

Proposal Form

Information Technology Liability



IMPORTANT NOTICE

Please read the following before proceeding to complete this Proposal Form.

Your Duty of Disclosure

Before you complete this Proposal Form and enter into a contract of general insurance, please be aware that you have a duty, under the *Insurance Contracts Act 1984* (Cth.) ('Insurance Contracts Act'), to disclose to the Insurer every matter that you know, or could reasonably be expected to know, is relevant to the Insurer's decision whether to accept the risk of the insurance and, if so, upon what terms. You have the same duty to disclose those matters to the Insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of matters:

- that diminishes the risk to be undertaken by the Insurer;
- that is of common knowledge;
- that your Insurer knows or, in the ordinary course of its business, ought to know; or
- where the Insurer agrees to waive compliance with your duty of disclosure.

(It should be noted that this duty continues after the Proposal Form has been completed up until the time the Policy is entered into.)

Non-Disclosure

If you fail to comply with your duty of disclosure, the Insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure or misrepresentation is fraudulent, the Insurer may also have the option of avoiding the contract in its entirety. It is therefore vital that you make sufficient enquiries BEFORE you complete this Proposal Form and BEFORE you sign any declaration that there has been no change in the information provided.

Information Technology Liability Insurance is issued on a CLAIMS MADE and NOTIFIED basis. This means that this cover only responds to:

1. Claims first made against you during the insurance period and notified to the Insurer during that insurance period, provided that you were not aware at any time prior to the Policy inception of circumstances which would have put a reasonable person in your position on notice that a Claim may be made against you; and
2. Claims notified pursuant to Section 40(3) of the Insurance Contracts Act, which states: "Where the Insured gave notice in writing to the Insurer of facts that might give rise to a Claim against the Insured as soon as was reasonably practicable after the Insured became aware of those facts but before the insurance cover provided by the contract expired, the Insurer is not relieved of liability under the contract in respect of the Claim, when made, by reason only that it was made after the expiration of the period of insurance cover provided by the contract".

When the Policy expires, no new notification generally can be made on the expired policy even though the event giving rise to a Claim against you may have occurred during the insurance period. You will not be entitled to indemnity under your new policy in

respect of any Claim arising out of circumstances of which you were aware at any time prior to policy inception which would have put a reasonable person in your position on notice that a Claim may be made against you. When completing this Proposal Form, you are obliged to report and provide full details of all circumstances which have become known to you and which would put a reasonable person in your position on notice that a Claim may be made against you. This is important to ensure that you make proper disclosure (refer to notice pursuant to the Insurance Contracts Act) in order that your entitlement to full indemnity under your new policy is not placed in jeopardy. In accordance with the provisions of the *Insurance Contracts Act*, DUAL Australia Pty Ltd ('DUAL Australia') is required to advise you of your responsibilities in relation to the disclosure of relevant information.

Surrender or Waiver of any Right of Contribution or Indemnity

Where another person or company would be liable to compensate you or hold you harmless for part or all or any loss or damage otherwise covered by the Policy, but you have agreed with that person either before or after the inception of the Policy that you would not seek to recover any loss or damage from that person, you are NOT covered under the Policy for any such loss or damage.

Contract by the Insured Affecting Rights of Subrogation

If the proposed contract of insurance includes a provision which excludes or limits the Insurer's liability in respect of any loss because you are a party to an agreement which excludes or limits your rights to recover damages from a third party in respect of that loss, you are hereby notified that signing any such agreement may place your indemnity under the proposed contract of insurance at risk.

Completing this Proposal Form

- Please answer all questions giving full and complete answers.
- It is the duty of the Applicant to provide all information that is requested in the Proposal Form as well as to add additional relevant fact.
 - Note: A relevant fact is such know fact and/or circumstance that may influence in the evaluation of the risk by the Insurer. If you have any doubts about what a relevant fact is, please do not hesitate to contact your broker.
- If the space provided on the Proposal Form is insufficient, please use a separate signed and dated sheet in order to provide a complete answer to any question.
- The Proposal Form must be completed, signed and dated by a person, who must be of legal capacity and authorised for the purpose of requesting Information Technology Liability Insurance for the organisation who acts as the Applicant.

This proposal form DOES NOT BIND the Applicant or the Insurer to complete the insurance but will form part of any insurance.

Privacy Collection Statement

At DUAL Australia Pty Ltd ('DUAL'), we are committed to protecting your privacy and complying with the Privacy Act 1988 (Cth) ('Privacy Act').

