

**Horticulturalist's Programme Combined General & Products  
Liability Policy**

Policy Form HORT 15.01



**Liberty**  
International  
Underwriters

## Statutory Liability Extension

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### Preamble

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

### 1. Notice to the Insured

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

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

### 2. Insuring Clause

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

### 3. Definitions

- 3.1 "Act" means any Act of the Parliament of Australia and any Act of the Parliaments of the States or Territories of Australia, including any subordinate or delegated legislation made under those Acts; and any amendment, consolidation or re-enactment of any of the above Acts or legislation.
- 3.2 "Business" means the business conducted by the Insured as described in the Schedule.
- 3.3 "Claim" means the receipt by the Insured of any written or verbal notice which alleges a Wrongful Breach and claims that the Insured is liable to pay a Penalty.
- 3.4 "Consumer Protection Act" means any of the following:
  - Fair Trading Act 1985 (VIC)
  - Fair Trading Act 1987 (NSW)
  - Fair Trading Act 1987 (SA)
  - Fair Trading Act 1987 (WA)
  - Fair Trading Act 1989 (QLD)
  - Fair Trading Act 1990 (TAS)
  - Fair Trading Act 1992 (ACT)
  - Consumer Affairs and Fair Trading Act 1996 (NT)
  - Trade Practices Act 1974 (Cth)
  - Competition and Consumer Act 2010 (Cth)

Part 2 of the Australian Securities and Investments Commission Act 2001

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

- 3.5 “Deductible” means the amount specified in the Policy Schedule.
- 3.6 “Employee” means any person employed by the organisation described in the Schedule.
- 3.7 “Insured” means:
- 3.7.1 The organisation named as the Insured in the Schedule, including any Officer, Employee or work experience student whilst acting in the performance of their duties or employment;
  - 3.7.2 Any subsidiary company of the Insured named in the Schedule which is:
    - 3.7.2.1 Incorporated within Australia including subsidiaries;
    - 3.7.2.2 Controlled by the Insured and over which the Insured assumes active management;
  - 3.7.3 Outside Directorship held by an Officer;
- Provided that:
- 3.7.3.1 Coverage shall not be extended to the outside organisation in which such Outside Directorship is held, or to any other director, executive officer, company secretary or employee of such organisation; and
  - 3.7.3.2 Coverage shall not apply to any part of any Loss covered by any indemnity given by such outside organisation or any contract of insurance taken out by or on behalf of that outside organisation or its directors, executive officers, company secretary or employees.
- 3.8 “Joint Venture” means any enterprise undertaken jointly by the Insured and any other party.
- 3.9 “LIU” means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA. (The liability of members is limited).
- 3.10 “Loss” means any Penalty and Defence Costs.
- 3.11 “Officer” means any past, present or future director, executive officer (as defined by the Corporations Act) or company secretary of the Insured.
- 3.12 “Outside Directorship” means an executive position held by the an Officer of the Insured in connection with the Business at the specific request of the Insured in any corporation, joint venture,

partnership, trust or other enterprise which is not included in the Definition of the Insured. In this definition, a reference to Insured shall mean the Insured as defined in clauses 3.7.1 and 3.7.2.

3.13 "Penalty" means any monetary sum payable by the Insured to any Regulatory Authority pursuant to any Act for a Wrongful Breach by the Insured but excluding:

3.13.1 Any amounts payable as compensation;

3.13.2 Any compliance, remedial, reparation or restitution costs;

3.13.3 Any damages, including any exemplary or punitive damages;

3.13.4 Any consequential economic loss;

3.13.5 Any legal costs and associated expenses.

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

3.14 "Period of Insurance" means the period of insurance specified in the Policy Schedule.

3.15 "Reasonable Grounds for Defence" means:

3.15.1 The Insured has reasonable prospects of success in avoiding the quantum of any Penalty alleged in the Claim; or

3.15.2 The Insured has reasonable prospects of success in reducing the quantum of any Penalty alleged in the Claim,

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

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

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

3.16 "Regulatory Authority" means a person or entity appointed, constituted or acting under a delegation pursuant to any Act for the purposes of enforcement of such Act or another Act, including a person or entity authorized to collect monies payable to the Consolidated Revenue Fund, Consolidated Fund or any other such fund.

3.17 "Retroactive Date" means the date specified in the Policy Schedule.

3.18 "Territorial Limits" means anywhere in Australia.

