

# DUAL

making relationships count

## PUBLIC AND PRODUCTS LIABILITY WORDING



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## Section 1: Preamble

- 1.1 WE shall provide the cover described in the POLICY, subject to its terms and conditions, for the INSURANCE PERIOD.
- 1.2 The cover under the POLICY commences upon the payment of the Premium unless otherwise agreed in writing.

## Section 2: Insuring Clauses

- 2.1 WE agree to indemnify the INSURED for any amount the INSURED becomes legally liable to pay in respect of CLAIMS for compensation for PERSONAL INJURY or PROPERTY DAMAGE arising out of an OCCURRENCE in the INSURANCE PERIOD in connection with the INSURED's BUSINESS.

### 2.2 Defence Costs and Expenses

In addition to the INDEMNITY LIMIT WE will pay in respect of a CLAIM covered under the POLICY, all:

- (a) DEFENCE COSTS incurred by US in respect of a CLAIM;
- (b) Costs awarded against the INSURED and all interest accruing after judgement until WE have paid, tendered or deposited in court that part of any judgement which does not exceed the INDEMNITY LIMIT;
- (c) Reasonable costs and expenses, other than loss of earnings, incurred by the INSURED with OUR prior written consent; and
- (d) Costs and expenses incurred by the INSURED for rendering first aid to others at the time of any PERSONAL INJURY;

Provided that:

- i) If to dispose of or settle a CLAIM covered under this section of the POLICY, compensation is payable in excess of the INDEMNITY LIMIT, OUR liability in respect of DEFENCE COSTS and costs and expenses under this clause will be limited to that proportion of such DEFENCE COSTS and costs and expenses as the INDEMNITY LIMIT bears to the total compensation payable to dispose of or settle the CLAIM;
- ii) WE will not pay for any DEFENCE COSTS or costs or expenses that are incurred after WE have paid or agreed to pay an amount equal to the INDEMNITY LIMIT; and
- iii) In relation to any CLAIM made or actions instituted within the United States of America or the Dominion of Canada or their territories or protectorates, OUR liability to pay any DEFENCE COSTS or costs or expenses detailed above shall be included in the INDEMNITY LIMIT, and not in addition to the INDEMNITY LIMIT.

### 2.3 Tenants Liability

WE agree to indemnify any lessor with whom the INSURED has entered into an agreement for the rental or lease of premises (not belonging to the INSURED) from which the INSURED conducts its BUSINESS, provided always that no wider cover shall be afforded to the lessor than would have been provided hereunder to the INSURED if the INSURED had been held legally liable for the same PERSONAL INJURY or PROPERTY DAMAGE and only where that liability arises out of the INSURED's use of such premises in the carrying on of its BUSINESS. Exclusion 5.3 (b) shall not apply to any cover provided under this Extension.

## Section 3: Interpretation

In the POLICY:

- 3.1 (a) Person includes individuals, partnerships, bodies corporate and associations.
- (b) The singular includes the plural and the masculine includes the feminine.

- (c) The headings are for descriptive purposes only.
- 3.2 This POLICY is governed by the laws of the Commonwealth of Australia and the State or Territory where the POLICY was issued. Any disputes relating to its interpretation or thereunder shall be submitted to the exclusive jurisdiction of the Courts of Australia.
- 3.3 In the event that any portion of the POLICY is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 3.4 All POLICY documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

## Section 4: Definitions

In the POLICY:

