

# Contract Works And Public Liability – Contracts Commenced Basis – Insurance Policy



for  
NSW Department of Commerce  
and Others



# Contract Works and Public Liability Insurance Policy

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In consideration of the Named Insured in the Schedule having paid or agreed to pay to the insurer named hereon the Premium shown in the Schedule.

The Insurer agrees, subject to the terms, conditions, exclusions, memoranda, definitions, limitations and other provisions contained herein or endorsed hereon, to indemnify the Insured against Loss, Destruction of or Damage to Property Insured, or liability to the extent and in the manner hereinafter provided.

Provided that the Insurer shall not be liable under this Policy in any circumstances described herein for more than the Sums Insured/Limit of Liability stated in the Schedule or such other amount(s) as may appear in the Policy or be substituted thereafter by memorandum or attached hereon signed on behalf of the Insurer.

<b>Insurer</b>
QBE Insurance (Australia) Limited 82 Pitt St, Sydney ABN 78003 191 035 AFS Licence No 239545

## The Schedule

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<b>POLICY NUMBER</b>	15JLT0001CAR
<b>NAMED INSURED</b>	<p>(i) State of NSW, Ministers of the Government of NSW under whose authority construction contracts are entered into and administered, State Government Departments and Agencies, State Owned Corporations identified in the State Owned Corporations Act 1989, and other statutory corporations formed by the Government of NSW.</p> <p>(ii) Principals to construction contracts that are arranged and administered by the following Departments and Agencies accredited by NSW Treasury for the Planning and Delivery Phases of construction projects:</p> <p style="padding-left: 40px;">Department of Commerce, Department of Housing, Maritime Authority, Roads and Traffic Authority, Sydney Catchment Authority, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority</p> <p>(iii) Contractors and Subcontractors of any tier</p> <p>(iv) Project Directors, Project Managers, Construction Managers, Architects, Engineers, Consultants and all practitioners of like disciplines.</p> <p>(v) Any Director, Partner, Officer, Workman or Employee of the Insured whilst acting with the authority or on behalf thereof.</p>

<b>INSURED PROJECTS</b>	<p>All works including temporary works under construction contracts awarded by the Named Insured or their agents, or any construction work commenced by the Named Insured themselves, or works awarded that the Named Insured undertake to insure in their role as Project Manager or Construction Manager, during the Policy Period, unless excluded by notification by the Named Insured.</p>
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Where any of the following apply to a contract, it is held covered only for 60 days from the date of the award of the contract unless the Insured gives the Insurer any information reasonably requested by the Insurer and the Insurer agrees, on any reasonable terms or conditions, and at any premium, which may be different from that in this policy, to continue the insurance.

- Any contract where the Contract Price (excluding GST) at the time of award is greater than \$30,000,000; or
- Any High Risk Civil Engineering Contract (being any contract for flood mitigation, dams, weirs, tunnels, bridges, jetties, and work under or over water or similar type works, where the value of such work at the time of award is exceeds 15% of the total contract value or \$1,000,000 whichever the greater); or
- Any contract with an estimated Construction Period at the time of award of greater duration than 36 months.

**DURATION OF POLICY**

From: 30 September 2008 at 4:00 pm AEST  
To: 30 September 2009 at 4:00 pm AEST

and any further period for which the Insurer agrees to provide cover.

**TERRITORIAL LIMITS**

Anywhere in Australia.

**JURISDICTIONAL SCOPE**

Worldwide

**LIMITS OF LIABILITY**

**Section One - Material Damage**

(a) Property Insured	\$30,000,000	any one contract insured under the policy (Insured Contract) in respect of any one Occurrence
(b) Except in respect of High Risk Civil Engineering Contracts, which are limited to	\$1,000,000	any one Insured Contract in respect of any one Occurrence
(a) & (b) Subject to Escalation Clause of		15%

**Sub Limits** (Payable in addition to the above)

All buildings used for construction purposes	\$1,000,000	any one Insured Contract in respect of any one Occurrence
Removal of Debris	\$4,000,000	any one Insured Contract in respect of any one Occurrence
Consultants' Fees	\$2,000,000	any one Insured Contract in respect of any one Occurrence
Expediting Expenses	\$2,000,000	any one Insured Contract in respect of any one Occurrence
Temporary Protection	\$1,000,000	any one Insured Contract in respect of any one Occurrence
Government Charges	\$1,000,000	any one Insured Contract in respect of any one Occurrence
Property Insured whilst in Transit	\$500,000	any one Insured Contract in respect of any one Occurrence

**Section Two - Public Liability**

\$20,000,000 any one Occurrence, unlimited during the Period of Insurance.

Defence Costs in addition to limits.

**DEDUCTIBLES**

**Section One - Material Damage**

The Insured shall bear the first amount of any one loss or series of losses arising out of any one Occurrence, as specified below:

Category	Deductible
1. All High Risk Civil Engineering Contracts	\$50,000
2. Contract cost up to \$1M and all ongoing facilities maintenance contracts	\$10,000
3. Contract cost above \$1M up to \$5M	\$20,000
4. Contract cost above \$5M up to \$10M	\$35,000
5. Contract cost above \$10M up to \$30M	\$50,000

Should more than one deductible appear under this Section of the Policy for any claim or loss or series of claims or losses arising from the one Occurrence, such deductibles shall not be aggregated. The highest single level of deductible only shall apply.