3.19 "Wrongful Breach" means any act, error or omission which occurs in connection with the Business, within the Territorial Limits and after the Retroactive Date, whereby:

3.19.1 The Insured contravenes an Act or is involved in the contravention of an Act;

3.19.2 The Insured commits an offence pursuant to an Act; or

3.19.3 Such conduct is prohibited under an Act or is the subject of the imposition of a Penalty under an Act.

#### **4. Limit of Indemnity and Deductible**

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

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

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

#### **5. Defence Costs**

LIU agrees to pay all legal costs and expenses, excluding wages, salaries or other remuneration of the Insured, incurred with LIU's prior written consent in connection with any Claim for which indemnity is available under this extension, provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this extension.

Provided that LIU shall not be obliged to provide such consent unless LIU is satisfied that the Insured has Reasonable Grounds for Defence.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this extension.

## **6. Exclusions**

6.1 This Policy does not provide indemnity in respect of any Claim:

6.1.1 Based upon, attributable to or in consequence of:

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

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

6.2 LIU shall not be liable to pay the amount of the Deductible in respect of each Loss.

## **7. Continuous Cover**

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

- 7.1 The failure to notify such facts was not a fraudulent misrepresentation or fraudulent non-disclosure by the Insured; and

- 7.2 The Insured has been insured continuously under a Statutory Liability Policy with LIU and was so insured by LIU at the time the Insured first became aware of such facts; but
- 7.3 Indemnity will be considered under the terms and conditions of the Policy (including Limits of Indemnity and Deductibles) in force when the Insured first became aware of such facts; and
- 7.4 LIU will reduce its liability to the extent of any prejudice suffered as a result of the Insured's failure to notify such facts giving rise to a Claim prior to the commencement date of the Period of Insurance.

## **8. Conditions**

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

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

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

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

- 8.6 Where LIU recommends to the Insured to pay any Penalty, consent to any directing the Insured to pay any Penalty or otherwise settle or resolve any Claim, and the Insured does not agree to do so, then LIU is entitled to reduce its liability to the Insured to the extent of any prejudice suffered by LIU by reason of the Insured's failure to so agree.
- 8.7 If the Insured continues to defend a Claim where LIU has refused to provide consent in accordance with Clause 5 and the Insured is successful in respect of that Claim, then the consent as set out in



Clause 5 shall be deemed to have been given at the time it was first requested by the Insured. For the purpose of this condition, "successful" means that the outcome of the Claim established that at the time at which LIU refused consent, the Insured has Reasonable Grounds for Defence.

- 8.8 This Policy shall be interpreted in accordance with the laws of Australia or any State or Territory as applicable, and all claims for indemnity under this Policy shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the Policy shall be submitted to the exclusive jurisdiction of the Australian Courts.
- 8.9 The Insured shall comply with any lawful notice or direction received from, or any enforcement action taken by any appropriate Regulatory Authority under any Act within the time specified or, if no time is specified, within a reasonable time.
- 8.10 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

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

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

- 8.11 Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies for the purposes of receiving any notice of cancellation pursuant to this Clause 8.10, or any other notice, statement, document or information relating to this insurance Policy. Where the Insured has an insurance broker, nothing in this paragraph shall restrict LIU's right to notify the broker as agent of the Insured.
- 8.12 Except to the extent that the Insured is compelled by law to do so, the Insured shall not release to any third party or otherwise publish details of:
- 8.12.1 The nature of the liabilities insured by this Policy;
- 8.12.2 The extent of cover provided by this Policy; or
- 8.12.3 The amount of the premium specified in the Schedule,



Without the written consent of LIU.

8.13 Where this Policy provides any indemnity to the Insured which is prohibited by law, this Policy shall be varied by operation of this Clause 8.12 so that this Policy does not respond to the extent that the indemnity is prohibited by law.

8.14 8.14.1 Failure by any Insured to comply with the duty of disclosure under the Insurance Contracts Act 1984 (Cth) or misrepresentation by any Insured to LIU shall not prejudice the right of any other Insured to cover under this Policy.


8.14.2 Failure by any Insured to comply with any terms and conditions of this Policy shall not prejudice the right of any other Insured to cover under this Policy.

Cover is only provided to an Insured who is innocent of and has no prior knowledge of such conduct. Such Insured shall as soon as practicable after becoming aware of such conduct, advise LIU in writing of all relevant facts.

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

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

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



For and on behalf of  
Liberty International Underwriters

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Date

## Financial Loss (Products & Services)

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### **1. Notice to the Insured**

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

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

### **2. Insuring Clause**

Subject to the terms and conditions of the Policy and this endorsement, LIU will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation as a result of a Claim for Financial Loss both first made against the Insured and notified to LIU during the Period of Insurance arising out of any negligence, whether by act, error or omission (which expression shall include any non-deliberate breach of Section 52, Section 53, Section 55, Section 55A or Section 71 of the Trade Practices Act 1974 or Section 18, Section 29, Section 33, Section 34, Section 54 or Section 55 of the Australian Consumer Law or mirroring provisions of any State Fair Trading Act or similar statute) committed or alleged to have been committed by the Insured in connection with the Insured's Products and Services as defined in the Policy Schedule provided in the normal course of the Insured's Business.