We use your information to assess the risk of providing you with insurance, provide quotations, issue policies and assess claims, on behalf of the insurers we represent. We also use your information to administer any policies we have issued to you and may do so by mail or electronically, unless you tell us that you do not wish to receive electronic communications. If you do not provide us with full information, we may not be able to provide insurance or assess a claim. If you provide us with information about someone else, you must obtain their consent to do so.

We provide your personal information to the insurer we represent when we issue and administer your insurance. When providing a quotation or insurance terms, we will tell you if the insurer is overseas and if so, where they are. We may also provide your information to your broker and our contracted third-party service providers (e.g. claims management companies). We are part of Howden Group Holdings Limited and may provide your information to UK based Group entities who provide us with business support services. If a recipient is not regulated by laws which protect your information in a way that is similar to the Privacy Act, we will take reasonable steps to ensure that they protect your information in the same way we do or seek your consent before disclosing your information to them. We do not trade, rent or sell your information.

Our Privacy Policy contains more information about how to access and correct the information we hold about you and how to make a privacy related complaint, including how we will deal with it. By providing us with your personal information, you consent to its collection and use as outlined above and in our Privacy Policy. Ask us for a copy of our Privacy Policy via email at privacy@dualaustralia.com.au or access it via our website using the following [link](#).

Notification of Circumstances or Events, which may give rise to a Claim

If during the period of this Policy, you become aware of any circumstances which may give rise to a Claim under the Policy and during the period of insurance given written notice to the Insurer of such circumstances, any Claim which may be subsequently made arising out of the circumstances of which notification has been given shall be deemed to be a Claim made during the period of this Policy whenever such Claim may actually be made.

All notifications of Claims and circumstances should be addressed to:

The National Claims Manager:

By Email: claims@dualaustralia.com.au

By Mail: GPO Box 7101
Sydney NSW 2001
Australia

DUAL Australia recommends that you keep a record of all information supplied for the purpose of entering into an insurance contract with us (including copies of this Proposal Form and any correspondence with us or your insurance broker or agent).

Section 1

Details of Applicant

Insured Name: _____

Address of head office: _____

State: _____ Postcode: _____

Web Address: _____

Date established (dd/mm/yy): _____ Country State of Registration: _____

ABN/ACN: _____ Telephone No: _____

Address of all other locations (if any) from which the Insured operates: _____

Section 2

Details of the Business

1. Please provide a detailed description of your information technology services or information technology products provided, including primary purpose of software/systems licensed or supplied by you including details of any advice provided.

- a. Has the name of the Business ever been changed? Yes [] No []

- b. Have you sold, purchased or merged with any other Business? Yes [] No []
- c. Is any Principal, Partner or Director connected or associated (financially or otherwise) with any other Business? Yes [] No []

If YES to any of the above, please provide further details: _____

Section 3 Employee Information

1. Please state the total number of the following:

Principals, Partners, Directors		Administration staff	
Professionally qualified staff		Other (please specify)	
Trainee staff			
Sales staff		Total:	

2. Please provide the following details for each of the Insured's Principals, Partners, Directors and key technical staff:

Name	Age	Qualifications	Date Qualified	No. Years of this Practise	Total Years Practising

3. Please provide details of annual gross wages for:

Current Year: _____

Estimate Next Year: _____

Section 4 Turnover Details

1. Please provide a percentage breakdown of your gross turnover by activity for the current year:

Activity	Percentage breakdown (%)	Activity	Percentage breakdown (%)
Reseller of Third Party Software		Maintenance and Repair	
Reseller of Third Party Hardware		Data Processing/Warehousing Services	
Software Sales (own developed)		General Consultancy	
Hardware Sales (own developed)		Education and Training	

ISP/Web/Internet Services		IT Recruitment and Placement Services	
Telecommunication Services		Facilities Management and Outsourcing	
Systems Integration		Other (please specify):	

2. Please provide a breakdown of turnover for the current financial year and an estimate for the next year:

Territory	Current Year	Estimate Next Year
Australia and New Zealand		
Asia		
UK		
USA/Canada		
Total		

3. In respect of gross turnover for the current financial year, please provide a breakdown by State:

NSW %	ACT %	QLD %	VIC %	TAS %	SA %	WA %	NT %	O/S %

4. Are any of your products/services intended for use in any of the following?

- | | | |
|--|---------|--------|
| a. Medical/Surgical applications | Yes [] | No [] |
| b. Aerospace/Radar/Navigation Systems | Yes [] | No [] |
| c. Military/Defence Systems | Yes [] | No [] |
| d. Oil/Gas/Power/Nuclear Energy applications | Yes [] | No [] |
| e. Financial or Banking Systems | Yes [] | No [] |
| f. Manufacturing Process Control Systems | Yes [] | No [] |
| g. Security Systems | Yes [] | No [] |

