



**PROFESSIONAL  
INDEMNITY AND  
GENERAL LIABILITY  
INSURANCE POLICY**

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# PROFESSIONAL INDEMNITY AND GENERAL LIABILITY INSURANCE PART A (NOTICES)

Part A (Notices) of this document describes and sets out the terms of Your insurance coverage with Us. It is essential that You read this document carefully before entering into any contract of insurance with Us. Please retain this document for Your records and refer to it in the event that You have any questions or any claims with respect to Your Policy.

Please note that Part A (Notices) contains a general overview of, and some important notices relating to, Your Policy. Part A (Notices) does not form part of Your Policy and that the terms of Your cover are as set out in Part B (Wording) of this document. The Policy terms detail all obligations, rights, exclusions and terms of Your Policy. Any words capitalised in Part A (Notices) will have the same meaning as the defined term in Part B (Wording) of this document.

Claims under Your Policy may be refused in accordance with the Policy terms and exclusions. You should therefore read and acquaint Yourself with the terms of Your Policy. The limit of Our liability to You if You make a claim is set out in the Schedule, which You will receive upon purchasing Your Policy.

## Pacific International Insurance Pty Limited

This product is underwritten by Pacific International Insurance Pty Ltd ("Pacific", "we", "us" and "our") ABN: 83 169 311 193. Pacific is an Australian insurance company regulated by the Australian Prudential Regulation Authority. Pacific has appointed AI Insurance Holdings Pty Limited ABN: 78 135 243 364 (AFSL Number: 379465) to issue contracts of insurance on its behalf. We have provided insurance cover to the pest control and building inspection industry in Australia since 2002. In that time We have developed a strong relationship with not only Our clients but with a panel of reinsurance companies which have received AM Best financial strength ratings of A- (excellent) or higher.

## Your Duty of Disclosure

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

You have this duty until we agree to insure you.

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

You do not need to tell us anything that:

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

## If You Do Not Tell Us Something

If you do not tell us something you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Utmost Good Faith

Under the Act, every insurance contract is based on the doctrine of utmost good faith which requires that parties to the contract act honestly and fairly toward each other. An example of Your obligation of utmost good faith is the requirement of full disclosure to Us and a requirement to have regard to Our legitimate interests.

If You fail to act in the utmost good faith in performing Your obligations under the insurance contract, We may refuse to pay a claim and/or cancel Your Policy.

## Claims Made and Notified Insurance

Your Policy provides coverage on a claims made and notified basis. This means that the Policy only covers Claims first made against You during the Period of Insurance and notified to Us during the Period of Insurance. As such, You must notify Us of all Claims against You after such Claims come to Your attention and prior to the expiry of Your Policy.

Section 40(3) of the Act provides that where You give notice in writing to Us of facts that might give rise to a claim against You as soon as was reasonably practicable after You became aware of those facts during the Period of Insurance, We cannot refuse to pay a claim which subsequently arises out of those facts merely because the claim was made after the Period of Insurance had expired.

If You, inadvertently or otherwise, do not notify the relevant facts to Us before the expiry of the Period of Insurance, You will not have the benefit of section 40(3) of the Act and We may refuse to pay a subsequent claim.

## Premium

You will be advised of the Premium You must pay to Us in Our insurance premium advice, which is subject to You fulfilling Your duty of disclosure and Our being aware of all the required information and circumstances. The Premium is determined by taking into account the nature of Your business activities, Your claims history, the location of Your business and the estimated size and scope of Your business (including the number of employees and subcontractors). Your total cost of Your Policy will be the Premium and all taxes and levies required to be collected by the relevant taxation authorities on the issuance of the Policy.

## Privacy

We are bound by the Privacy Act 1988 when We collect and keep records of Your personal information. The information We collect from You is only for the purpose of assessing Your application for insurance, providing insurance and other related services. You can choose not to provide Us with Your personal information; however, We may not be able to process Your application or Your claim in the absence of such information.

We may need to pass on Your personal information to third parties such as insurers, reinsurers, loss adjusters and other service providers in circumstances where it is necessary for Us to provide

Our services to the professional standard You expect. By providing Your personal information to Us, You consent to Us making these disclosures.

You can seek access to Your records and correct Your personal information by contacting Our office. Our privacy policy (available at [www.pacificintins.com.au/privacy-policy](http://www.pacificintins.com.au/privacy-policy)) outlines this process including how You may complain about a breach of privacy and how We will deal with a complaint.

When You give Us information about other individuals, We rely on You to make them aware that:

- You will be providing their information to Us; and
- You have informed them of the purpose for which We use the information and the third parties We may disclose it to; and
- they may access and correct their personal information by contacting Our office.
- If the information about other individuals is sensitive, We rely on You to have obtained their consent prior to giving Us the information. If You have not done these things, You must tell Us before You provide the relevant information.

## Cancellation

You may cancel the Policy by notifying Us in writing and We may cancel the Policy by notifying You in writing. We may, subject to the terms of Your Policy, provide You with a refund of part of the Premium in the event of cancellation. The terms of Your Policy relating to cancellation are set out in clause 3.3 Policy Conditions applicable to Parts B1 and B2 of this Policy.

## Dispute Resolution

Please contact Us if You have any complaints or queries about Our services. We are committed to the fair, transparent and timely resolution of any dispute that may arise.

In the unlikely event that You have a complaint or dispute about any matter involving Our services, We have an internal complaints handling procedure. In the first instance, You should address Your concern or complaint to Your client service officer. Your client service officer will make every effort to try and resolve the matter. You can provide you query or complaint to [insurance@rapidsolutions.com.au](mailto:insurance@rapidsolutions.com.au)

In the unlikely event that You have a complaint or dispute about any matter involving Our services You can provide you querie or complaint to [insurance@rapidsolutions.com.au](mailto:insurance@rapidsolutions.com.au)

If Your complaint is not resolved to Your satisfaction by Us within 45 days, You have the right to refer the matter to the free consumer service offered by Australian Financial Complaints Authority ("AFCA"). AFCA aims to obtain a fair outcome for both parties and will act independently in trying to resolve the dispute. You can contact AFCA as follows:

Phone: 1800 931 678

Post: GPO Box 3 Melbourne VIC 3001

Website: [www.afca.org.au](http://www.afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au)

The AFCA service is provided to you free of charge. A decision by AFCA is binding on us but is not binding on you. You also have the right to seek further legal assistance.

# PROFESSIONAL INDEMNITY AND GENERAL LIABILITY INSURANCE POLICY - PART B (POLICY WORDING)

You may select one or both of the following Parts of this Policy:

PART B1 - Professional Indemnity

PART B2 - General (Public and Products) Liability

The Part(s) You choose will be shown on Your Policy Schedule.

Some terms and provisions of this Policy apply to both Parts B1 and B2, irrespective of whether you select one or both Parts. Where terms and provisions apply solely to one Part, they will be set out within that Part of the Policy.

## CLAUSES WHICH APPLY TO PARTS B1 AND B2 OF THIS POLICY

### Section 1

1 Dictionary applicable to Parts B1 and B2 of this Policy

In Parts B1 and B2 of this Policy:

- 1.1 Aircraft means any vessel, craft, device or thing made or intended to fly or move in or through the atmosphere or space.
- 1.2 APVMA means the Australian Pesticides and Veterinary Medicines Authority or any other body with similar functions which replaces that Authority.
- 1.3 Asbestos means:
  - a. that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite; and
  - b. that group of man made mineral fibres that comprises mineral wool, rockwool, glass fibre, ceramic fibres and superfine fibres.
- 1.4 Business means the business shown in the Schedule and carried on by a person named as an Insured in the Schedule or by a company or entity named as an Insured in the Schedule, or its Subsidiary.
- 1.5 Business Activities means the activities or services nominated as Business Activities by Endorsement but only where those activities or services are being performed in the course of the Business.
- 1.6 Circumstances means any circumstances:
  - a. known to You, or known to any of Your Employees whose knowledge in law would be deemed to be Yours, prior to the commencement of this Policy; and
  - b. which might give rise to a Claim.