**Section Two - Public Liability**

The insured shall bear the first amount of each and every claim or series of claims arising out of any one Occurrence, as specified below:

Category	Deductible
1. Where the Contractor has failed to comply with Underground Services provisions in all cases	\$200,000 in respect of loss or damage to underground telecommunications, power supply or water supply utilities and \$100,000 in respect of loss or damage to other underground utilities
2. Contract cost up to \$5M	\$25,000
3. Contract cost above \$5M up to \$30M	\$50,000

Should more than one deductible appear under this Section of the Policy for any claim or loss or series of claims or losses arising from the one Occurrence, such deductibles shall not be aggregated. The highest single level of deductible only shall apply.

**THE PREMIUM**

As agreed.

# Section 1 – Material Damage

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## Definitions – Applicable To Section 1

### 1 PROPERTY INSURED

“Property Insured” shall mean the following real and personal property:

- (a) all materials, goods, equipment and supplies (including owner supplied materials) forming a permanent part of, or which will form a permanent part of, the Insured Projects;
- (b) all temporary works and/or structures erected, installed and/or constructed by the Insured for the purpose of completing the Insured Projects, including but not limited to, props, slipform, shuttering, formwork, falsework, hoardings, bunding, bridging and the like;
- (c) contract consumables, including, but not limited to, oil, petrol first aid equipment, safety boots and the like;
- (d) all plans, files, records, specifications and the like pertaining to the Insured Projects, be they in book or similar document form, or held on computer software;
- (e) All buildings used for construction purposes (but not mobile plant and equipment), subject to the limit stated in the schedule;

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

### 2 LOSS TO PROPERTY INSURED

“Loss” in respect of Property Insured shall mean physical loss of, physical destruction of, or physical damage.

## **Insuring Clause – Applicable to Section 1**

- 1** The insurance by this Policy indemnifies the insured against Loss to Property Insured occurring during the Construction Period arising from any cause not hereinafter excluded, wherever the Property Insured may be located within the Territorial Limits detailed in the Schedule.
- 2** The insurance by this Policy also indemnifies the Insured against Loss to Property Insured at the Contract Site arising from any cause not hereinafter excluded:
  - (a) which occurs during the Post Construction Period and is occasioned by the Insured in remedying Defects or performing maintenance in accordance with their obligations under the provisions of the contract or agreement.
  - (b) which occurs during the Post Construction Period and is due to a cause arising out of works including temporary works carried out during the Construction Period.

## **Basis of Settlement – Applicable to Section 1**

### **1 THE WORKS (AS DEFINED UNDER PROPERTY INSURED (a), (c), AND (d)).**

1. The amount payable in respect of Loss to Property Insured as defined under Property Insured (a), (c), and (d) shall be the cost of reinstatement of the Property Insured at the time of reinstatement including a reasonable margin for profits and overheads.

The work of rebuilding or replacing or repairing or restoring may be carried out at another site, in any manner suitable to the requirements of the Insured, subject to the liability of the Insurer not being thereby increased.

2. For the purpose of this Basis of Settlement “reinstatement” shall mean:
  - (a) Where property is lost or destroyed: in the case of a building, the rebuilding thereof or in the case of property other than a building, the replacement thereof by similar property; in either case in a condition equal to, but not better or more extensive than, its condition when new.
  - (b) Where property is damaged: the repair of the damage and the restoration of the damaged portion of the property to a condition the same as, but not better or more extensive than, its condition when new.
  - (c) Notwithstanding the provisions of clauses (i) and (ii) above, the cost of reinstatement shall also extend to include the extra cost of reinstatement (including demolition or dismantling) of damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder, or any By-Law or Regulation of any Municipal or other Statutory Authority.

Provided always that the amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Insured had been required to comply prior to the happening of the Loss to Property Insured.

### **2 TEMPORARY WORKS AND BUILDINGS (AS DEFINED UNDER PROPERTY INSURED (b) AND (e)) AND ANY PRE-EXISTING STRUCTURES THAT MAY BE INSURED**

1. The amount payable in respect of Loss to Property Insured as defined under Property Insured (b), and (e) shall be the cost necessary to reinstate the Property Insured to the same condition as existed immediately prior to the Loss to Property Insured, subject only to the respective Limits of Indemnity.
2. The cost of reinstatement, as described above, shall mean the final cost to the Insured after completion of the work of reinstatement, replacement or repair of the Property Insured.
3. Where such work is carried out wholly or in part by the Insured, such final costs shall include a reasonable margin for overheads and profit. Such margin for overheads and profit shall not exceed the allowances made originally for the whole of the works.