If YES to any of the above, please provide further details: _____

Section 5 | General Information

1. Are you, have you, or do you plan to be a part of a joint venture, partnership or consortium? Yes [] No []

If YES, please provide further details:

Joint Venture Partner	Details

2. Do you use a standard contract or agreement for all the work you perform? Yes [] No []

If YES, please attach a copy.

a. What percentage of the time do customers agree to the Proposer's standard contract or agreement? _____

Please attach a copy of the largest non-standard contract.

b. Who must approve any variations in the Proposer's standard contracts? _____

3. Do you ever negotiate contracts or agreements in which you:

a. Limit your liability in all contracts to the cost of services or products provided? Yes [] No []

If NO, how do you limit your liability? _____

b. Agree to limit the other parties' liability? Yes [] No []

If YES, in what circumstances? And what are the limitation amounts? _____

c. Accept liability for consequential damages? Yes [] No []

If YES, in what circumstances? _____

d. Do not include a Force Majeure Clause? Yes [] No []

4. Are all contracts legally reviewed prior to signing? Yes [] No []

5. Do you ever agree to indemnify or hold harmless any third party for claims arising out of your services or products? Yes [] No []

If YES, please provide details: _____

6. Do you enter into contracts for a specified dollar value? (i.e. Fixed price contracts) Yes [] No []

Indicate % of time: _____

7. Do you provide contractual indemnities to anyone in respect of intellectual property licensed, sold or shared? Yes [] No []

If YES, please supply a copy of your standard indemnity.

8. Do you have sole legal rights to the intellectual property/licensed/sold/shared? Yes [] No []

If NO, please supply details: _____

9. Do you act as an agent for any company(s)? Yes [] No []

If YES, please provide details:

Company	Software/Hardware/Services provided in accordance with the agency	Estimate Percentage of agency sales to total turnover Next Year (%)

10. Please provide a brief description and contract value for the five (5) largest contracts undertaken over the past five (5) years

Brief Description	Contract Value (\$)

11. a. What is the value of your average contract? \$ _____

b. What is the duration of your average contract? _____

c. Do all customers sign a written agreement, contract or purchase order? Yes [] No []

12. Do you use the services of consultants, contractors or agents? Yes [] No []

If YES:

a. What percentage of IT services or IT products are provided by sub-contractors? _____ %

b. Please specify what IT services or IT products are sub-contracted? _____

c. Do you have specific written contracts with these sub-contractors? Yes [] No []

- d. Do you insist they carry their own Information Technology Liability Insurance? Yes [] No []
- e. Do you require proof of IT Liability Insurance from sub-contractors? Yes [] No []
- f. Do you enter into any hold-harmless agreements or otherwise waive any legal rights or entitlements which you may have against such consultants, sub-contractors or agents? Yes [] No []
- g. Do you require cover for consultants, contractors or agents? Yes [] No []

If YES, please provide:

- i. A list of consultants, contractors, or agents;
- ii. Total payments to such persons in the current year ; and
- iii. Copy of your standard Contractors Agreement.

13. Do you have all employees, consultants and contractors assign you their intellectual property rights? Yes [] No []

If YES, please provide a copy of the standard Agreement.

14. Do you envisage any substantial changes in your activities or are there any major new operations contemplated during the next twelve (12) months? Yes [] No []

If YES, please provide further details: _____

15. Do you perform work outside Australia, or work for clients located overseas? Yes [] No []

If YES, please provide an approximate percentage breakdown by country: _____

Section 6 Risk Management

1. Do you require written acceptance from the customer on delivery of services or products? Yes [] No []
2. Do you have a Total Quality Management (TQM) strategy in place? Yes [] No []

If YES, please provide details: _____

3. Do you have a Product Recall Plan in place? Yes [] No []

4. Do your product or systems development procedures include the following:
- | | | |
|---|---------|--------|
| a. Systems development methodology in writing | Yes [] | No [] |
| b. A written proposal in order to determine customer performance expectations is required | Yes [] | No [] |
| c. A written contract of specifications of products and services signed by the customer | Yes [] | No [] |
| d. A written agreement outlining the scope of the project or services | Yes [] | No [] |
| e. Contract outlining responsibility of all parties | Yes [] | No [] |
5. Do your sign-off procedures include the following:
- | | | |
|---|---------|--------|
| a. Interim changes documented with customer sign-off required | Yes [] | No [] |
| b. Performance milestones acknowledged and accepted with customer sign-off when achieved | Yes [] | No [] |
| c. Final test made with the customer and sign-off is required | Yes [] | No [] |
| d. A final acceptance letter or sign off agreement from the customer is required | Yes [] | No [] |
| e. Formal policy for documenting/responding to customer complaints/requests for changes/fixes | Yes [] | No [] |
6. Do you obtain legal advice from advisers specialising in intellectual property law before releasing new software or products? Yes [] No []
7. If you use in-house legal counsel for due diligence and clearance of new software or products, please attach details of the due diligence checklist for intellectual property clearances. Yes [] No []