- 4.1 AIRCRAFT means any object that is intended to fly or move in or through the air, atmosphere or space.
- 4.2 BUSINESS means all activities involved in the business described in the Schedule including the provision of canteens, social, sports, welfare and childcare organisations for the benefit of the INSURED's EMPLOYEES, first aid, fire and ambulance services and the maintenance of the INSURED'S premises.
- 4.3 CLAIM means:
- (a) any civil proceeding brought by a third party against the INSURED for compensation; or a written demand by a third party for monetary damages.
- 4.4 DEDUCTIBLE means the amount specified in Item 6 of the Schedule.
- 4.5 DEFENCE COSTS means any necessary and reasonable fees, expenses, costs and disbursements incurred in investigating or defending a CLAIM covered by the POLICY.
- 4.6 INCIDENTAL CONTRACT means;
- (a) any written agreement for the lease of property, except those agreements where there is an obligation to insure such property or where there is an agreement to accept liability regardless of fault;
- (b) any written contract made or entered into with any public authority for the supply of water, gas, electricity, fuel, air, steam, waste disposal facilities, telephone or communication services, except a contract made or entered into with such authority for work done or to be done for such authority; or
- (c) any written contract made or entered into with any railway authority for the loading, unloading or transport of the INSUREDs PRODUCTS or any contract relating to the operation of railway sidings.
- 4.7 INDEMNITY LIMIT means the amount specified in Item 5 of the Schedule.
- 4.8 INSURANCE PERIOD means the period specified in Item 4 of the Schedule.
- 4.9 INSURED means
- (a) The person, partnership, company, SUBSIDIARY or other entity, specified as the INSURED in the Schedule; and
- (b) subsidiary companies of the INSURED specified in the SCHEDULE whose place of incorporation is within Australia; and
- (c) The directors, employees, executive officers or partners of the INSURED specified in the SCHEDULE or of a company designated in (b) above, but only whilst acting within the scope of their duties in such capacity; and

- (d) Every principal of the INSURED specified in the SCHEDULE or of a company designated in (b) above in the respect of the liability of such principal arising out of the performance by the INSURED specified in the SCHEDULE or by a company designated in (b) above of any contract or agreement for the performance of work for such principal, to the extent required by such contract or agreement, but limited to the coverage provided by this POLICY; and
- (e) Every office bearer or member of social or sporting clubs or welfare organisations formed with the INSURED's consent (other than an INSURED designated in (d) above) in respect of CLAIMS arising from the duties of, or connected with the activities of, any such club or organisation.

4.10 OCCURRENCE means an event, including continuous or repeated exposure to substantially the same general conditions, which results in PERSONAL INJURY or PROPERTY DAMAGE, neither expected nor intended by the INSURED.

4.11 PERSONAL INJURY means:

- (a) bodily injury, death, sickness, disease, disability, shock, fright, mental anguish and mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) wrongful entry, wrongful eviction or other invasion of right of privacy; and/or
- (d) assault and battery committed by THE INSURED for the purpose of preventing or eliminating danger to persons or property, resulting from an OCCURRENCE.

In the event of PERSONAL INJURY arising from latent injury, latent sickness, latent disease or latent disability, that PERSONAL INJURY shall be deemed to have occurred on the day the injury, sickness, disease or disability was first medically diagnosed.

4.12 POLICY means this POLICY wording, the Schedule, the PROPOSAL and any endorsement attaching to and forming part of the POLICY either at commencement or during the INSURANCE PERIOD.

4.13 POLLUTANTS means any contaminant whether solid, liquid or gas including but not limited to chemicals, smoke, vapours, soot, acids, alkalis, chemicals, waste and fumes. Waste includes material to be recycled, reconditioned or reclaimed.

4.14 PRODUCT means anything (after it has ceased to be in the INSURED's possession or in the INSURED's legal control) which has been manufactured, grown, extracted, produced, processed, constructed, erected, installed, assembled, altered, repaired, serviced, treated, sold, supplied or distributed by the INSURED in the course of the INSURED'S BUSINESS, including any packaging or containers (other than a VEHICLE) used to package or contain the INSURED'S PRODUCT(S).

4.15 PRODUCT LIABILITY means any liability for an OCCURRENCE that is caused by or arises out of any PRODUCT.

4.16 PROPERTY DAMAGE means physical loss, damage or destruction of tangible property including the resultant loss of use, or loss of use of tangible property which has not been physically damaged or destroyed, provided such loss of use is caused by or arises from an OCCURRENCE. In the event of a CLAIM arising from latent damage or from the exposure of tangible property to gradual deterioration and eventual damage, such PROPERTY DAMAGE shall be deemed to have occurred on the day such deterioration or damage was first discovered.

4.17 PROPOSAL means the written proposal made by the INSURED to US together with any attachments.

4.18 VEHICLE means any type of machine including attachments that is designed to travel on wheels or on self-laid tracks made or intended to be propelled by other than manual or animal power.