## Exclusions – Applicable to Section 1

### The Insurer shall not be liable for:

1. the amount(s) of the Deductible(s) shown in the Schedule for any one Occurrence.
2. any loss of use or occupancy, loss of earnings and loss of value consequent upon Loss to Property Insured.
3. Penalties (contractual or otherwise) for non completion of or delay in completion of contract or non-compliance with contract conditions and/or fines, liquidated damages, or aggravated, punitive or exemplary damages.
4. Loss, destruction of or damage to:
  - (a) any waterborne craft or vessel exceeding 8 metres in length and/or aircraft and/or Vehicles including any plant and/or equipment permanently mounted thereon which is owned, maintained, hired, used or controlled by or for the Insured. This exclusion does not apply to unregistered Vehicles that form part of the Insured Projects;
  - (b) the Insureds' construction plant and equipment, other than the detailed in (b) under Property Insured;
  - (c) contractors', subcontractor's and plant suppliers' and hirers' plant and equipment, unless otherwise agreed by the Insurer.
5. Loss to Property Insured whilst such property is in the course of ocean marine shipment (which expression shall not include loading and/or unloading and/or lifting operations). Provided that this Exclusion 5 shall not apply to any Property Insured in the course of ocean marine shipments between any ports or places in Australia.
6. Loss or damage to and the cost necessary to replace, repair or rectify:
  - (a) any component part or individual item of the Property Insured which is defective in design plan specification materials or workmanship.
  - (b) Property Insured lost or damaged to enable the replacement repair or rectification of Property Insured excluded by (a) above

Exclusion (a) above shall not apply to other parts or items of Property Insured which are free from defect but are damaged in consequence thereof.

For the purpose of this Policy and not merely this Exclusion the Property Insured shall not be regarded as lost or damaged solely by the virtue of the existence of any defect in design plan specification materials or workmanship in the Property Insured or any part thereof.
7. Loss revealed solely by inventory shortage, except where the loss can be reasonably attributed to burglary or theft or any attempt thereat at a specific date and time.
8. Loss, destruction of or damage to cash, bank notes, treasury-notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes, securities and computer software.
9. Loss, destruction or damage due to abandonment of the works associated with the Insured Projects, or cessation of work for any other reason, except for the first sixty (60) days of any such cessation.
10. Loss, destruction or damage due to embezzlement or fraudulent misappropriation by an employee of the Insured.

- 11.** Loss to Property Insured whilst underground unless otherwise agreed and acknowledged by specific Endorsement.
- 12.** Loss, destruction of or damage to:
- (a) exchangeable tools such as (but not limited to) cutting tools, knives, crushing tools, pressing and punching tools, drills, blades, and edges;
  - (b) moulding, shaping, forming dies, moulds patterns, or templates;
  - (c) masonry, brick lining, and refractory materials;
  - (d) replacement parts such as (but not limited to) fuels bulbs, X-ray tubes, filters, seals, ropes, belts, felts, caterpillar tracks, chains, conveyor belts, roller covering links, jointing, packing materials, batteries, tyres, tracks, heating elements, electrical contracts, and any other part or parts which require periodic or frequent replacement;
  - (e) overloads, fuses, shear pins, rupture plates, or similar protective devices;
- attaching to or forming part of any Property Insured.
- 13.** Loss, destruction or damage occasioned by lawful seizure or other operation of law or arising from any breach of contract agreement or obligation.
- 14.** Loss, destruction or damage due to faults or defects known to the Named Insured or any responsible employee of the Named Insured existing prior to the commencement of this Policy.
- 15.** Vandalism or malicious damage in respect of contracts for work at operational gaols.
- 16.** (i) Replacing or rectifying piles or retaining wall elements
- (a) Which have become misplaced or misaligned or jammed;
  - (b) Which are lost or abandoned or damaged during driving or extraction; or
  - (c) Which have become obstructed by jammed or damaged piling equipment or casings;
- (ii) Rectifying disconnected or declutched sheet piles;
- (iii) Rectifying any leakage or infiltration of material of any kind;
- (iv) Filling voids or for replacing lost bentonite;
- (v) Any piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity, or that cannot be driven to the required depth;
- (vi) Reinstating profiles or dimensions.

This exclusion 16 does not apply to loss or damage caused by natural hazards. The burden of proving that such loss or damage is covered shall be upon the Insured.

## Memoranda – Applicable to Section 1

### 1. AUTOMATIC REINSTATEMENT

1. In consideration of the Sums Insured/Limits of Liability in the Schedule not being reduced by the amount of an Occurrence, the Insured shall pay a pro rata premium on the amount of such Occurrence from the date thereof to the date of the expiry of the Period of Insurance. Provided further that no such additional premium shall in any case be payable where the amount of an Occurrence is less than \$500,000.
2. Such additional premium shall be disregarded for the purpose of any adjustment of premium under Condition 12 of General Conditions applicable to all Policy sections.

### 2. CONSULTANTS FEES

1. This insurance automatically extends to cover architects', surveyors', consulting engineers', project and construction managers', legal and other such professional fees, costs and expenses; and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision all necessarily and reasonably incurred for the purpose of repairing, reinstating or replacing the Property Insured consequent upon Loss to Property Insured.
2. Subject to limitation shown in the Schedule.

### 3. REMOVAL OF DEBRIS

This insurance automatically extends to cover costs and expenses necessarily and reasonably incurred by or on behalf of the Insured:

- (a) in dismantling and/or demolishing and/or removing any of the Property Insured no longer useful for the purpose for which it was intended;
- (b) in cleaning up, removing, storing and/or disposing of debris, detritus, and all substances from and around the site of the works;
- (c) for the demolition and removal of undamaged Property Insured necessary to enable the works to be restored and replaced;

consequent upon Loss to Property Insured and subject to limitation shown in the Schedule.