If you do not have due diligence and clearance procedures, please provide comments: _____

- | | | |
|--|---------|--------|
| 8. Do new employees involved in development work sign an agreement that they will not distribute or utilise previous employer's trade secrets? | Yes [] | No [] |
| 9. If you use sub-contractors during the development process, do they sign copyright license agreements? | Yes [] | No [] |
| 10. Do you have written procedures for handling intellectual property of others? | Yes [] | No [] |
| 11. Have you ever filed for any patents? | Yes [] | No [] |

If YES, how many patents do you currently own? _____

Section 7**Claims Details**

1. After enquiry:

- a. Have any Claims been made against the Company for professional negligence, error or omission in the last 5 years? Yes [] No []
- b. Have any Claims been made against you for Information Technology Liability Yes [] No []

If YES, please provide further details of the Claim, the Claim amount and any payments: _____

2. After enquiry is the Proposer or any of the Principals, Partners, Directors or Employees aware, of any circumstances or incident, which may give rise to a Claim against the Company or any present or former Principals, Partners, Directors or Employees? Yes [] No []

If YES, please provide further details: _____

3. After enquiry has any client disputed payment for products or services rendered? Yes [] No []

If YES, please provide further details: _____

4. After enquiry has any contract or project experienced cost overruns, delays, system failure or functionality problems? Yes [] No []

If YES, please provide further details: _____

Section 8**Details of Insurance Cover**

1. Do you have any Information Technology Liability, Professional Indemnity or Public/Products Liability Insurance Cover currently in place? Yes [] No []

If YES, please state: _____

2. Has the Company or any Principal, Partner or Director ever been refused or cancelled insurance, or had a renewal application denied, or had special terms imposed? Yes [] No []

If YES, please provide further details: _____

Section 9 | Indemnity Limit

1. Please complete indemnity limit and deductible required:

	Indemnity Limit (AUD\$)	Deductible (AUD\$)
Professional Indemnity	\$	\$
Public and Products Liability	\$	\$

2. OPTIONAL EXTENSIONS

Is cover required for:

- a. USA/Canada Cover Yes [] No []
- b. Consultants, Subcontractors and Agents Yes [] No []
- c. Reinstatement of Indemnity Limit Yes [] No []

Section 10 | Declaration

SIGNING THIS PROPOSAL FORM DOES NOT BIND THE PROPOSER OR THE INSURER TO COMPLETE THIS INSURANCE

The undersigned declares that the statement and particulars in this Proposal Form are true and that no material facts have been misstated or suppressed after enquiry. The undersigned agrees that should any of the information given by us alter between the date of this Proposal and the inception date of the insurance to which this Proposal relates, the undersigned will give immediate notice thereof. The undersigned agrees that the Underwriters may use and disclose our personal information in accordance with the 'Privacy Collection Statement' at the beginning of this Proposal.

The undersigned acknowledges that they have read the policy wording and associated endorsements and are satisfied with the coverage provided, including the limitations and restrictions on coverage.

The undersigned agrees that this Proposal, together with any other information supplied by us shall form the basis of any contract of insurance effected thereon.

TO BE SIGNED BY THE INSURED FOR WHOM THIS INSURANCE IS INTENDED FOR

Full Name: _____

Position: _____

Signature: _____ Date: / /

IT IS IMPORTANT THE UNDERSIGNED OF THE DECLARATION ABOVE IS FULLY AWARE OF THE SCOPE OF THIS INSURANCE SO THAT THESE QUESTIONS CAN BE ANSWERED CORRECTLY. IF IN DOUBT PLEASE CONTACT THE BROKER OR AGENT, SINCE NON-DISCLOSURE MAY AFFECT AN INSURED'S RIGHT OF RECOVERY UNDER THE POLICY.

DUAL Australia recommends that you keep a record of all information supplied for the purpose of entering into an insurance contract (including copies of this Proposal Form and correspondence).

HOW TO CONTACT DUAL AUSTRALIA PTY LTD:

Address: DUAL Australia Pty Ltd

GPO Box 7101

Sydney NSW 2001

Australia

Telephone: 1300 769 772 (If dialling from outside Australia +61 2 9248 6300)

E-mail: dualenquiries@dualaustralia.com.au