- 1.7 Claim means:
- a. a writ, statement of claim, summons, application or other originating legal or arbitral process, cross-claim, counter claim or third party or similar notice; or
  - b. a written demand for compensation.
- 1.8 Client means a person, company or entity that:
- a. uses the professional services of an Insured named in the Schedule; and
  - b. is named as a Client in the Schedule for the purpose of cover under this Policy, subject always to all the terms, conditions and exclusions of the Policy
- 1.9 Control Agent means any pesticide, herbicide, termiticide, chemical, dust, bait or other product or goods used to control or kill pests or weeds and that has been registered by the APVMA for the purpose used at the time of use.
- 1.10 Costs and Expenses means:
- a. the reasonable legal and other costs and expenses incurred, with Our written consent, in the investigation, defence or settlement of a Claim; and
  - b. all expenses incurred by You for first aid provided to others for Personal Injury that is the subject of a Claim for which You are covered under Part B1 or Part B2 of this Policy (other than expenses prohibited by law).
- 1.11 Dangerous Poison means any Control Agent that has been scheduled by the APVMA as a Schedule 7 poison.
- 1.12 Employee means any natural person employed by You under a contract of service or traineeship or apprenticeship provided that:
- a. the person does not carry out any Business Activities for any other person, company, firm or business other than for You; and
  - b. the person does not carry out any Business Activities in his or her own right for financial gain or reward other than for You; and
  - c. You pay the reward, wage or salary directly to that person and not by way of or through any incorporated company other than You.
- 1.13 Endorsement means the endorsement(s) to this Policy specified in the Schedule.
- 1.14 Excess means the amount(s) specified as such in the Schedule.
- 1.15 General Conditions, Exclusions and Definitions means a condition, exclusion or definition contained within the terms of this Policy, but not in the Schedule or Endorsement.
- 1.16 GST Act means A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth of Australia.
- 1.17 Hovercraft means any vessel, craft or device made or intended to float on or in or travel on or through the atmosphere or water on a cushion of air provided by a downward blast.
- 1.18 Licensed and Qualified Person means any individual licensed to undertake the Business Activities in the State or Territory they take place.

- 1.19 Mould means (but is not limited to) pathogenic organisms, fungi, bacteria, yeasts, mildew, algae, virus, or their spores, mycotoxins or other metabolic products whether toxic or otherwise.
- 1.20 Parties means You and Us.
- 1.21 Period of Insurance means the period specified as such in the Schedule and from 4.00 pm Australian Eastern Time on the date that period begins until 4.00 pm Australian Eastern Time on the date that the period ends.
- 1.22 Policy means this contract of insurance, including Parts B1 and B2, the Schedule and any Endorsements.
- 1.23 Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals and waste (with waste to include material to be recycled, reconditioned or reclaimed).
- 1.24 Premium means the amount(s) specified as such in the Schedule or in any endorsement to the Schedule.
- 1.25 Proposal means the application form completed by You and includes information, answers, particulars, statements or material provided to Us with that form.
- 1.26 Restricted Business Activities means any Business Activities nominated as Restricted Business Activities by Endorsement.
- 1.27 Retroactive Date means the date specified as such in the Schedule.
- 1.28 Schedule means the attached schedule signed by Our authorised representative.
- 1.29 Specific Conditions, Exclusions or Definitions means a condition, exclusion or definition that is contained in an Endorsement or Schedule to this Policy.
- 1.30 Spray Drift means the sudden and unexpected movement of droplets through the air and away from the target area to any non-target site during the application of a Control Agent.
- 1.31 Spray Equipment Claim means a Claim made against You arising out of the use of spray equipment that has not been washed or replaced in accordance with the manufacturer's or distributor's directions, conditions or recommendations following previous use of a Control Agent.
- 1.32 Subsidiary means, where You are a company named as an Insured in the Schedule, any entity:
- a. which by virtue of any applicable legislation or law is deemed to be Your subsidiary; or
  - b. over which You are in a position to exercise effective direction or control through ownership or control of fifty percent (50%) or more of the issued voting shares of such entity.
- 1.33 Territorial Limits means anywhere within the Commonwealth of Australia or its external territories or as specified in any Endorsement to this Policy.



- 1.34 Terrorism means a terrorist act as defined by section 100.1 of the Criminal Code Act 1995 of the Commonwealth of Australia.
- 1.35 Tool of Trade means a Vehicle which has any tool or plant forming part of, attached to, or used in connection with it, but only while such tool or plant is in operation for the purpose of the Business Activities, but does not include:
- a. any Vehicle while in transit to or from any place where the tool or plant is operated for the purpose of the Business Activities; or
  - b. any Vehicle used for transport or haulage or used for tree lopping.
- 1.36 Vehicle means any type of machine on wheels or on self laid tracks made or intended to be propelled by other than manual or animal power and any trailer or other attachment made or intended to be drawn by any such machine.
- 1.37 Underground Services means any underground services including but not limited to:
- a. water, gas, sewage or fuel pipes;
  - b. electricity, phone or data cables; or
  - c. any other underground property or structures including but not limited to storage areas, conveyer belts, tunnels or any form of transmitter device.
- 1.38 War means war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, exercise of military or usurped power.
- 1.39 Watercraft means any vessel, craft or device (other than a Hovercraft) made or intended to float on or in or travel on or through water.
- 1.40 We, Our or Us means Pacific International Insurance Pty Ltd.
- 1.41 You, Your or Yours means each person, company or entity:
- a. named as an Insured in the Schedule;
  - b. any Subsidiary of an Insured named in the Schedule at the commencement of the Policy;
  - c. any past or present partner, principal, director, executive officer or Employee of an Insured named in the Schedule, but only while acting within the scope of their duties in such capacity; or
  - d. named as a Client in the Schedule; or
  - e. that is a principal of an Insured named in the Schedule, but only:
    - i. in respect of such principal's vicarious liability for the acts or omissions of the parties shown in (a) and (b) above in performing the Business Activities for such principal;
    - and ii. to the extent that cover is afforded under this Policy.

## Section 2

### 2 Automatic Extensions applicable to Parts B1 and B2 of this Policy

We will extend indemnity in accordance with the following Automatic Extensions provided that:

- a. each Automatic Extension clarifies the cover provided under Section 1 of either Part B1 or Part B2 of this Policy and is subject to:
  - i. all the applicable terms and conditions of Part B1 or Part B2 of this Policy; and
  - ii. where relevant, the General Conditions, General Exclusions, General Definitions and any other terms applicable to Parts B1 and B2 of this Policy; and
- b. the inclusion of any of the following Automatic Extensions do not increase the applicable Limit of Indemnity unless specifically stated otherwise in any Automatic Extension.

#### 2.1 Estates and Legal Representatives

We agree to indemnify Your estate, heirs, legal representatives or assignees in the event of Your death or incapacity as if they were Parties, but only for Your conduct and not for any conduct of Your estate, heirs, legal representatives or assignees.

#### 2.2 Former Subsidiaries Run-off Cover

We agree that where any Subsidiary ceases to exist or operate, or is merged into or acquired by any other entity, then the coverage provided to such Subsidiary under Part B1 and/or Part B2 of this Policy shall continue until the expiry of the Period of Insurance, but only in respect to that Subsidiary's conduct of the Business Activities after the Retroactive Date and prior to the date when it ceased to exist, operate, or was merged into or acquired by any other entity and provided that:

- a. Each of the persons or entities seeking cover under this extension agrees in writing within a reasonable time after notification to Us to be bound by this Policy and be liable individually and together with You, to pay the Excess and any other payment due to Us under this Policy, in respect of any cover provided to them under this Policy;
- b. You have provided Us with written notice as soon as practicable after such Subsidiary has ceased to exist, operate, or was merged into or acquired by another entity.

#### 2.3 New Entities and Subsidiaries

We agree to indemnify any entity or Subsidiary created or acquired by You during the Period of Insurance as if they were Parties, but

- a. only for conduct or events, or Claims arising from conduct or events, which occur after Your creation or acquisition of the entity or Subsidiary;
- b. only where You have provided Us with written notice as soon as practicable when You create or acquire an entity or Subsidiary after the commencement of the Period of Insurance; and
- c. subject to the applicable exclusion 7.8(b) (Relevant Dates) under Part B1 or exclusion 6.16(b) (Relevant Dates) of Part B2.