### 4. TEMPORARY PROTECTION AND/OR GOVERNMENT EXPENSES

This insurance automatically extends to cover costs and expenses necessarily and reasonably incurred by or on behalf of the Insured for:

- (a) shoring up, propping, underpinning or other temporary protection of the Property Insured, deemed necessary by the Insured or by a professionally qualified person or entity representing the Insured, to avoid further Loss to Property Insured occurring;
- (b) any fee, contribution or other impost (excluding fines and/or penalties) payable to any Government, Local Government or Statutory Authority for services rendered or equipment supplied for the purpose of helping to prevent further, mitigate or confine imminent Loss, Destruction of or Damage to Property Insured at the situation where the Property Insured is located;

consequent upon any Loss to Property Insured being indemnified under this Policy and subject to limitation shown in the Schedule.

## **5. EXPEDITING EXPENSES**

This insurance automatically extends to cover additional expenses necessarily and reasonably incurred by or on behalf of the Insured for:

- a) express delivery within Australia. Express delivery will include 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) travel costs of the Insured's. Provided such costs are for regular service fares within Australia, but not aircraft chartered specifically for such carriage;
- c) overtime or penalty rates of labour and other related allowances or payments;
- d) hire of additional labour, plant, machinery, equipment, materials, expertise and/or services;
- e) accommodation and boarding costs, including meals and other costs associated therewith;

consequent upon any Loss to Property Insured and subject to limitation shown in the Schedule.

## **6. ESCALATION**

If a contract forming part of the Insured Projects should, during construction, escalate in value above the price agreed at the date of award of the contract, then the Sum Insured/Limits of Liability specified in the Schedule for Property Insured (a) shall be increased by a corresponding amount, subject however to the increase not exceeding the Escalation Limit stated in the Schedule without the Insurer's further agreement endorsed hereon.

## **7. 72 HOUR CLAUSE**

Any Loss to Property Insured arising during one period of 72 consecutive hours caused by storm, tempest, flood, hail or earthquake shall be deemed as a single event and therefore to constitute one Occurrence with regard to the Deductible provided for herein. For the purpose of the foregoing the commencement of any such 72 hour period shall be decided at the discretion of the Insured it being understood and agreed, however, that there shall be no overlapping of any two or more such 72 hour periods in the event of Loss to Property Insured occurring over a more extended period of time.

## **Claim Conditions – Applicable to Section 1**

### **1. PAYMENT ON ACCOUNT**

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

### **2. PAYMENT OF LOSSES**

Loss under Section 1 of this Insurance shall be adjusted with and payable to the Named Insured, or as they may direct, and payment by the Insurer pursuant to such notice shall, to the extent of such payment, constitute a discharge.

## Section 2 – Public Liability

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### Definitions – Applicable to Section 2

#### 1. INSURED COMPLETED WORKS

Insured's Completed Works shall mean any building constructed by the Named Insured but only when the Named Insured is solely a Prime Contractor and only when buildings have been completed, handed over to the Principal / Owner and where any Post Construction Periods have expired. Insured's Completed Works does not extend to include non-building structures nor ancillary building structures such as pergolas, decking, fencing, gardens, paving, drive ways and the like.

#### 2. PERSONAL INJURY

"Personal Injury" shall mean:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish or mental injury;
- (b) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution or humiliation;
- (c) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing Personal Injury or Property Damage or eliminating danger;
- (d) the publication or utterance of libel or slander, or other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
  - (i) when the first such publication or utterance is related to any publication or utterance made prior to the commencement date of this Policy; or
  - (ii) when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured.
- (e) wrongful entry or invasion of the right of privacy.

#### 3. PROPERTY DAMAGE

"Property Damage" shall mean

- (a) physical loss of, damage to or the destruction of tangible property, including the loss of use thereof at any time resulting therefrom.
- (b) total or partial interruption of or interference with or loss of use of or deprivation of premises, property, services, facilities, trade or traffic including, but not limited to, any loss of use of property which has not been physically lost, destroyed or damaged.

## **Insuring Clause – Applicable to Section 2**

### **1. COVERAGE**

1. The Insurer agrees to indemnify the Insured in respect of all amounts, not hereinafter excluded, which the Insured shall become legally liable to pay for:

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

happening during the Period of Insurance as a result of an Occurrence and in connection with the Insured Projects anywhere within the Territorial Limits specified in the Schedule.

### **2. DEFENCE COSTS – APPLICABLE TO SECTION 2**

1. The Insurers will, in addition to the indemnity provided under Insuring Clause 1.1 and 1.2 above, pay:

- (a) all charges, expenses, and legal costs incurred with the written consent of the Insurer in the settlement or defence of any claim for compensation in respect of which the Insured is entitled to indemnity under this Policy or if sustained would be entitled, and
- (b) all charges, expenses and law costs recovered from the Insured by claimants in connection with said claims, and
- (c) all legal costs for representatives of any Insured at any coroner's inquest or in any court of summary jurisdiction, and
- (d) all expenses incurred by the insured for the first aid rendered for injury to others and/or for temporary repairs and/or shoring up of property made necessary by an Occurrence indemnified under this Policy.

Hereinafter called "Defence Costs"

2. Provided that:

- (a) The Insurer shall not be obliged to pay any claims or judgement or to defend any suit after the Insurer's Limit of Liability has been exhausted by payment or judgment or settlements;
- (b) If payment exceeding the Insurer's Limit of Liability has been made to dispose of a claim, the liability of the Insurer to pay any Defence Costs in connection therewith shall be limited to such portion of the said Defence Costs as the Limit of Liability bears to the amount paid to dispose of the claims;
- (c) In no event shall the Insurer's liability in respect of Defence Costs exceed thirty percent (30%) of the Limit of Liability stated in the Schedule.