4.19 WATERCRAFT means anything made or intended to float on or in, or travel on or through or under water.

4.20 WE/US/OUR means DUAL Australia Pty Limited, ACN 107 553 257 as agent of the Underwriters named in the Schedule under the heading "Underwriters".

## Section 5: Exclusions

WE will not cover the INSURED, including for compensation, DEFENCE COSTS or other costs, expenses or loss, in respect of:

### 5.1 Prior knowledge

- (a) Any CLAIM arising from or in connection with any circumstance occurring prior to or existing at the inception of this POLICY and which the INSURED knew or ought reasonably to have known prior to the INSURANCE PERIOD might or could give rise to a CLAIM;
- (b) Any CLAIM arising from or in connection with any OCCURRENCE, fact or circumstance of which notice has been or reasonably should have been given under any previous insurance;
- (c) Any CLAIM or circumstance likely to give rise to a CLAIM stated in the PROPOSAL in the form or declaration, being the basis of this POLICY.

### 5.2 Fines and Penalties and Non-Compensatory

- (a) Taxes, fines or penalties;
- (b) Punitive, aggravated, multiple, exemplary, liquidated or other non-compensatory damages or the consequences of non-payment.

### 5.3 Assumed Liability

Any obligation assumed by the INSURED under any agreement, except that this Exclusion does not apply to:

- (a) any liability which is, or would have been, implied by law in such agreement or would have arisen separately from it; or
- (b) where the liability arises from a provision in a contract for lease of real or personal property, other than a provision which obliges the INSURED to effect insurance or provide indemnity in respect of the subject matter of that contract; or
- (c) any liability which is under implied warranty as to fitness or quality as to the INSURED'S PRODUCTS; or
- (d) any liability assumed under an INCIDENTAL CONTRACT; or
- (e) written contracts, warranties or agreements agreed by US and specified in the SCHEDULE.

### 5.4 Liability to EMPLOYEES

Any CLAIM arising from or directly or indirectly attributable to or in consequence of:

- (a) any PERSONAL INJURY to any employee in the course of employment in the INSURED'S BUSINESS. (This exclusion does not apply in respect of the INSURED'S liability for injuries which are not compensated under the workers' compensation legislation in Queensland in respect of Occurrences where employment is not the major factor causing the injury); or
- (b) based on, any provision of any workers' compensation legislation or any industrial award or agreement or determination; or
- (c) any liability for which the INSURED is or would have been entitled to seek indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers' or workmens' compensation including any legislation of any State or Territory (whether insurance is effected or not).

For the purpose of this Exclusion, employee means any person engaged under a contract of service or apprenticeship with the INSURED but does not include any person employed under such a contract who is excluded from the definition of worker under any workers' compensation legislation.

**5.5 Pollution**

Any CLAIM arising from or directly or indirectly attributable to or in consequence of the actual or alleged release,, discharge escape or seepage of POLLUTANTS into or upon any property, land, the atmosphere, watercourse or body of water.

WE shall also not be liable to pay any costs and expenses incurred in the prevention, removal or clean-up of such POLLUTANTS.

This Exclusion shall not apply if such discharge, dispersal, release or escape is caused by a sudden, identifiable, unexpected and unintended happening and takes place in its entirety at a specific time and place and provided the limit of OUR liability in such circumstances, whether or not there is more than one OCCURRENCE during the INSURANCE PERIOD, is limited in the aggregate to the INDEMNITY LIMIT.

**5.6 War/Terrorism**

Any CLAIM or liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence:

- (a) War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) Any act of terrorism; or
- (c) Any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

For the purposes of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**5.7 Nuclear**

Any CLAIM or liability arising from or directly or indirectly attributable to or in connection with:

- (a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or
- (b) Any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
  - (i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - (ii) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

**5.8 Asbestos and Toxic Mould**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:

- (a) asbestos or other things that contain it; or



- (b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, or mycotoxins relating to Stachy Botrys, such action to including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, mycotoxins relating to Stachy Botrys.