## 2.4 Restricted Business Activities

Your right to indemnity in accordance with Section 1 of Part B1 and/or Part B2 of this Policy extends to Your liability for Claims in connection with any Restricted Business Activities agreed by Us by Endorsement, subject always to:

- a. all the terms, conditions and exclusions of this Policy including in particular (but not limited to) exclusion 5.18 "Unlicensed and Unqualified Persons" and policy condition 3.4 "Licensed and Qualified Employees and Documentation" which are applicable to Parts B1 and B2; and
- b. any additional terms, conditions and exclusions specified in such Endorsement.

## 2.5 Run-off Cover

Where an Insured named in the Schedule is an entity or company and, during the Period of Insurance, such Insured ceased to exist or operate, or is consolidated with, merged into or acquired by any other entity:

- a. We agree to indemnify that Insured until the expiry date of the Period of Insurance in respect of any Claim otherwise covered under Part B1 and/or Part B2 of this Policy arising from its conduct of the Business Activities prior to the effective date that it ceased to exist or operate, or was consolidated with, merged into or acquired by another entity; and
- b. That Insured may apply to extend the Period of Insurance for run-off cover by submitting a satisfactorily completed Proposal and subject to:
  - i. Our written agreement (which is at Our absolute discretion); and
  - ii. full payment of any additional premium required by Us, to be paid on expiry of the Period of Insurance; and
  - iii. any additional terms, conditions or exclusions that We may impose, the Period of Insurance may be extended, as We determine, provided that Our total aggregate liability under Part 131 and/or Part 82 of the Policy for all Claims for the Period of Insurance and the extended period pursuant to this Section 2.5(b) shall not exceed the Limit of Indemnity applicable under Part B1 and/ or Part B2.

## 2.6 Underground Services

Notwithstanding the exclusion in clause 5.5 (Damage to Underground Services) applicable to Parts B1 and B2, Your right to indemnity under Part B1 or B2 of the Policy extends to liability for the cost of repairs to or replacement or reinstatement of damaged Underground Services but does not extend to any liability for consequential loss resulting from damage to Underground Services.

## Section 3

### 3 Policy Conditions applicable to Parts B1 and B2 of this Policy

#### 3.1 Assignment of Interest

No change in, or modification of, or assignment of, any interest under this Policy shall be effective except when made by written endorsement to this Policy and signed by Us.

#### 3.2 Cancellation

- a. We may cancel the Policy as permitted by law. If the Policy is cancelled by Us then We will refund the pro-rata balance of the Premium less an amount of 10% of that balance or a minimum administration charge of \$250, plus applicable statutory charges, whichever is the greater.
- b. You may, by written notice, cancel the Policy at any time. The Policy will be cancelled upon Our receipt of Your notice. If You cancel the Policy, then We may solely at Our discretion refund the pro-rata balance of the premium less an amount of 10% of that balance or a minimum administration charge of \$250 plus applicable statutory charges, whichever is the greater.
- c. Where We are required by law or contract to notify a third party (such as a licensing authority) of any cancellation or intention to cancel this Policy (either by You or by Us), You authorise Us to give such notices.

#### 3.3 Conditions, Exclusions, and Definitions

Save for the above clauses 3.1(a) and 3.1(b), where a Specific Condition, Exclusion, or Definition is in conflict with a General Condition, Exclusion, or Definition, the Specific Condition, Exclusion, or Definition will apply.

#### 3.4 Licensed and Qualified Employees and Documentation

- a. Each and every Employee must be appropriately and suitably licensed and qualified before they carry out any Restricted Business Activities.
- b. You must use documentation approved by Us in carrying out any Restricted Business Activities.

#### 3.5 Non-disclosure or Misrepresentation

If You do not comply with Your duty of disclosure (as defined by section 21 of the Insurance Contracts Act 1984 of the Commonwealth of Australia), or You make a misrepresentation to Us prior to Our entry into this Policy with You, We may be entitled to:

- a. reduce Our liability for any Claim;
- b. cancel the Policy; or
- c. avoid the Policy from its beginning, if Your non-disclosure was fraudulent.

#### 3.6 Notices

Subject to clause 4.1. below, any notices given by You under this Policy should be made to in writing.

### 3.7 Other Insurance

This Policy does not provide indemnity or cover for any loss, liability or Costs or Expenses for which You are, or would be, entitled to be indemnified under:

- a. any other contract of insurance required by law and which You did not enter into; or
- b. any statutory fund or fidelity fund of any description.

### 3.8 Policy Construction and Jurisdiction

a. The construction, interpretation and meaning of the provisions of this Policy shall be determined in accordance with the laws of Australia and in any disputes arising out of or under this Policy, the Parties agree to submit to the exclusive jurisdiction of any courts of competent jurisdiction within Australia.

b. Under this Policy:

- i. the singular includes the plural and vice versa; and
- ii. all monetary amounts are in Australian dollars.

### 3.9 Precautions, Care and Remedial Action

a. You must take all reasonable precautions and/or exercise reasonable care:

- i. to maintain Your Tools of Trade and Vehicles in sound condition; and
- ii. to comply with all statutory obligations and by-laws, ordinances or regulations imposed by any public authority concerning the safety of persons or property;
- iii. to only employ or otherwise engage competent persons, and licensed persons where and when required by laws, ordinances or regulations imposed by any public authority;
- iv. to prevent the sale, supply or use of defective products by You; and
- v. to keep on file a contemporaneous written record, in either electronic or paper form, of any verbal advice You provide in the course of the Business Activities.

b. You must, at Your own expense, take all reasonable action to:

- i. avoid or minimise any Personal Injury, Property Damage, Products liability, or other loss or damage which is or may be the subject of a Claim, including taking reasonable action to prevent further Personal Injury, Property Damage, Products liability, or other loss or damage arising;
- ii. eliminate or control any pests which are causing or could cause Personal Injury, Property Damage, Products liability, or other loss or damage due to any deficiency, failure or partial failure of any treatment that You provided and You are aware of or have reason to suspect the deficiency or failure;
- iii. trace, recall or modify any products or treatment containing any defect or deficiency, where You are aware of or have reason to suspect the defect or deficiency; and
- iv. preserve any products, appliances, equipment, timbers, plants or other items which might be necessary or useful in the defence of a Claim if You become aware of or have reason to suspect any circumstances which may give rise to such a Claim.

### 3.10 Premium Adjustment

If the Premium has been calculated on any estimates given by You, You must keep accurate records containing all relevant particulars and at any reasonable time allow Us to inspect such records. Following the expiry of the Period of Insurance You must supply Us with such records as We may reasonably require so that any adjusted premium may be calculated. If We calculate an adjusted premium, any difference between the Premium and the adjusted premium must be paid by You.

### 3.11 Underground Services

Where You are to carry out any Business Activities that You suspect, or a reasonable person in Your position would suspect, could or may affect any Underground Services, then You must inquire about the precise location of any Underground Services prior to the commencement of the Business Activities.

## Section 4

### 4 Claims Conditions applicable to Parts B1 and B2 of this Policy

#### 4.1 Notification

a. You must, at Your own expense:

- i. notify Us of any Claim as soon as possible. You can notify us via email, telephone or letter
- ii. provide Us with details of any other liability insurance effected by You or on Your behalf which may cover that Claim.

b. Your notice in accordance with (a) above must be given to Us during the Period of Insurance.

c. All Claim notifications are to be made to the Claims Manager, whose address is as follows:

Claims Manager

Pacific International Insurance Pty Limited

PO BOX 550

KOTARA NSW 2289 Australia

claims@rapidsolutions.com.au

Tel: 1300 309 169

#### 4.2 Allocation

a. If a Claim against You includes both insured and uninsured matters (losses) or such Claim is made and others are a party to the proceedings or demand to which the Claim relates, then We will use Our best efforts to agree with You on a fair and proper allocation of such amount between the insured and uninsured losses (including but not limited to compensation, damages, Costs and Expenses).

b.