### **3. CROSS LIABILITIES**

The Insurers will:

- (a) Act in relation to the parties comprising the Insured, in connection with all matters concerning this policy, as if each such party was a separate and distinct legal entity, capable of suing and being sued, and the words "the Insured" shall be considered as applying to each such party in the same manner as if a separate policy has been issued to each of them in its name alone.

Provided that nothing in this Clause shall be deemed to increase the limit of the Insurer's liability under Section 2 in respect of any Occurrence.

- (b) Indemnify any department of the government of the State of New South Wales, the Minister responsible from time to time of any such department and the Crown in right of the State of New South Wales in respect of Personal Injury or Property Damage caused or contributed to by the parties comprising the Insured (or any one or more of such parties) or any of their respective officers, employees or agents but such cover is limited to the liability which the parties, or their respective officers, employees or agents would have had to any such department, Minister or the said Crown, in respect of the Personal Injury or Property Damage had the parties and the department, Minister or Crown been separate entities, each capable of suing or being sued by the other.

Provided that nothing in this Clause shall be deemed to increase the limit of the Insurer's liability under Section 2 in respect of any Occurrence.

## Exclusions – Applicable to Section 2

### This policy shall not apply to liability:

1. for the amount(s) of the Deductible(s) shown in the Schedule for each and every Occurrence.
2. for Personal Injury imposed:
  - a) by any workers compensation law
  - b) by the provision of any industrial award, 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, agreement or determination or contract of employment or workplace agreement, or

provided that if the Named Insured are:

- c) required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited or not) for such personal injury, or
- d) not required to so insure or otherwise fund such liability by reason only that the personal injury is to a person who is not a worker or employee for the purpose of the relevant worker's compensation law or the personal injury is not an injury which is subject to such law.

There is no cover under this Policy for and in respect of employment practices.

3. for loss or damage to property owned, leased, occupied, or used by or in the care, custody or control of the Insured;

Provided that Exclusion 3 shall not apply with respect to:

- (a) personal effects (including vehicle and contents) belonging to directors and/or employees of the Insured.
  - (b) Existing premises, structures, machinery, plant and equipment or any part(s) or such premises and structures (including contents thereof) being worked upon by the Insured for the purpose of alteration, addition, extension, renovation, refurbishment, decoration, maintenance or repair;
  - (c) Existing premises or any part(s) of such premises at or adjacent to the Contract Site (including contents thereof) leased or tenanted by the prime contractor in direct connection with the Insured Projects or Named Insured's business;
  - (d) Construction plant, machinery or equipment hired, leased, loaned or borrowed by the Insured, for use in connection with the Insured Projects or Named Insured's business.
4. caused by reason of the existence, maintenance, or use of any waterborne craft or vessels exceeding 8 metres in length and/or aircraft including any plant and/or equipment permanently mounted thereon which is owned, maintained, hired, used or controlled by or for the Insured.

5. caused by the ownership, possession or use by the Insured of any Vehicle where such liability at the time and place of any Occurrence giving rise to a claim under this Section of the Policy is insured or is required to be insured by virtue of any legislation governing the use of Vehicles.

PROVIDED THAT this Exclusion 5 shall not apply to:

- (a) any Vehicle whilst situated and being used as a tool of trade on or adjacent to any Contract Site of any Insured Projects;
  - (b) any Vehicle or trailer, in connection with any Insured Projects where such Vehicle is in transit other than under its own power;
  - (c) liability caused by or arising out of the loading or unloading of or the delivery or collection of goods to or from any Vehicle used in connection with or in relation to the Insured Projects and is not in the Insured's physical or legal control;
  - (d) liability caused by or arising out of the delivery or collection of goods to or from any Vehicle or trailer where such is located on any carriageway or thoroughfare which forms part of the Contract Site of the Insured Projects.
6. for any claims arising out of or in connection with the Insured's Completed Works.
  7. for any loss or damage to property where such property consists of or forms part of the Property Insured covered under Section 1 of this Policy.
  8. for:
    - (a) Personal Injury or Property Damage caused by or arising out of the discharge, dispersal, release, seepage, migration or escape of pollutants into or upon land, the atmosphere, or any water course or body of water, but this exclusion does not apply if the discharge, dispersal, release or escape is sudden, identifiable, unexpected and unintended and takes place in its entirety at a specific time and place.
    - (b) Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such contamination or pollution but this exclusion does not apply to clean-up, removal or nullifying expenses only, which are consequent upon a sudden, identifiable, unexpected, unintended happening taking place in its entirety at a specific time and place which results in Personal Injury and/or Property Damage.
    - (c) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants caused by any product that has been discarded, dumped, abandoned or thrown away by others.
    - (d) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of pollutants in the United States of America (USA) or Canada or in any country to which the laws of the USA or Canada apply.
- Our liability under clauses (a) and (b) above in respect of any one discharge, dispersal, release, seepage, migration or escape and for all discharges, dispersals, releases and escape of pollutants during any one period of insurance will not exceed the limit of liability.
9. for any penalties (contractual or otherwise) for non completion of or delay in completion of any contract or non-compliance with contract conditions and/or fines, liquidated damages, or aggravated, punitive or exemplary damages.