#### 5.9 Property In Your Physical or Legal Control

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of PROPERTY DAMAGE to property owned by the INSURED or in the INSURED's physical or legal control, other than:

- (a) premises which are leased or rented to the INSURED;
- (b) premises which the INSURED temporarily occupies in order for the INSURED to carry out work;
- (c) VEHICLES (not belonging to the INSURED or used by the INSURED or on the INSURED'S behalf) in the INSURED's physical or legal control whilst within a car park owned or operated by the INSURED unless part of the INSURED's BUSINESS is the operation of a car park for reward;
- (d) the INSURED's EMPLOYEES' property; or
- (e) other property in the INSURED's physical or legal control, provided that OUR total liability payable from all CLAIMS during the INSURANCE PERIOD shall not exceed \$250,000 in the aggregate for all CLAIMS.

#### 5.10 Product Recall

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the recall, withdrawal, inspection, repair, replacement or loss of use of the INSURED's PRODUCTS or of any property of which the INSURED's PRODUCTS form a part, if these PRODUCTS are recalled by the INSURED or another, or withdrawn from the market or from use, because of any known or suspected defect or deficiency therein.

#### 5.11 Aircraft and Watercraft

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:

- (a) The ownership, maintenance, servicing, operation or use by the INSURED of:
  - (i) any AIRCRAFT; or
  - (ii) any WATERCRAFT exceeding 8 metres in length, except where such WATERCRAFT is not owned by the INSURED but used by the INSURED for business entertainment; or
- (b) PRODUCTS that the INSURED could reasonably be expected to know are installed in or on any AIRCRAFT; or
- (c) the use by the INSURED as a landing area for AIRCRAFT of any PROPERTY or structure owned occupied or controlled by the INSURED. The term "landing area" includes any area on which AIRCRAFT taxi, land, take-off, are housed, maintained or operated.

#### 5.12 Vehicles

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the use of or ownership or operation by the INSURED of any VEHICLE which is legally required to be registered or legally required to be insured.

This exclusion shall not apply to:

- (a) CLAIMS or liability caused by or arising from the delivery or collection of goods to or from any VEHICLE where such PERSONAL INJURY or PROPERTY DAMAGE occurs beyond the limits of any carriage-way or thoroughfare;



- (b) CLAIMS or liability arising during the trade use of any VEHICLE at any site where the INSURED are working or at the INSURED's premises, provided that the INSURED is not indemnified under this POLICY where the VEHICLE is used only for the transportation or haulage of goods; or
- (c) CLAIMS or liability caused by or arising out of the use of an unregistered VEHICLE whilst being driven under its own power between its point of unloading and a worksite and whilst returning from a worksite to the point of reloading for its conveyance from the area.

**5.13 Faulty Workmanship**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the cost of performing, correcting or improving any work undertaken by the INSURED.

**5.14 Genetically Modified or Engineered Organisms (GMO)**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the manufacture, importing, growing, blending, mixing or distributing of Genetically Modified or Engineered Organisms (GMO).

For the purpose of this Exclusion, a Genetically Modified or Engineered Organism is defined to be a living plant, animal or microbe that has been altered by the addition or modification of a gene through the process of genetic engineering and contains genes or portions of genes from unrelated organisms.

**5.15 TSE**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of Transmissible Spongiform Encephalopathy (TSE) including but not limited to Bovine Spongiform Encephalopathy (BSE) or new Variant Creutzfeldt-Jakob Disease (VCJD).

This exclusion applies regardless of any other contributing or aggravating cause or event.

**5.16 Professional Services**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the rendering of or failure to render professional advice or service by the INSURED or any error or omission connected therewith.

This Exclusion shall not apply to:

- (a) the rendering of or failure to render medical advice or service by Medical Persons employed by the INSURED to provide first aid and other medical services on the INSURED's premises; or
- (b) CLAIMS in respect of PERSONAL INJURY or PROPERTY DAMAGE where such professional advice or service is given without fee or charge.

**5.17 Loss of Use**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of use of tangible property which has not been physically damaged or destroyed resulting from:

- (a) a delay in, or lack of performance by the INSURED or on the behalf of the INSURED of any contract or agreement; or
- (b) the failure of the INSURED's PRODUCTS to meet the level of performance, quality, fitness or durability expressly warranted or represented by the INSURED. This Exclusion shall not apply to loss of use of other tangible property resulting from sudden and accidental physical damage to or destruction of the INSURED's PRODUCTS after the INSURED's PRODUCTS have been put to use by any person or organisation other than the INSURED.

