall be varied by operation of this Clause 8.13 so that this Policy does not respond to the extent that the indemnity is prohibited by law.
- 8.14 8.14.1 Failure by any Insured to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any Insured to LIU shall not prejudice the right of any other Insured to cover under this Policy.

8.14.2 Failure by any Insured to comply with any terms and conditions of this Policy shall not prejudice the right of any other Insured to cover under this Policy.
Cover is only provided to an Insured who is innocent of and has no prior knowledge of such conduct. Such Insured shall as soon as practicable after becoming aware of such conduct, advise LIU in writing of all relevant facts.

8.15 To the extent of any inconsistency, the provisions of this extension prevail over those of the Policy.

Nothing contained in this extension shall in any way serve to increase the Limit of Indemnity stated in the Schedule.

Other than as amended above, the terms of this Policy shall continue to apply.

**For and on behalf of
Liberty International Underwriters**

Date