- i. We will advance Costs and Expenses which We believe to be covered under this Policy based upon the above allocation until a different allocation is negotiated, arbitrated or judicially determined; and
- ii. Any negotiated, arbitrated or judicially determined allocation of Costs and Expenses on account of such Claim will be applied retrospectively to all Costs and Expenses on account of that Claim.



#### 4.3 Conduct

- a. If under this Policy, You are entitled to indemnity for a Claim, then We are entitled to take over and conduct, in Your name and on Your behalf, the defence and settlement of that Claim. If We exercise this entitlement in relation to a Claim, then We have sole and complete discretion in the conduct of its defence and settlement.
- b. If We believe that the amount claimed under any Claim will not exceed Your Excess We may instruct You to conduct the defence of the Claim.
- c. You agree not to settle any Claim, incur any Costs and Expenses, make any admission, offer, promise or payment or otherwise agree to any contractual obligation with respect to any Claim without Our written consent.
- d. You must, at Your own expense, give Us all the information and assistance We may reasonably require in relation to a Claim, including its investigation, defence and/or settlement (and may include Your giving evidence in any legal proceedings).

#### 4.4 Discharge Payment

- a. We may at any time pay to You or on Your behalf in relation to a Claim:
  - i. the applicable Limit of Indemnity or Sub-Limit, after deduction of the amount of the Excess and any sum or sums already paid by Us or agreed to be paid by Us as at the date We decide to make a payment under this clause; or
  - ii. the amount of the Claim; or
  - iii. any sum for which the Claim is capable of settlement, whichever is lower.
- b. Upon such payment, We will relinquish conduct of the defence of the Claim and will be under no further liability under this Policy in connection with such Claim including but not limited to Costs and Expenses.

#### 4.5 Subrogation

We may prosecute and settle in Your name, rights or claims You may have against other persons for loss arising out of a Claim and We will have sole and complete discretion in doing so. You must execute and deliver all instruments and papers and do everything necessary to secure and preserve such rights or claims and to assist Us to prosecute and settle those rights or claims in Your name.

#### 4.6 Limit of Indemnity and Sub-Limits

- a. Subject to clauses 4.6(b), (c) and (d) below, If You are entitled to indemnity under Part B1 and/or Part B2 of this Policy for a Claim, We will only indemnify You for that Claim (including any payment of Costs and Expenses) up to:
  - i. the amount of the applicable Limit of Indemnity; or
  - ii. any applicable Sub-Limit as provided for in any condition, exclusion or definition contained within the terms of Part B1 and/or Part B2 of this Policy minus the relevant Excess.
- b. Our maximum aggregate liability under Part B1 and/or Part B2 of this Policy is the amount of the applicable Limit of Indemnity. Once We have paid that Limit of Indemnity, We shall have no further liability to any of You under the relevant part of this Policy.

c. If You are entitled to indemnity under Part B1 of this Policy for a Spray Equipment Claim, then We will only indemnify You for that Claim (including any payment of Costs and Expenses) up to the amount of the Limit of Indemnity as specified in the Schedule for Part B1

d. For the avoidance of doubt, our liability under this Policy with respect to any Claim to which a Sub-Limit applies will be for an amount no greater than the Sub-Limit, always subject to any reduction to the relevant Sub-Limit caused by the aforementioned Claim breaching the relevant maximum aggregate liability under this Policy.

#### 4.7 Excess

If You are entitled to indemnity under this Policy for a Claim or a loss:

- a. You must pay the applicable Excess to Us within 14 days of a request by Us for You to do so; and
- b. if You have not paid that Excess, We may deduct the amount of that Excess from any payment made pursuant to Your entitlement under this Policy.

#### 4.8 GST

- a. Where payment is made under this Policy for the acquisition of goods, services or other things, We will reduce the amount of payment by the amount of any input tax credit that You are, or will be, entitled to under the GST Act in relation to that acquisition.
- b. Where payment is made under this Policy as compensation instead of payment for the acquisition of goods, services or other things, We will reduce the amount of the payment by the amount of any input tax credit that You would have been entitled to under the GST Act had the payment been applied to acquire such goods, services or other things.
- c. The Limits of Indemnity, Sub-Limits or any amounts indicated in this Policy are inclusive of Goods and Services Tax (GST).

## Section 5

### 5. Exclusions applicable to Parts B1 and B2 of this Policy

This Policy does not provide indemnity or cover for any liability, Costs and Expenses, loss, damage or destruction, or costs, charges and expenses, directly or indirectly caused by or arising out of or in any way connected with:

#### 5.1 Assault and Battery

Any assault and battery committed by You or at Your direction unless reasonably committed for the purpose of preventing or eliminating danger to persons or property.

#### 5.2 Australian Standards and Industry Code of Practice

Any non compliance with any applicable Australian Standard, or non adherence to any relevant Code of Practice prescribed by the relevant industry association.

#### 5.3 Conduct

Any wilful, dishonest, fraudulent, criminal or malicious conduct on Your part or on the part of another person committed with Your knowledge or consent or connivance.

#### 5.4 Construction

- a. The construction, erection, alteration, underpinning, dewatering, demolition of, or addition or removal of support to any building, structure, plant or equipment by You or on Your behalf.
- b. The installation of insulation in any building, structure, plant or equipment by You or on Your behalf.

#### 5.5 Contractual Liability

Any liability assumed by You under any contract or agreement except for:

- a. liability that would otherwise have been implied by law or statute; or
- b. liability under those written contracts shown in the current Schedule or on an Endorsement.

#### 5.6 Coronavirus

Any claim against any Insured arising directly or indirectly based upon, attributable to, or in consequence of, or in connection with Coronavirus (COVID-19), Novel Coronavirus (nCoV), Middle East Respiratory Syndrome (MERS-CoV), Severe Acute Respiratory Syndrome (SARS-CoV), or any by-product or associated or related disease therefrom.

#### 5.7 Damage to Underground Services Any damage to any Underground Services.

#### 5.8 Faulty Workmanship

The cost of performing, completing, correcting or improving any work or service undertaken or provided by You or on Your behalf.

#### 5.9 Fines, Penalties and Excluded Damages

Fines or penalties imposed by law or liquidated damages or punitive, exemplary and/or aggravated damages and/or additional damages resulting from the multiplication of compensatory damages.

#### 5.10 Hazardous Activities

- a. The use of any explosives or firearms or welding, thermal or oxygen cutting or heating or other related heat producing or spark producing activities.
- b. The use of any Dangerous Poisons, 2,2-Dichlorovinyl Dimethyl Phosphate (Dichlorvos) or products containing 2,4-Dichlorophenoxyacetic acid (2,4-D).

#### 5.11 Insolvency

Your insolvency, bankruptcy, or liquidation.

#### 5.12 Intellectual Property

Any infringement of copyright, trade marks, service marks, registered designs or patents or any plagiarism or breach of confidentiality.

#### 5.13 JointVenture

Your participation in any joint venture.

#### 5.14 Known Circumstances

Any Circumstances.

#### 5.15 Pre-existing Damage

Any additional or continuing damage to property which was previously damaged.

#### 5.16 Related Persons

Any Claim brought by:

- a. any of You; or
- b. any person who, at the time of any act, error or omission giving rise to the Claim, is Your spouse, domestic partner or companion (or their parent), Your parent, brother, sister, sibling or child, unless such person is acting without any prior direct or indirect solicitation or co-operation of any of You.

#### 5.17 Sanctions

Any liability whatsoever for which a payment under this Policy would breach any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, New Zealand, the European Union, United Kingdom or United States of America.

#### 5.18 Territories

- a. Any Business Activities performed or carried on outside the Territorial Limits.
- b. Any action for damages brought against You in a court of law of the United States of America or the Dominion of Canada, their territories, dependencies or protectorates.
- c. The enforcement of any judgment, order or award obtained in, or pursuant to, the laws of the United States of America, or the Dominion of Canada, their territories, dependencies or protectorates.

#### 5.19 Trading Debts

Any trading debt incurred by You or any guarantee given by You for a trading debt.

#### 5.20 Unlicensed and Unqualified Persons

- a. Any work performed, services provided or activities carried on by a person or Employee who is not licensed to perform the Business Activities where required to lawfully do so or is not a Licensed and Qualified Person.
- b. Any Business Activities not conducted in accordance with the relevant Australian Standards.