**5.18 Libel and Slander**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the publication or utterance of a libel or slander:

- (a) made prior to the commencement date of this POLICY;
- (b) made by the INSURED or at the INSURED's direction knowing it to be false; or
- (c) related to advertising, broadcasting or telecasting activities conducted by the INSURED or on the INSURED's behalf.

**5.19 Assault and Battery**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of assault and battery committed by or at the direction of the INSURED unless reasonably necessary for the protection of persons or property.

**5.20 Pipes and Cables**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of damage to pipes and cables unless the appropriate authorities have been consulted prior to work commencing and written details have been obtained from them as to the position of such underground pipes and cables together with their support and fittings.

**5.21 Internet Operations**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of the INSURED's Internet Operations.

Internet Operations shall mean any of the following:

- (a) use of electronic mail systems by the INSURED, the INSURED's employees or by any other person with the INSURED's permission; or
- (b) access through the INSURED's network to the world wide web or a public internet site by the INSURED, the INSURED's employees or by any person with the INSURED's permission; or
- (c) access to the INSURED's intranet (meaning internal company information and computing resources) which is made available through the world wide web; or
- (d) the operation and maintenance of the INSURED's web site.

This Exclusion will not apply to liability arising out of any material which is already in print by the manufacturer in support of its products which is also reproduced on the INSURED's web site, however the Exclusion shall apply to any other advice or information located on the INSURED's web site that is used for the purpose of attracting customers.

For the purpose of this Exclusion, "employee" shall mean any person engaged under a contract of service of apprenticeship with the INSURED.

**5.22 Electronic Data**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of:

- (a) the communication, display, distribution or publication of Electronic Data; or
- (b) the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data; or
- (c) any error in creating, amending, entering, deleting or using Electronic Data; or

(d) the total or partial inability or failure to receive, send, access or use Electronic Data for any time at all from any cause whatsoever regardless of any other contributing cause or event whenever it may occur.

**5.23 Participation**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of PERSONAL INJURY to any person caused by or arising out of the participation of such person in any game, match, race, practice, training, trial, warm ups, warm downs, competition and other preliminary activities unless such PERSONAL INJURY is as a direct result of the INSURED's negligence in regard to the facility provided.

**5.24 Product Defect**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of PROPERTY DAMAGE to the INSURED's PRODUCTS if the damage results from any defect contained within the PRODUCT or to their harmful nature or unsuitability.

**5.25 Sexual Molestation**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of sexual and or child abuse, assault, molestation or attempt thereof. Furthermore WE will not cover the INSURED under Insuring Clause 2.2 Defence Costs and Expenses.

**5.26 Tobacco**

Any CLAIM or liability arising from or directly or indirectly attributable to or in consequence of PERSONAL INJURY due to the inhalation or ingestion of, or exposure to:

- (a) tobacco or tobacco smoke;
- (b) any ingredient or additive present in any articles, items or goods which contain or include tobacco.

**5.27 Territorial Limits**

Any CLAIM or liability occurring outside of Australia. This Exclusion shall not apply to CLAIMS arising from:

- (a) The INSURED's PRODUCTS (other than those exported to the United States of America or the Dominion of Canada or their territories, protectorates or dependencies), or;
- (b) The presence outside of Australia of the INSURED's partners, directors and employees engaged in non-manual work in connection with the INSURED's BUSINESS and who are normally resident in Australia.

**5.28 Legal Jurisdiction**

Any CLAIM or liability:

- (a) brought against the INSURED in any country outside Australia;
- (b) arising as a consequence of the INSURED entering into contractual obligations submitting to the jurisdiction of a Court other than a Court of any State or Territory of Australia; or
- (c) arising as a consequence of any agreement by the INSURED to indemnify any party in respect of awards, judgements or settlements made under the jurisdiction of a Court other than a Court of any State or Territory of Australia

**5.29 Physical Work Exclusion**

Any CLAIM or liability for PERSONAL INJURY or PROPERTY DAMAGE arising directly or indirectly from or caused by or in connection with any construction management, construction supervision, actual building work and or construction work other than for the INSURED's office risks or on-site inspections.