### **3. Definitions**

#### 3.1 "Claim" means:

- 3.1.1 Any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured; or
- 3.1.2 The receipt by the Insured of any written or verbal notice of demand for compensation made by a third party against the Insured.

#### 3.2 "Financial Loss" means any loss which is economic in nature and not consequent upon Injury or Damage.

### **4. Limit of Indemnity**

LIU's liability to pay compensation under this endorsement shall not exceed the Limit of Indemnity referred to in the Schedule any one Claim and in the aggregate during the Period of Insurance.

Further, all payments made under this endorsement will also contribute towards the exhaustion of the aggregate Limit of Indemnity in respect of Products liability.

All claims of a series consequent on or attributable to one source or original cause shall be deemed one Claim.



The Deductible shown in the Schedule applies each and every Claim (costs inclusive) shall be borne by the Insured at their own risk and LIU's liability shall only be in excess of this amount.

## **5. Defence Costs**

LIU agrees to pay all legal costs and expenses incurred with LIU's prior written consent in connection with any Claim for which indemnity is available under this endorsement, provided that such legal costs and expenses are included within the Limit of Indemnity applicable to this endorsement.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this endorsement.

In the event the Insured is a party to a demand, legal proceedings, inquiry or hearing which is covered only in part by this endorsement, the Insured and LIU will use their best efforts to agree upon a fair and proper allocation of legal costs and/or expenses or any other amount insured under this endorsement which relate solely to what is covered under this endorsement.

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

## **6. Exclusions**

For the purposes of this endorsement only:

- 6.1 Exclusion 7.12.2 of the Policy wording is deleted.
- 6.2 Section 4. Cross Liabilities of the Policy wording is deleted.
- 6.3 The following additional exclusions apply:
  - 6.3.1 Any act, error or omission which occurred or allegedly occurred prior to Retroactive Date in the Schedule.
  - 6.3.2 An occurrence which would otherwise be excluded under the public/products component of this Policy (and any endorsements attached thereto) to which this endorsement is attached.
  - 6.3.3 Any facts or circumstances of which the Insured was aware prior to the commencement of the Period of Insurance or which a reasonable person in the Insured's position would have considered may give rise to a Claim.
  - 6.3.4 Any Claim made prior to or existing at the inception of this Policy.
  - 6.3.5 6.3.5.1 Any Claim; or

6.3.5.2 Facts or circumstances that might give rise to a Claim,

Which have been notified or which could have been notified under any prior policy.

6.3.6 Any failure or omission on the part of the Insured to effect or maintain insurance.

6.3.7 Arising from or in connection with the rendering of or failure to render professional advice or service or any error or omission connected therewith given for a fee by the Insured or any person covered by Clause 3 of this Policy.

6.3.8 Any claim which is more specifically insured against in any other section of this Policy.

6.3.9 Conspiracy, conversion, deceit, inducement, breach of contract or injurious falsehood.

6.3.10 Claims made and actions instituted within the United States of America or Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or Canada.

6.3.11 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

6.3.12 Any Claim incurred by or caused by a director or officer of the Insured whilst acting within the scope of their duties in such capacity.

6.3.13 The failure of any Product to meet the level of performance, quality, fitness or durability warranted by the Insured.

6.3.14 Liability assumed under the terms of a contract, agreement or warranty unless the Insured would have been liable in the absence of such contract, agreement or warranty.

6.3.15 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.

## **7. Conditions**

7.1 In the event of a Claim, the Insured must give immediate notice in writing to LIU of such Claim and such information as LIU may require to reasonably investigate the Claim and to enable LIU to determine its liability under this Policy.

7.2 The Insured must take all reasonable precautions to prevent Financial Loss to any third party.



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

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

A handwritten signature in blue ink, consisting of a stylized 'L' followed by a circular flourish, set against a yellow rectangular background.

For and on behalf of  
Liberty International Underwriters

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Date

## Combined General & Products Liability Policy

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

### 1. Insuring Clauses

Subject to the terms of this Policy, Liberty International Underwriters (hereinafter called LIU) will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation in respect of Injury and/or Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

### 2. Definitions

2.1 "Asbestos" means:

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

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

And includes Asbestos Products and Products containing Asbestos.

2.2 "Damage" means:

2.2.1 Physical damage to or destruction of tangible property, (other than Product) including all resulting loss of use of that property. All such loss of use shall be deemed to happen at the time of the physical damage that caused it; or

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

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

2.4 "Injury" means death, bodily injury, sickness or disease to any person.