## 5.21 War, Terrorism, Government Action and Nuclear Hazards

- a. War or any action taken in controlling, preventing, suppressing or in any way relating to War.
- b. Terrorism or any action taken in controlling, preventing, suppressing or in any way relating to Terrorism.
- c. Confiscation or nationalisation or requisition of or damage to property by or under the order of any government or public local authority.
- d. The radioactive, toxic, explosive or other hazardous properties of any nuclear material, nuclear waste or nuclear fuel (including its combustion and any self-sustaining process of nuclear fission).

## PROFESSIONAL INDEMNITY - PART B1 (POLICY WORDING)

In consideration of the payment of the Premium by You to Us, the Parties agree as follows:

### Section 1

#### 1 Insuring Clause

1.1 Subject to the terms of this Policy, under Part B1 We will pay to You or on Your behalf all sums which You become legally liable to pay for Claims for Civil Liability:

- a. first made against You, and notified to Us, during the Period of Insurance; and
- b. in the conduct of the Business Activities.

1.2 If You are entitled to indemnity for a Claim under this Part B1, We will also pay Costs and Expenses as part of and not in addition to the Limit of Indemnity.

### Section 2

#### 2 Automatic Extensions

We will extend indemnity in accordance with the following Automatic Extensions provided that:

- a. each Automatic Extension clarifies the cover provided under Section 1 of Part B1 of this Policy and is subject to:
  - i. all the terms and conditions of Part B1 of this Policy; and
  - ii. where relevant, the General Conditions, General Exclusions, General Definitions and any other clauses or terms applicable to Parts B1 and B2 of this Policy; and
- b. the inclusion of any of the following Automatic Extensions do not increase the Limit of Indemnity applicable under this Part B1 unless specifically stated otherwise in any Automatic Extension.

## 2.1 Civil Penalties

Notwithstanding the exclusion in clause 5.7 of the "Exclusions applicable to Parts B1 and B2 of this Policy", We will pay to You or on Your behalf all compensatory civil penalties and Costs and Expenses which You become legally liable to pay for Claims:

- a. first made against You, and notified to Us, during the Period of Insurance; and
- b. arising in the conduct of the Business Activities; and
- c. up to a limit of \$50,000 any one claim and \$100,000 in the aggregate,
- d. except where:
  - i. We are legally prohibited from making any payment; or
  - ii. Your liability arises out of criminal proceedings or the commission of a criminal offence; or
  - iii. the Claim is based upon or attributable to any:
    - a. willful, intentional or deliberate failure to comply with any lawful notice, direction, enforcement action or proceeding under any legislation; or
    - b. Your gross negligence or recklessness; or
    - c. requirement to pay rates, taxes, duties, levies, fees, charges or any other revenue charge or impost; or
    - d. breach of sections 182 or 183 of the Corporations Act 2001 of the Commonwealth of Australia and any amendment, consolidation or re-enactment of those sections.

## 2.2 Consultants, Sub-Contractors and Agents

We agree to indemnify You for any Claim first made against You and notified, during the Period of Insurance, for any Civil Liability incurred on the part of any consultant, sub-contractor or agent in respect of whose actions You are legally liable. However, no indemnity is extended to such consultant, sub-contractor or agent.

## 2.3 Consumer Protection Legislation

We will pay to You or on Your behalf all sums which You become legally liable to pay for Claims:

- a. first made against You, and notified to Us, during the Period of Insurance; and
- b. for any contravention, in connection with the Business Activities, of section 18 of the Australian Consumer Law or any similar legislation enacted by any Australian States and Territories
- c. provided that:
- d. where a separate Claim is also made for Civil Liability in connection with the Business Activities, this extension does not apply;
- e. We will not be liable to make any payment under this clause where a Claim arises from conduct that is fraudulent or intended to mislead or deceive; and
- f. We will not be liable to make any payment under this clause where a Claim arises under the penal or criminal provisions of the legislation under which the Claim is made.



## 2.4 Continuous Cover

a. Notwithstanding the exclusion in clause 5.12, (Known Circumstances) of the “Exclusions applicable to Parts B1 and B2 of this Policy”, We will indemnify You under Part B1 of this Policy for Your liability directly or indirectly caused by, arising out of or in any way connected with Circumstances on condition that:

- i. the Circumstances became known to You or Your Employee during the period of insurance of an earlier professional indemnity insurance policy You held with Us;
- ii. You did not notify Us of those Circumstances during that earlier period of insurance;
- iii. You have held professional indemnity insurance with Us continuously from that earlier period of insurance to the commencement of Part B1 of this Policy; and
- iv. We may reduce Our liability under this clause by the amount that fairly represents the extent to which Our interests are prejudiced by reason that You did not notify Us of the Circumstances during the earlier period of insurance.

b. The indemnity provided under this clause is on the basis of all the terms and conditions of the professional indemnity policy of insurance You held with Us when the Circumstances became known to You or Your Employee, subject to:

- i. the Limit of Indemnity or any applicable Sub-Limit under Part B1 of this Policy will apply if they are less than the amount of the equivalent limits or sub-limits provided for in the earlier policy;
- ii. the Excess under Part B1 of this Policy will apply if it is greater than the amount of the excess provided for in the earlier policy; and
- iii. the exclusion in clause 7.8 (Relevant Dates) of this Part B1 applying to this extension.

## 2.5 Defamation, Libel and Slander

Notwithstanding the exclusion in clause 7.3 of this Part B1 We will pay to You or on Your behalf all sums which You become legally liable to pay for Claims:

- a. first made against You, and notified to Us, during the Period of Insurance; and
- b. for any unintentional libel, slander or other defamation in connection with the Business Activities.

## 2.6 Documents

Notwithstanding the exclusion in clause 7.6 of this Part B1:

- a. We will pay to You or on Your behalf all sums which You become legally liable to pay for Claims:
  - i. first made against You, and notified to Us, during the Period of Insurance; and
  - ii. for any loss, damage or destruction of any Documents occurring in connection with the Business Activities;
- b. We will indemnify You for all reasonable costs, charges and expenses incurred by You in replacing and/or restoring any Documents lost, damaged or destroyed in connection with the Business Activities,

provided that:

- c. the loss, damage or destruction was discovered by You during the Period of Insurance and was notified in writing to Us within twenty-eight (28) days of the date You discovered it but not beyond the expiry date of the Period of Insurance;
- d. We will not be liable to make any payment under this clause in relation to any loss, damage or destruction brought about by wear, tear or other gradually operating cause;
- e. We will not be liable to make any payment under this clause in relation to any loss, damage or destruction occurring outside the Territorial Limits;
- f. We will not be liable to make any payment under this clause in relation to any loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes;
- g. You, at Your own cost, produce satisfactory proof to substantiate any loss, damage or destruction covered by this clause;
- h. Our total liability for losses under this extension shall not exceed the sum of \$100,000

## 2.7 Fidelity

We agree to indemnify You against the direct loss of money, negotiable instruments, bearer bonds or coupons, stamps, bank or currency notes belonging to You or for which You are legally liable, where such loss is the direct result of any dishonest or fraudulent act or omission of Your Employee, partner or director, provided that:

- a. the loss is first discovered by You during the Period of Insurance and is notified in writing to Us within fourteen (14) days of its discovery;
- b. We will not be liable to make any payment under this clause for any loss resulting from any act or omission occurring after the date You discover, or had reasonable cause to suspect, the dishonest or fraudulent conduct by Your Employee, partner or director;
- c. We will not be liable to make any payment under this clause for any indirect or consequential losses of any nature, including but not limited to liability to third parties, damages, interest, investigation costs or trading losses;
- d. We will not be liable to make any payment under this clause for that amount of any loss that You have or can offset by applying monies otherwise owing or payable by You to the relevant Employee, partner or director;
- e. You, at Your own cost, produce satisfactory proof to substantiate any loss covered by this clause.