10. for any breach of a duty owned in a professional capacity by any Insured or persons for whose breaches of such duty such insured may be legally liable, provided this Exclusion 10 shall not apply to Personal Injury or Property Damage resulting therefrom.

Provided that this Exclusion 11. does not apply to the rendering of or failure to render professional medical advice by medical persons employed by the Insured (not being a qualified medical practitioner) to provide first aid and other medical services on any of the Insured's premises or sites associated with any Insured Projects.

11. resulting from the existence, mining, handling, processing, manufacture, sale, distribution, storage or use of asbestos, asbestos products and/or products containing asbestos.
12. assumed solely under any contract or agreement (other than the contract(s) pursuant to any works being carried out or any contract for the hire of construction plant, machinery or equipment related to any Insured Projects) unless such liability would have attached notwithstanding the existence of such contract or agreement or is specifically allowed by written endorsement to this Policy.
13. arising out of any waiver of rights of subrogation recovery or recourse against any person other than any of the Insured existing prior to or undertaken after the happening of an Occurrence to which such waiver applies.
14. for Property Damage to that part of any property upon which the Insured is or has been working where the property damage arises from the Insured's work or the cost of performing, correcting or improving any work undertaken by the Insured.

## **Memoranda – Applicable to Section 2**

### **1. LIMIT OF LIABILITY**

The Insurer's liability under Insuring Clause 1 Coverage Applicable to Section 2 shall not exceed the amount stated as "Limit of Liability" in the Schedule for each and every Occurrence.

## **Conditions – Applicable to Section 2**

### **1. INSURED'S DUTIES IN THE EVENT OF ANY OCCURRENCE**

In the event of an Occurrence likely to result in a claim under this Policy the Insured shall:

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

### **2. CO-OPERATION BY THE INSURED**

The Insured shall co-operate with the Insurer in the defence of claims and suits and in prosecuting appeals, and upon the Insurer's request shall attend hearings and trials, and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits.

### **3. INSOLVENCY**

The insolvency or bankruptcy of the Insured shall not release the Insurer from any of the Insurer's obligations assumed hereunder.

# **Matters Generally Applicable to Sections 1 and 2**

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## **General Definitions – Applicable to Sections 1 and 2**

### **1. HIGH RISK CIVIL ENGINEERING CONTRACT**

“High Risk Civil Engineering Contract” shall mean a Contract for flood mitigation, dams, weirs, tunnels, bridges, jetties, work under and over water, and similar type works.

For the purpose of this definition, any Contract where part of the works including temporary works include a component of flood mitigation, dams, weirs, tunnels, bridges, jetties, work under and over water, and similar type works, which does not exceed 15% of the Contract Price at the time of award shall not be defined to be a High Risk Civil Engineering Contract.

### **2. CONTRACT**

‘Contract’ means, unless the context requires otherwise, any contract forming part of the Insured Projects.

### **3. CONTRACT SITE**

“Contract Site” shall mean the address and adjacent situations at which any one contract forming part of the Insured Projects is to be completed and handed over to the Principal / owner.

### **4. DEFECT**

“Defect” means a defect, error, omission, shrinkage or other fault in or affecting the works or temporary works which results from a failure of the Contractor to comply with the Contract.

### **5. INSURED**

“Insured” shall mean:

(a) the Named Insured noted in the Schedule being either;

- (i) any principal
- (ii) the contractor
- (iii) the project manager;

(b) and additional parties being;

- (i) any principal
- (ii) the contractor
- (iii) the project manager

not being the Named Insured noted in the Schedule but being a legal entity with whom the Policy holder has entered into a contract for the performance of any part or parts of the Insured Projects;

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

- (d) any sub-contractor to entities noted in (a) or (b), above being a legal entity with whom such sub-contractor has entered into a sub-contract agreement for the performance of any part or parts of the Insured Projects.

For the purpose of this Policy professional consultants such as:

- (i) Engineers;
- (ii) Architects; or
- (iii) Surveyors;

are not considered to be sub-contractors;

- (e) any legal entity identified by name in the Schedule as having a financial, legal or equitable interest in the Insured Projects, but only in respect of the insurance provided under Section 1 and only to the extent of such financial, legal or equitable interest;
- (f) any supplier to entities noted in (a), (b) or (d) above being a legal entity with whom such entity has entered into a agreement for the supply of any physical items for a Contract forming part of the Insured Projects, but only whilst the supplier is at the contract site;
- (g) any professional consultant to entities noted in (a). or (b). above but only in relation to their on-site activities associated with the Insured Projects;
- (h) all subsidiary and related corporations of the Named Insured;
- (i) all joint ventures where the Named Insured accepts the responsibility to provide insurance;
- (j) any Director or Executive Officer or employee of the Insured whilst acting within the scope of his/her duties with such parties;

All for their respective rights, interests and liabilities.

## **6. OCCURRENCE**

"Occurrence" shall mean:

An event, including continuous or repeated exposure to substantially the same general conditions, which occurs during the Period of Insurance and results in subsequent:

- (a) Loss to the Property Insured described under Section 1;
- (b) Personal Injury and/or Property Damage as defined under Section 2;

neither expected nor intended from the standpoint of the Insured.