### 5.30 Sanctions Limitation Exclusion

Any CLAIM or liability for any matter where the provision of such benefit would expose US to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

## Section 6: Claim Conditions

### 6.1 Notification

The INSURED shall notify US as soon as practicable in writing of every OCCURRENCE, CLAIM, proceeding, impending prosecution and inquest together with all relevant information which may result in a claim under this POLICY, whether or not the INSURED believes the amount of any such claim might fall below the applicable deductible.

Any Notice given to US shall be in writing, and delivered to:

DUAL Australia Pty Ltd, GPO Box 7101, Sydney, NSW, 2001 Australia  
or by email and addressed to claims@dualaustralia.com.au

### 6.2 Co-operation

- (a) The INSURED shall, at the INSURED's own cost, frankly and honestly provide US with all information and assistance required by US and/or the lawyers and investigators and others appointed by US in relation to any CLAIM or loss. Any unreasonable failure to comply with this obligation may entitle US to deny cover for the CLAIM or loss, in whole or part.
- (b) The INSURED shall, at its own cost, do all things reasonably practicable to minimise the INSURED's liability in respect of any CLAIM, liability or loss.

### 6.3 Legal Defence and Settlement

- (a) Unless otherwise agreed, WE shall have the right to assume, in the name of the INSURED, the legal defence of any CLAIM covered under this POLICY. WE shall have the right to appoint the lawyers that will defend and represent the INSURED in respect of any CLAIM.
- (b) WE shall have full discretion in managing any negotiation or proceeding as to the resolution of such CLAIM. WE shall be entitled to settle a CLAIM if WE so choose.
- (c) The INSURED agrees not to admit liability for or settle any CLAIM, liability or loss, make any admission, offer any payment or assume any obligation in connection with any CLAIM, liability or loss, or incur any DEFENCE COSTS in connection with any CLAIM, without OUR written consent.
- (d) WE shall not be liable for any settlement, DEFENCE COSTS, costs and expenses, admission, offer, payment or assumed obligation made, incurred or entered into without OUR written consent.
- (e) If WE are of the opinion that a CLAIM will not exceed the DEDUCTIBLE, WE may require the INSURED to conduct the defence of the CLAIM. If the DEFENCE COSTS and/or any other payment exceed the DEDUCTIBLE then WE will pay the amount in excess of the DEDUCTIBLE.

### 6.4 INSURED's right to contest

In the event that WE recommend settlement of a CLAIM and the INSURED does not agree to the settlement of the CLAIM, and the INSURED decides to contest the CLAIM, OUR liability shall not exceed the amount for which the CLAIM could have been settled, and DEFENCE COSTS and any other costs and expenses covered under this POLICY incurred up to the date upon which the CLAIM could have been settled.

### 6.5 Senior Counsel

- (a) WE shall not require the INSURED to contest a CLAIM unless a Senior Counsel (agreed upon by the INSURED and US) advises that the CLAIM should be contested, taking into account all likely DEFENCE COSTS, prospects of successfully defending the CLAIM and the damages and costs likely to be recovered by the third party claimant.
- (b) The costs of Senior Counsel's advice shall be regarded as part of the DEFENCE COSTS.

#### 6.6 Non-Imputation

No state of mind or knowledge possessed by any one INSURED will be imputed to any other INSURED for the purpose of determining whether any provision in this POLICY applies. However, any state of mind or knowledge possessed by any past or present principal, director, partner of the INSURED will be imputed to the INSURED in Clause 4.9(a) of this POLICY.

#### 6.7 Other Insurance

To the extent permitted by the *Insurance Contracts Act 1984*, this POLICY will only cover loss or liability to the extent that the amount of such loss or liability is in excess of any indemnity or cover available to the INSURED in respect of that loss or liability under any other policy entered into by the INSURED.

To the extent permitted by the *Insurance Contracts Act 1984*, this POLICY will only cover loss or liability to the extent that the amount of such loss or liability is in excess of any indemnity or cover available to the INSURED in respect of that loss or liability under any other policy effected on behalf of the INSURED or under which the INSURED is a beneficiary (but not a policy to which the preceding paragraph applies).

Neither of the two paragraphs immediately above applies to such other insurance that is written only as specific excess insurance over the INDEMNITY LIMIT provided in this POLICY.