## 2.8 Fraud and Dishonesty

Notwithstanding the exclusion in clause 5.2 of the “Exclusions applicable to Parts B1 and B2 of this Policy”, Your right to indemnity in accordance with Section 1 of this Part B1 of the Policy extends to Your liability for any fraudulent, dishonest, willful or malicious act or omission by Your Employee or Your agent, provided that:

- a. You were unaware of and did not condone any such fraudulent, dishonest, willful or malicious act or omission by Your Employee or Your agent;
- b. We do not indemnify the Employee or agent who committed the act or omission; and
- c. We will not be liable to make any payment under this clause for a Claim arising from or in any way connected with the loss of money, negotiable instruments (including shares), bearer bonds, coupons, stamps, bank or currency notes.

## 2.9 Intellectual Property

Notwithstanding the exclusion in clause 5.10 of the “Exclusions applicable to Parts B1 and B2 of this Policy”, We will pay to You or on Your behalf all sums which You become legally liable to pay for Claims:

- a. first made against You, and notified to Us, during the Period of Insurance; and
- b. for any unintentional infringement of copyright, trade marks, service marks, registered designs or patents or any unintentional plagiarism or unintentional breach of confidentiality in connection with the Business Activities.

# Section 3

## 3 Optional Extension

The Optional Extension set out in this Section 3 is not included in Part B1 of this Policy unless specified in the Schedule or by Endorsement.

We agree to extend indemnity as stated in the Optional Extension provided that:

- a. the Optional Extension is subject to:
  - i. all the terms and conditions of Part B1 of this Policy; and
  - ii. where relevant, the General Conditions, General Exclusions, General Definitions and any other clauses and terms applicable to Parts B1 and B2 of this Policy; and
- b. the inclusion of the Optional Extension does not increase the Limit of Indemnity applicable under this Part B1 unless specifically stated otherwise in the Optional Extension.

## 3.1 Joint Venture

Where the Schedule states ‘Joint Venture Extension’, then notwithstanding the exclusion in clause 5.11 of the “Exclusions applicable to Parts B1 and B2 of this Policy”, We will pay to You or on Your behalf all sums which You become legally liable to pay for Claims:

- a. first made against You, and notified to Us, during the Period of Insurance; and
- b. for Your Civil Liability in connection with Your participation in any joint venture,

provided that:

- c. the Claim arises in connection with activities carried on by the joint venture that would be Business Activities if carried on by the Business;
- d. We will only be liable under this clause for Your proportion of any liability incurred by the joint venture; and
- e. We do not indemnify You for Claims made by any participants in the joint venture.

## Section 4

4 Dictionary applicable to Part B1 In Part B1 of this Policy:

4.1 Australian Consumer Law means the law set out in Schedule 2 of the Competition and Consumer Act 2010 of the Commonwealth of Australia and any corresponding provisions of the fair trading legislation of an Australian State or Territory.

4.2 Civil Liability means compensatory damages, costs and expenses payable to a third party in respect of a Claim but not any criminal liability or penalty.

4.3 Documents means documents and/or computer records:

- a. belonging to You or for which You are legally responsible; and
- b. are in Your physical custody or control.

4.4 Limit of Indemnity means the amount specified as such in the Schedule for Part B1.

4.5 Personal Injury means bodily injury, sickness, disease, mental injury, death of any person, any consequential loss, mental anguish, nervous shock or emotional distress.

4.6 Property Damage means:

- a. physical loss, damage to or destruction of tangible property including all resulting loss of use of that property; and
- b. loss of use of tangible property that is not physically damaged or destroyed where such loss of use is caused by physical damage to other tangible property.

4.7 Sub-Limit means any amount specified as such in the Schedule for Part B1 or any Endorsement to this Policy.

## Section 5

### 5 Policy Conditions applicable to Part B1

#### 5.1 Alteration to Risk

a. You must notify Us in writing within fourteen (14) days if during the Period of Insurance You become aware of:

- i. any change or alteration in the facts or circumstances that existed at the commencement of the Policy; or
- ii. any changes or alterations relating to the Business occurring during the Period of Insurance which may increase the risks covered by the Policy.

b. For the avoidance of doubt, the matters required to be notified under clause 5.1(a) above include:

- i. Your going into voluntary bankruptcy, receivership or liquidation or Your failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- ii. suspension and/or cancellation of any licence You require to lawfully carry out the Business Activities;
- iii. any material change in the nature of the Business Activities or to the Business or in the manner in which You carry out the Business Activities;
- iv. Your creation or acquisition of a new entity or Subsidiary which will carry out Business Activities; or
- . any change in the ownership or control of the Business.

c. We may at Our sole discretion decide to charge additional premium, add terms or conditions to or cancel Part B1 of this Policy following a notification made by You under this clause.

d. Subject to clause 2.10 of this Part B1, this Policy does not provide indemnity or cover for any liability, Costs and Expenses, loss, damage or destruction, or costs, charges and expenses, directly or indirectly caused by or arising out of or in any way connected with any facts, circumstances or matters required to be notified under clause 5.1(a) unless:

- i. You notify Us in accordance with clause 5.1(a); and
- ii. We agree in writing to accept the change or alteration; and
- iii. You pay or agree to pay to Us any additional premium which We may require.

## 5.2 Severability and Non-imputation

Where this Policy insures more than one party, We agree that any conduct on the part of any party where that party:

- a. failed to comply with their duty of disclosure under the Insurance Contracts Act 1984 of the Commonwealth of Australia; or
- b. made a misrepresentation to Us before this Policy was entered into, shall not prejudice the right of any other party to indemnity under Part B1 of this Policy, provided that:
- c. the remaining parties are entirely innocent of and had no prior knowledge of such conduct;
- d. upon becoming aware of such conduct, they advise us in writing as soon as reasonably practicable, of all known facts in relation to the conduct; and
- e. before entering into this Policy, proper inquiry was made of each of You for the purposes of complying with the duty of disclosure under the Insurance Contracts Act 1984 of the Commonwealth of Australia. This provision is not intended to limit Your duty of disclosure.

## 5.3 Subcontractors

Where You engage someone other than an Employee to carry out any of Your Business Activities, You must ensure that person holds a policy of insurance:

- a. covering the performance of the Business Activities You have engaged them to carry out; and
- b. underwritten by an insurer authorised by the Australian Prudential Regulation Authority and covering civil liabilities in connection with the Business Activities You have engaged them to carry out, up to amounts equivalent to the Limit of Indemnity and any Sub-Limits under Part B1 this Policy.

# Section 6

## 6 Claims Condition applicable to Part B1

### 6.1 Multiple Claims

All Claims made against You arising from causally connected or interrelated events, occurrences, acts or omissions shall be deemed to be a single Claim for the purpose of Part B1 of this Policy.



## Section 7

### 7 Exclusions applicable to Part B1

Part B1 of this Policy does not provide indemnity or cover for any liability, Costs and Expenses, loss, damage or destruction, or costs, charges and expenses, directly or indirectly caused by or arising out of or in any way connected with:

#### 7.1 Aircraft, Watercraft and Hovercraft

Ownership, possession, maintenance, repair, operation or use by You or on Your behalf of any Aircraft, Watercraft or Hovercraft.

#### 7.2 Asbestos

- a. Subject to clause 7.2(b) below, Asbestos or products or materials containing or covered with Asbestos including any exposure to Asbestos.
- b. Asbestos in whatever form or quantity but this exclusion shall not apply to any Claim for:
  - i. Personal Injury which is unrelated to an Asbestos related disease; or
  - ii. Property Damage arising from a negligent act committed by You (but not by any Client) in the conduct of the Business Activities provided that Your Business does not involve the manufacture, handling, installation, storage, distribution or removal of Asbestos fibre or products containing Asbestos.

#### 7.3 Defamation, Libel and Slander

The publication or utterance of any defamatory or disparaging material whatsoever which is known to be false or relates to any advertising, broadcasting or telecasting by You or on Your behalf.

#### 7.4 Environmental Impairment

- a. The actual, alleged or threatened discharge, dispersal, release or escape of Pollutants (not including Spray Drift).
- b. Spray Drift.

#### 7.5 Mould

- a. Any exposure whatsoever to Mould.
- b. Any inspection for, or process of removal, decontamination, treatment or control of Mould or products or materials containing or covered with Mould.