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

## 7. PERIOD OF INSURANCE

1. The Policy shall operate during the Construction Period and if required by the construction contract conditions for the Post Construction Period for all Contracts forming part of the Insured Projects awarded during the Duration of Policy.
2. **The Construction Period**  
  
shall commence at the date of award of the contract provided such date is within the Duration of Policy stated in the Schedule;  
  
and ends at the earliest of:
  - (a) the time agreed between an agent or officer of the Department of Commerce acting as Principal and the Contractor that the works including temporary works are complete or complete except for minor omissions and minor defects which do not prevent the works including temporary works from being reasonably capable of being used for their intended purpose, OR
  - (b) with respect of any portion of the works including temporary works, the time it is taken over or taken into use by the Principal.
3. The **Post Construction Period** shall commence at the end of the Construction Period and end at the earliest of twelve months after the end of the Construction Period or the notification of final payment under the contract by the Principal to the Contractor or the making of such a payment.
4. Notwithstanding the above:
  - (a) It is also agreed that where an obligation under contract exists upon the contractor to continue to cover separable sections of the contract or work which have been completed and handed over to the Principal pending completion of the remaining sections, then the Insurer agrees to continue Policy cover on the basis described in Paragraph 1 of the Sections 1 and 2 Insuring Clause without prejudice to the Insured.
  - (b) It is further agreed that the Post Construction Period for the contract or work as specified in the contract or agreement between the Insured, will commence when the separable section of the works including temporary works has been formally taken over, put into use, or agreed between the Principal and the contractor to be complete or complete except for minor omissions and minor defects which do not prevent it from being reasonably capable of being used for its intended purpose.

## 8. VEHICLE

“Vehicle” shall mean any machine including any attachments thereto designed to travel on wheels or on self-laid tracks or on railway tracks and to be propelled by other than manual or animal power.

## General Exclusions – Applicable to Sections 1 and 2

1. This insurance does not cover loss, destruction or damage or liability occasioned by, happening through or in consequence of war, invasion, hostilities, acts of foreign enemies (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power or martial law or confiscation by order of any Government or Public Authority.
2. This insurance does not cover any insured damage or liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
  - a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, For the purpose of this exclusion only combustion shall include any self-sustaining process of nuclear fission, or
  - b) nuclear weapons material.
- 3 This insurance Policy does not cover:
  - (a) Personal Injury or Property Damage arising, directly or indirectly, out of, or in any way involving the Insured's internet operations, or
  - (b) Property Damage to computer data or programs and their storage media arising directly or indirectly out of or caused by, through or in connection with:
    - i) the use of any computer hardware or software
    - ii) the provision of computer or telecommunication services by the Insured or on the Insured's behalf
    - iii) the use of computer hardware or software belonging to any third party, whether authorised or unauthorised including damage caused by any computer virus.

But this exclusion does not apply to:

- (c) Personal Injury or Property Damage arising out of any material which is already in print by the manufacturer in support of its product, including but not limited to product use and safety instructions or warnings, and which is also reproduced on its site, or
- (d) Liability which arises irrespective of the involvement of the Insured's internet operations, and nothing in this exclusion will be construed to extend coverage under this Policy to any liability which would not have been covered in the absence of this exclusion.

4 This insurance does not cover any act(s) of terrorism.

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

- Involves violence against one or more persons, or
- Involves damage to property, or
- endangers life other than that of the person committing the action, or
- creates a risk to health or safety of the public or a section of the public, or

is designed to interfere with or to disrupt an electronic system.

## General Conditions - Applicable to Sections 1 and 2

### 1. OBSERVANCE OF CONDITIONS

- (a) The observance of the terms Conditions and Endorsements of this Policy by any persons or entities insured in so far as they relate to anything to be done or complied with by any persons or entities insured, and
- (b) The truth of the verbal and written statements made to the Insurer by any of the persons or entities insured or their representative or agents prior to concluding this Policy, and
- (c) The notification as soon as practical by any of the persons or entities insured of any alteration of risk which materially affects this insurance

shall be conditions upon which any liability of the Insurer under this Policy depends.

### 2. CLAIMS PROCEDURE

1. Following discovery of any loss, destruction or damage which might give rise to a claim under this Policy, the Insured or his representative must:
  - (a) notify the Insurers as soon as possible and confirm such notification in writing giving an indication of the nature and extent of the loss, destruction or damage.
  - (b) take all steps within the power of the Insured to minimise the extent of the loss, destruction or damage.
  - (c) preserve all parts affected and make them available for inspection by the Insurer, its employees or agents.
  - (d) furnish all such information and documentary evidence as the Insurer may reasonably require.
  - (e) notify the police of any actual or attempted theft, burglary or malicious damage.

The Insured is at liberty, without reference to the Insurer, to:

- effect repairs to Property Insured where the costs or repairs does not exceed \$50,000 after the application of the relevant Deductible;
  - take immediate action to avoid loss of life, personal injury, or further loss or damage to property, without prejudice to the Insured's position.
2. Upon notification of any loss, destruction or damage being given to the Insurer, the Insured may carry out repairs or make good damage in excess of \$50,000 after the application of the relevant Deductible, only after the Insured gives the Insurers, its employees or agents an opportunity to inspect the loss, destruction or damage before any repairs or alterations are effected. If no inspection is carried out by or on behalf of the Insurer within a period of time which is reasonable having regard to the location of risk, weather conditions and any other relevant factors, the Insured may proceed with such repairs or replacement.
  3. The Insurer will not pay for any additional damage to any item caused by the failure to repair that item property and without delay.