If such other insurance is provided by US, or any other member company, associate or affiliate, and it covers a loss or liability covered by this POLICY in respect of a CLAIM, the INDEMNITY LIMIT under this POLICY in respect of that CLAIM shall be reduced by any amount paid by US (or member company, associate or affiliate) under such other insurance.

## Section 7: General Conditions

#### 7.1 Subrogation

- (a) Where WE have paid an amount under the POLICY WE become entitled to any rights of the INSURED against any party in relation to the CLAIM, costs and expenses or loss, to the extent of OUR payment.
- (b) The INSURED, at its own cost, must assist US and provide information as WE may reasonably require to exercise OUR rights of subrogation. This may include providing and signing statements and other documents and the giving of evidence, among other things.

#### 7.2 Increase in Risk

The INSURED must notify US in writing as soon as practicable giving US full particulars of any alteration to the BUSINESS and or holdings in any subsidiary company and the INSURED will pay such reasonable additional premium as WE may require.

#### 7.3 Premium Adjustment

Where premium has been calculated on estimates furnished by the INSURED, the INSURED shall, within 30 days after the expiry of each INSURANCE PERIOD, furnish to US such information as WE may require to adjust the premium for the INSURANCE PERIOD. Any difference in premium shall be paid by or allowed to the INSURED. The INSURED shall allow US to inspect the INSURED's records to ascertain or verify such information if required.

#### 7.4 Assignment

The INSURED must not assign the POLICY or any rights under the POLICY without OUR prior written consent by way of endorsement to the POLICY.

**7.5 Cancellation**

- (a) The INSURED may cancel the POLICY at any time by notifying US in writing.
- (b) WE may cancel the POLICY in accordance with the provisions of the *Insurance Contracts Act 1984* (Commonwealth).

On cancellation of this POLICY, WE will retain the proportion of the premium calculated pro rata as at the date of the cancellation plus fifteen percent (15%) of that amount.

**7.6 Joint Insured**

Where more than one party comprises the INSURED, each of the parties will be considered as a separate and distinct unit and the word INSURED will be considered as applying to each party in the same manner as if a separate POLICY had been issued to each of them provided always that nothing in this Condition will result in an increase of the INDEMNITY LIMIT or DEFENCE COSTS.

**7.7 Discharge of Liabilities**

WE may at any time pay to the INSURED in respect of damages payable as a result of any OCCURRENCE or number of OCCURENCES arising directly or indirectly from one source or original cause the amount of the INDMENITY LIMIT or such limit specified in this POLICY in respect thereof (after deduction of any amount or amounts already paid in respect thereof) or any lesser amount for which the CLAIM or CLAIMS can be settled. Upon such payment WE shall relinquish conduct or control of and be under no further liability under this POLICY in connection with such CLAIM or CLAIMS except for costs, charges and expenses incurred by US or by the INSURED with OUR prior written consent.

**7.8 Goods and Services Tax (GST)**

All of the amounts covered by this POLICY exclude GST. Any claim settlements, up to the total of all amounts insured, will exclude GST. However if there is a shortfall between the GST component of the INSURED's CLAIM and the amount of input tax credit the INSURED is entitled to, WE will pay this shortfall in addition to the claim settlement.

WE will not be liable to pay any GST, or any fine, penalty or charge the INSURED is liable for arising out of the INSURED's misrepresentation of, or failure to disclosed, the INSURED's proper input tax credit entitlement in the settlement of any CLAIM or premium relating to this POLICY.

**7.9 Prevention of Accidents**

The INSURED must:

- (a) exercise reasonable care that only competent employees are employed and take reasonable measures to maintain all premises, fittings and plant in safe and sound condition:
- (b) take all reasonable precautions to:
  - (i) prevent PERSONAL INJURY and PROPERTY DAMAGE;
  - (ii) prevent the manufacture, sale or supply of defective PRODUCTS; and
  - (iii) comply and ensure the INSURED, the INSURED's employees, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of

persons or property;

- (iv) take reasonable action to trace, recall or modify any of the INSURED's PRODUCTS containing any defect or deficiency of which the INSURED has knowledge or has reason to suspect any defect or deficiency.