#### 7.6 Personal Injury and Property Damage

Any Personal Injury or Property Damage unless arising directly from a breach of your professional duty in the conduct of the Business Activities.

#### 7.7 Products

The use of any product which was not used in strict compliance with the manufacturer's instructions.

## 7.8 Relevant Dates

- a. Any act or omission by You or on Your behalf prior to the Retroactive Date.
- b. Where You create or acquire an entity or Subsidiary during the Period of Insurance, any act or omission of that entity or Subsidiary prior to that creation or acquisition.
- c. Any act or omission by a former partner in or principal or director of the Business after that person ceased to be involved in the Business in that capacity.
- d. Where You cease to be a Subsidiary of an Insured in the Schedule during the Period of Insurance, any act or omission by You after that date.

## 7.9 Vehicles

Any ownership, possession, operation, use or legal control by You or on Your behalf of any Vehicle.

# GENERAL (PUBLIC AND PRODUCTS) LIABILITY - PART B2 (POLICY WORDING)

In consideration of the payment of the Premium by You to Us, the Parties agree as follows:

## Section 1

### 1 Insuring Clause

1.1 Subject to the terms of this Policy, under Part B2, We will pay to You or on Your behalf all sums which You become legally liable to pay as compensation for Claims under Part B2 of this Policy:

- a. first made against You by a third party, and notified to Us, during the Period of Insurance; and
- b. for Personal Injury or Property Damage occurring in connection with the Business Activities.

1.2 If You are entitled to indemnity for a Claim under this Part B2, We will also pay Costs and Expenses as part of and not in addition to the Limit of Indemnity.

## Section 2

### 2 Extensions

We will extend indemnity in accordance with the following Extensions provided that:

- a. Each Extension clarifies the cover provided under Section 1 of Part B2 of this Policy and is subject to:
  - i. all the terms and conditions of Part B2 of this Policy; and
  - ii. where relevant, the General Conditions, General Exclusions, General Definitions and any other clauses or terms applicable to Parts B1 and B2 of this Policy; and
- b. the inclusion of any of the following Extensions does not increase the Limit of Indemnity applicable under this Part B2 unless specifically stated otherwise in any Extension.

#### 2.1 Continuous Cover

a. Notwithstanding the exclusion in clause 5.12 (Known Circumstances) of the "Exclusions applicable to Parts B1 and B2 of this Policy", We will indemnify You under Part B2 of this Policy for Your liability directly or indirectly caused by, arising out of or in any way connected with Circumstances on condition that:

- i. the Circumstances became known to You or Your Employee during the period of insurance of an earlier public and products liability insurance policy You held with Us;
- ii. You did not notify Us of those Circumstances during that earlier period of insurance;
- iii. You have held public and products liability insurance with Us continuously from that earlier period of insurance to the commencement of Part B2 of this Policy; and
- iv. We may reduce Our liability under this clause by the amount that fairly represents the extent to which Our interests are prejudiced by reason that You did not notify Us of the Circumstances during the earlier period of insurance.

b. The indemnity provided under this clause is on the basis of all the terms and conditions of the public and products liability policy of insurance You held with Us when the Circumstances became known to You or Your Employee, subject to:

- i. the Limit of Indemnity or any applicable Sub-Limit under Part B2 of this Policy will apply if they are less than the amount of the equivalent limits or sub-limits provided for in the earlier policy;
- ii. the Excess under Part B2 of this Policy will apply if it is greater than the amount of the excess provided for in the earlier policy; and
- iii. the exclusion in clause 6.16 of this Part B2 applying to this extension.

## 2.2 Environmental Impairment

Your right to indemnity in accordance with Section 1 of this Part B2 extends to liability:

- a. for Claims for Property Damage directly or indirectly arising out of the accidental or unintentional discharge, dispersal, release or escape of Pollutants (not including Spray Drift) caused by Business Activities; and
- b. subject to the exclusion in clause 6.7(a) of this Part B2 for the costs of testing, monitoring, clean-up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect, consequent upon such accidental or unintentional discharge.

## 2.3 Products Liability

We will pay your legal liability in respect of Personal Injury and/or Property Damage caused by or arising out of any Products; but only where such Personal Injury and/or Property Damage occurs away from premises owned or leased by or rented to You and only during such periods in which Personal Injury and/or Property Damage occurs when you are in physical control and have legal responsibility for such Products.

## 2.4 Spray Drift

Notwithstanding the exclusion in clause 6.7(b) of this Part B2, Your right to indemnity in accordance with Section 1 of this Part B2 extends to liability for Claims directly or indirectly arising out of an accidental, instantaneous, identifiable, unintended and unexpected Spray Drift. For the avoidance of doubt, We will not be liable to make any payment if the Spray Drift resulted from outdoor spraying in weather conditions involving a foreseeable risk of Spray Drift.

## 2.5 Vehicles

Notwithstanding the exclusion in clause 6.19(b) of this Part B2, but subject to the exclusion in clause 6.19(a) of this Part B2, Your right to indemnity in accordance with Section 1 this Part B2 extends to liability:

- a. arising out of the use of any Vehicle as a Tool of Trade; or
- b. for Claims for Property Damage to any Vehicle in Your physical and legal control but not belonging to You or used by You or on Your behalf, where such Property Damage occurs while such Vehicle is in a car park which is not owned or operated for reward by You as part of the Business.

## Section 3

3 Dictionary applicable to Part B2 In Part B2 of this Policy:

3.1 Geographical Limits means anywhere within the Commonwealth of Australia or its external territories or as specified in any endorsement to this Policy.

3.2 Limit of Indemnity means the amount specified as such in the Schedule for Part B2 and being one limit for any one claim and in the aggregate.

3.3 Personal Injury means

- a. bodily injury, sickness, disease, mental injury, death of any person, any consequential loss, mental anguish, nervous shock or emotional distress;
- b. publication or utterance of defamatory material;
- c. false arrest, false imprisonment, wrongful detention or malicious prosecution.

3.4 Products means anything manufactured, constructed, erected, assembled, installed, extracted, produced or processed, treated, modified, bottled, supplied, sold, distributed, labelled or handled by You or on Your behalf (including Your predecessors in the Business), including any packaging or containers thereof, including the design, formula or specification, directions, markings, instructions, advice or warnings given or omitted to be given in connection with such products and anything which, by law or otherwise, You are deemed to have manufactured in the course of the Business.

3.5 Professional Service means any Business Activity listed in Your Schedule.

3.6 Property Damage means:

- a. physical loss, damage to or destruction of Property Insured including all resulting loss of use of that property; and
- b. loss of use of Property Insured that is not physically damaged or destroyed provided such loss of use is caused by physical damage to other Property Insured.

3.7 Property Insured means all tangible property, both real and personal, and not otherwise excluded by Part B2 of this Policy which is in your physical control and for which you are legally responsible.

3.8 Sub-Limit means any amount specified as such in the Schedule for Part B2 applicable to any Endorsement or extension set out in Section 2 of Part B2 of this Policy.

## Section 4

### 4 Policy Conditions applicable to Part B2

#### 4.1 Alteration to Risk

a. You must notify Us in writing within fourteen (14) days if during the Period of Insurance You become aware of:

- i. any change or alteration in the facts or circumstances that existed at the commencement of the Policy; or
- ii. any changes or alterations relating to the Business occurring during the Period of Insurance which may increase the risk of Personal Injury, Property Damage or Products liability.

b. For the avoidance of doubt, the matters required to be notified under clause 4.1(a) above include:

- i. Your going into voluntary bankruptcy, receivership or liquidation or Your failing to pay debts or breaching any other obligation giving rise to the appointment of a receiver or bankruptcy or winding-up proceedings;
- ii. suspension and/or cancellation of any licence You require to lawfully carry out the Business Activities;
- iii. any material change in the nature of the Business Activities or to the Business or in the manner in which You carry out the Business Activities;
- iv. Your creation or acquisition of a new entity or Subsidiary which will carry out Business Activities; or
- v. any change in the ownership or control of the Business.

c. We may at Our sole discretion decide to charge additional premium, add terms or conditions to or cancel Part B2 of this Policy following a notification made by You under this clause.

d. Subject to clause 2.1 of the Automatic Extensions applicable to Parts B1 and B2 of this Policy, this Policy does not provide indemnity or cover for liability or Costs and Expenses, loss, damage or destruction, or costs, charges and expenses, directly or indirectly caused by or arising out of or in any way connected with any facts, circumstances or matters required to be notified under clause 4.1(a) unless:

- i. You notify Us in accordance with clause 4.1(a); and
- ii. We agree in writing to accept the change or alteration; and
- iii. You pay or agree to pay to Us any additional premium which We may require.