### **3. LOSS ADJUSTERS**

The appointed Loss Adjusters to handle all claims in relation to this policy are:

- (a) Freemans Australia
- (b) Crawford & Company

### **4. SUBROGATION**

1. Other than as provided by Insuring clause 3 (Section 2) and General Condition 11, the Insured shall, at the request and at the expense of the Insurer, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Insurer for the purpose of enforcing any rights and remedies against, or of obtaining relief or indemnity from, other parties to which the Insurer shall be or would become entitled or subrogated, upon the Insurer paying for or making good any loss, destruction or damage or liability under this Policy, whether such acts or things shall be or become necessary or required before or after their indemnification by the Insurer.
2. The Insured will not in any case be entitled to abandon any property to the Insurer.
3. Notwithstanding the above, in the event of the Insurer making payment to any Insured(s), the Insurer shall not exercise any rights of subrogation against any other Insured(s) hereunder other than those Insured noted under part (g) of the Definition of "Insured".

### **5. OTHER INSURANCE**

In the event of a claim being made under this Policy, any Insured which make claims must notify the Insurer of any other insurance covering the same loss, destruction or damage or liability of which the Insured is aware.

### **6. NOTICES**

1. It is agreed and declared that any notice(s) required by the Conditions of this Policy, and given by any individual Insured to the Insurer, shall be accepted as a notice given on behalf of all Insured persons or entities.
2. The Insurer agrees to be bound by the terms and conditions of any contract or agreement that exists between the Named Insured and any other insured party, which stipulates that any policy notice(s) served upon the Named Insured will also be served upon another insured party.

### **7. NON-INVALIDATION**

The Insurer agrees that any act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of Condition or warranty by any individual insured party shall not prejudice or invalidate the rights of the other insured parties comprising the Insured who are themselves not guilty of such act, error, omission, neglect, fraud, misrepresentation, misdescription, non-disclosure or breach of Condition or warranty.

### **8. UNIFORM MEANING**

This Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been given in any part of this Policy or of the Schedule shall bear such meaning wherever it may appear unless such meaning is clearly inapplicable in the context that the word or expression appears.

## **9. APPLICABLE LAW**

Should any dispute arise between the Insured and the Insurer over the application of this Policy, such dispute shall be determined in accordance with the law of Australia and its Mandated Territories and Protectorates.

## **10. ASSIGNMENT**

No assignment of interest under this Policy shall bind the Insurer until their consent is endorsed hereon. However, should any Insured die or be adjudged bankrupt or insolvent the Insurer will consent to the assignment of this Policy to such Insured's Legal representative provided that written notice is given to the Insurer within 30 days after the date of such death, bankruptcy or insolvency.

## **11. RELEASE**

Wherever the Insured is required by contractual agreement to release any Government, Public, Local or Statutory Authority from liability, such release is allowed without prejudice to this insurance. Notwithstanding General Condition 5 of this Policy, the Insurer agrees to waive all rights of subrogation against any such persons or parties in the event of any Occurrence for which a claim for indemnity is made and subsequently indemnified under this Policy but only when such release is essential in gaining approval to commence any contract forming part of the Insured Projects.

## **12. DECLARATION OF CONTRACTS AND/OR WORK**

1. In respect of all contracts covered by this insurance the Insured will notify the Insurer of:
  - the Principal to the Contract
  - the name of the Contract
  - the type of works required in the Contract
  - the town or city where the Contract is
  - the Contractor
  - the GST exclusive value of the Contract, and
  - the date of award of the Contract
2. The premium will only be adjustable under this policy if the final Contract Price (excluding GST) increases by more than 15% or greater, or is less than or equal to 85% of the Contract Price (excluding GST) at the time of award.

## **13. GST**

1. The premium charged for this policy will include an amount on account of GST. The Insured must inform the Insurer of the extent to which they are entitled to an input tax credit for the premium each time that a claim is made under this policy. No payment will be made to the insured for any GST liability that they may acquire on the settlement of a claim if the Insured have not informed the Insurer of its entitlement or correct entitlement to an input tax credit.
2. Despite the other provision of this insurance (including provisions in the Policy, the Schedule and any Endorsements), the Insurer's liability will be calculated taking into account:
  - (a) any input tax credit to which the Insured are entitled for any acquisition relevant to a claim, or to which the Insured would have been entitled were the Insured to have made a relevant acquisition; and
  - (b) (also for claims for business interruption only) the GST exclusive amount of any supply made by the Insured's business which is relevant to the Insured's claim.

If the sum insured or policy limit is not sufficient to cover the Insured's loss, the Insurer will only pay GST (less any relevant input tax credit) that relates to the Insured's proportion of the

Insured's loss. The Insurer will pay that GST amount in addition to the sum insured or policy limit.

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

#### **14. UNDERGROUND SERVICES PROVISION**

The Insured, prior to the commencement of excavation:

- (i) will obtain from the public authority or "Dial Before You Dig" information service or the owner of underground services, written confirmation of the exact position of such services; and
- (ii) will verify the location of the services and indicate the location on the site.

The onus of proof of compliance with this provision rests with the Insured.

#### **15. WELDING PROCEDURES**

It is a general condition applying to all sections of this policy that all welding operations carried out by the Insured shall, as far as is practicable, be executed in accordance with Australian Standard AS16740-1980