**7.10 Cross Liability**

Where the INSURED is comprised of more than one party, each of the parties shall be considered as a separate entity and the words "the INSURED" shall be considered as applying to each party in the same manner as if a separate POLICY had been issued to each party provided that nothing in this Condition shall result in an increase in OUR INDEMNITY LIMIT in respect of any OCCURRENCE or INSURANCE PERIOD.

**7.11 Several Liability Notice**

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

**7.12 Complaints Procedures**

Any enquiry or complaint relating to this Insurance should be referred to US in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should write to:

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21, Angel Place, 123 Pitt Street, Sydney NSW 2000

Telephone Number: (02) 9223 1433

Facsimile Number: (02) 9223 1466

who will refer your dispute to Policyholder & Market Assistance at Lloyd's.

Complaints that cannot be resolved by Policyholder & Market Assistance may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

For the purpose of this Clause only, "this Insurance" means the POLICY, "you/your" means the INSURED.

**7.13 Service of Suit (Australia)**

The Underwriters hereon agree that:-

- (a) In the event of a dispute arising under this POLICY, Underwriters at the request of the INSURED (or reinsured) will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- (b) Any summons notice or process to be served upon the Underwriters may be served upon Lloyd's General Representative at Lloyd's Australia:  
Lloyd's Australia Limited, Suite 2, Level 21 Angel Place, 123 Pitt Street, Sydney NSW 2000  
who has authority to accept service and to enter an appearance on Underwriters' behalf, and who is directed at the request of the INSURED (or reinsured) to give a written undertaking to the INSURED (or reinsured) that he will enter an appearance on Underwriters' behalf.
- (c) If a suit is instituted against any one of the Underwriters all Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

**7.14 General Insurance Code of Practice**

This POLICY is Insurance Council of Australia's General Insurance Code of Practice compliant, apart from any



claims adjusted outside Australia. Underwriters at Lloyd's and DUAL Australia proudly support the General Insurance Code of Practice. The purpose of the Code is to raise standards of practice and service in the general insurance industry.

A copy of this Code is available by contacting DUAL Australia or from the Insurance Council of Australia's website at [www.ica.com.au](http://www.ica.com.au) or from the Code's dedicated website at [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

## Section 8: Limit Of Liability

### 8.1 Indemnity Limit

- (a) OUR liability for all compensation payable in respect of any CLAIM or a series of CLAIMS caused by or arising out of one OCCURRENCE shall not exceed the INDEMNITY LIMIT;
- (b) All CLAIMS for compensation that result from one original source, or one original cause, shall be considered to have been caused by or arise out of a single OCCURRENCE; and
- (c) OUR total aggregate liability in any one INSURANCE PERIOD for PRODUCT LIABILITY CLAIMS shall not exceed the INDEMNITY LIMIT.
- (d) OUR total aggregate liability under clause 2.2 (c) for all CLAIMS and other costs and expenses is the INDEMNITY LIMIT.

### 8.2 Deductible

The INSURED is responsible for the DEDUCTIBLE in respect of each and every CLAIM. Subject to clause (b) below, WE are only liable to indemnify the INSURED for that part of the INSURED's liability in respect of each CLAIM, DEFENCE COSTS and other costs and expenses in excess of the DEDUCTIBLE.

- (a) Where WE have paid on the INSURED's behalf part or all of the DEDUCTIBLE, the INSURED shall reimburse US.
- (b) Unless otherwise expressed in the Schedule, all DEDUCTIBLES are exclusive of DEFENCE COSTS.
- (c) Costs and expenses incurred by US in determining whether WE are liable to indemnify the INSURED under the POLICY shall not be subject to the DEDUCTIBLE and will be met by US.
- (d) Only one DEDUCTIBLE shall apply where the CLAIM(S) or a series of CLAIMS is /are caused by or arise(s) out of one OCCURRENCE or is caused by or arises out of one original source, or one original cause, or related original sources or causes.

## Section 9: Authority

- 9.1 This is to certify that in accordance with the authorisation granted under Contract to the undersigned by the Underwriters as named in the Schedule.
- 9.2 In consideration of the premium paid the Underwriters are hereby bound, severally and not jointly, to insure in accordance with the terms and conditions contained herein or endorsed hereon.