## 4.2 Joint Insured

Where You are comprised of more than one party:

- a. subject to clauses 4.2(b) and (c), the term “You” will be considered as applying to each party in the same manner as though a separate Part B2 of this Policy had been issued to each party;
- b. there is no separate Limit of Indemnity or any separate Sub-Limits for each of You, but only one Limit of Indemnity and only one Sub-Limit, where applicable, for all of You under this Part B2;
- c. any Proposal provided is deemed to have been provided by all of You and all communications made by any one party are deemed to be communications made by all of You, unless any such communication expressly precludes the other parties.

## 4.3 Subcontractors

Where You engage someone other than an Employee to carry out any of Your Business Activities, You must ensure that person holds a policy of insurance:

- a. covering the performance of the Business Activities You have engaged them to carry out; and
- b. underwritten by an insurer authorised by the Australian Prudential Regulation Authority and covering Personal Injury, Property Damage and Products liabilities up to amounts equivalent to the Limit of Indemnity and any Sub-Limits under Part B2 of this Policy.

# Section 5

## 5 Claims Condition applicable to Part B2

### 5.1 Multiple Claims

All Claims made against You arising from causally connected or interrelated events, occurrences, acts or omissions shall be deemed to be a single Claim for the purpose of Part B2 of this Policy.

## Section 6

### 6 Exclusions applicable to Part B2

Part B2 of this Policy does not provide indemnity or cover for any liability, Costs and Expenses, loss, damage or destruction, or costs, charges and expenses, directly or indirectly caused by or arising out of or in any way connected with:

#### 6.1 Aircraft, Watercraft and Hovercraft

Ownership, possession, maintenance, repair, operation or use by You or on Your behalf of any Watercraft, Hovercraft or Aircraft including the use or installation of any of Your Products with Your knowledge in any Aircraft.

#### 6.2 Asbestos and Mould

- a. Asbestos or products or materials containing or covered with Asbestos including any exposure to Asbestos.
- b. Any exposure to Mould.
- c. Any inspection for, or process of removal, decontamination, treatment or control of:
  - i. Asbestos or Mould; or
  - ii. products or materials containing or covered with Asbestos or Mould.

#### 6.3 Computers and Information Technology

Any internet or computer operations including (but not limited to) computer viruses, hacker attacks, data manipulation by third parties and operational errors.

#### 6.4 Damage to Products

Property Damage to any Products where such damage is directly caused by a fault or defect in such Products; but this exclusion shall be interpreted to apply with respect to damage to that part and only that part of such product to which the damage is directly attributable.

#### 6.5 Defamation, Libel and Slander

Notwithstanding definition clause 3.3(b) of this Part B2, any publication or utterance of defamatory or disparaging material whatsoever which is known to be false or relates to any advertising, broadcasting or telecasting by You or on Your behalf.

#### 6.6 Employer's Liability

- a. Personal Injury to any of Your Employees arising out of, or in the course of their employment in the Business.
- b. Personal Injury to any person who is deemed to be Your Employee pursuant to any legislation relating to workers' compensation.
- c. Any liability for which You are entitled to seek indemnity under any policy of Insurance required to be taken out pursuant to any legislation relating to workers' compensation, whether or not You are a party to that policy of insurance.
- d. The imposition of liability by the provisions of any workers' compensation legislation or any industrial award or agreement or determination.

## 6.7 Environmental Impairment

- a. The actual, alleged or threatened discharge, dispersal, release or escape of Pollutants (not including Spray Drift) whether caused by a product which any person has disposed of or discarded, or otherwise caused.
- b. Spray Drift.

## 6.8 Loss of Use

Loss of the use of tangible property directly or indirectly arising out of:

- a. a delay in or lack of performance by You or on Your behalf in relation to any contract or agreement; or
- b. the failure of Your service or products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You, where the relevant tangible property has not been physically damaged or destroyed.

## 6.9 Manufacturer's Instructions

The use of any product in a manner which fails to fully comply with the manufacturer's instructions.

## 6.10 Product Efficacy

The failure of any Products to perform their intended function.

## 6.11 Product Guarantee

Any Products warranty or guarantee given by You or on Your behalf, but this exclusion shall not apply to the requirements of any Federal or State legislation as to product safety and information.

## 6.12 Product Recall

The withdrawal, recall, inspection, repair, reconditioning, modification, reinstallation, replacement or loss of use of any Products where such Products, or any component used in or which forms a part of the Products, are withdrawn or recalled from the market or from use by the Insured named in the Schedule or the manufacturer of components used in the Products because of any known, alleged or suspected defect or deficiency or dangerous condition in such Products or components.

## 6.13 Professional Liability

- a. Your provision of, or failure to provide, any professional advice or services, or any related error or omission.
- b. Advice, design, formula or specification given by You for a fee or otherwise in carrying out any Business Activities.

## 6.14 Property owned by You

Property Damage to property owned by You.

## 6.15 Property in Your care, custody or control

Property Damage, except in the instance of "Products Liability" covered under this Part B2, to property in Your physical or legal care, custody or control; but this exclusion shall not apply with regard to:

- a. the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or employees, or the clothing and personal effects of any of Your visitors,

- b. premises or part(s) of premises (including their contents) leased or rented to, or temporarily occupied by, You for the purpose of the Business, but no cover is provided by this Part B2 if You have assumed the responsibility to insure such premises,
- c.
  - i. premises (and/or their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Business, or
  - ii. any other property temporarily in Your possession for the purpose of being worked upon, but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work,
- d. any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicle) not belonging to or used by You, whilst any such Vehicle is in a car park owned or operated by You; provided that You do not operate the car park for reward, as a principal part of Your business,
- e. notwithstanding exclusion clause 5.4 (Contractual Liability) of the "Exclusions applicable to Parts B1 and B2 of this Policy", any property (except property that You own) not mentioned in clauses (a) to (d) above whilst in Your physical or legal care, custody or control whether or not You have accepted or assumed legal liability for such property. Provided that Our liability under this clause (e) shall not exceed \$100,000 in respect of any one claim or in the aggregate.

#### 6.16 Relevant Dates

- a. Any act, error or omission occurring, committed or alleged to have occurred or to have been committed by You or on Your behalf prior to the Retroactive Date.
- b. Where You create or acquire an entity or Subsidiary during the Period of Insurance, any act or omission of that entity or Subsidiary prior to that creation or acquisition.
- c. Any act or omission by a former partner in or principal or director of the Business after that person ceased to be involved in the Business in that capacity.
- d. Where You cease to be a Subsidiary of an Insured in the Schedule during the Period of Insurance, any act or omission by You after that date.

#### 6.17 Spray Equipment Any Spray Equipment Claim.

#### 6.18 Tobacco

The inhalation or ingestion of or exposure to:

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

#### 6.19 Vehicles

Any ownership, possession, operation, use or legal control by You or on Your behalf of any Vehicle:

- a. in respect of which liability insurance is required by law; or
- b. which is registered or is required under any legislation to be registered, save for liability or Costs and Expenses arising from Personal Injury where:
  - i. the liability insurance required by law does not provide cover; and
  - ii. the reason(s) why such insurance does not provide cover does not involve a breach by You or on Your behalf of legislation relating to Vehicles.



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ACN: 169 311 193

This product is underwritten by Pacific International Insurance Pty Ltd ("Pacific, "we", "us" and "our") ABN: 83 169 311 193. Pacific is an Australian insurance company regulated by the Australian Prudential Regulation Authority. Pacific has appointed AI Insurance Holdings Pty Limited ABN: 78 135 243 364 (AFSL Number: 379465) to issue contracts of insurance and handle claims on its behalf.

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