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



- 2.5.1 Any subsidiary company of the Insured incorporated within Australia, including subsidiaries thereof; or
- 2.5.2 Any other entity incorporated within Australia controlled by the Insured over which the Insured assumes active management.
- 2.6 "Insured's Business" is the business shown in the Schedule.
- 2.7 "LIU" means Liberty International Underwriters. Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company (ABN 61 086 083 605). Incorporated in Massachusetts, USA (The liability of members is limited).
- 2.8 "Limit of Indemnity" means the amount stated in the Schedule pursuant to Clause 5 of this Policy.
- 2.9 "Occurrence" means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Injury and/or Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 2.10 "Period of Insurance" is the period shown in the Policy.
- 2.11 "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, cinders, dust, odours, noise, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 2.12 "Product" means any commodity, article or thing (after it has ceased to be in the possession or under the control of the Insured) which is or is deemed (whether by law or otherwise) to have been manufactured, constructed, grown, extracted, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, handled, supplied or distributed by the Insured or by others trading under the name of the Insured (including any container thereof other than a motor vehicle).
- 2.13 "Terrorism" means an act or acts:
- 2.13.1 That are violent in nature or are dangerous to human life:
- 2.13.1.1 That are a violation of the criminal laws of the United States of America or Australia or of any State or Territory of the United States of America or Australia or that would be a criminal violation if committed within the jurisdiction of the United States of America or Australia or any State or Territory of the United States of America or Australia; and that have the apparent intent of:
- 2.13.1.1.1 Intimidating or coercing a civilian population;
- 2.13.1.1.2 Influencing the policy of any government by intimidation or coercion;  
or



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

Or

2.13.2 That result in:

2.13.2.1 The denial of access to or services from web sites, computer networks or telecommunications equipment; or

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

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

2.14 "Worker" means any person employed by the Insured or deemed to be employed by the Insured whether pursuant to any Workers' Compensation Law or otherwise.

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

### 3 Indemnity to Others

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

3.1 Any principal, in respect of that principal's vicarious liability for the negligent acts or omissions of the Insured pursuant to Definition 2.5 and arising out of the Insured's Business, but this Policy does not extend to the liability of any principal howsoever arising out of the negligence, breach of contract or breach of duty of such principal;

3.2 Any director, executive officer or Worker of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties in such capacity;

3.3 The officers, committee and members of the Insured's canteen, social, sports, first aid/ medical, fire fighting and employee welfare organisations in their respective capacity as such; or

3.4 The legal personal representative of any person entitled to indemnity under this Clause 3 in circumstances giving rise to indemnity under this Policy.

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

## 4 Cross Liabilities

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

## 5 Limit of Indemnity

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

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

## 6 Defence Costs

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In addition to the Limit of Indemnity, LIU will pay all reasonable legal costs and expenses incurred with LIU's prior written consent in connection with any claim for which the Insured is indemnified by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses where indemnity is not provided by this Policy.

Provided that LIU shall not be liable for legal costs and/or expenses for or in respect of representation at any formal legal inquiry involving an accident resulting in Injury or at any coroner's inquiry or defending any proceedings in a court of summary jurisdiction.

Provided that LIU shall not pay any legal costs and/or expenses in respect of any Occurrence after LIU has paid compensation up to the Limit of Indemnity.

Provided further that the legal costs and/or expenses incurred in connection with claims made and/or actions instituted within the United States of America or Canada and their respective territories and protectorates or any other territory coming within the jurisdiction of the courts of these countries, shall form part of the Limit of Indemnity and will not be payable by LIU in addition to the Limit of Indemnity.

## 7 Exclusions

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

- 7.1 The ownership, maintenance, operation, possession, use, loading or unloading by or on behalf of the Insured of any motor vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which

there existed a statutory scheme providing compensation for Injury, but this exclusion does not apply to:

- 7.1.1 Injury for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
- 7.1.2 Injury caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer for which no indemnity is or would be available to the Insured under the said policy of compulsory liability insurance had the Insured complied with its obligations pursuant to such law;
- 7.1.3 Damage caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- 7.1.4 Damage to any bridge, weighbridge or road, or anything beneath such bridge, weighbridge or road caused by the weight of any motor vehicle or trailer or of the load carried thereon; or
- 7.1.5 Damage to any motor vehicle or trailer (not owned, leased or hired by, under hire purchase, on loan or rented to the Insured) temporarily in the Insured's custody or control for the purpose of parking and directly arising out of such parking.
- 7.2 Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:
  - 7.2.1 Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage to or destruction of that part of any premises or contents on which the Insured is or has been working on if the physical damage or destruction arises from such work;
  - 7.2.2 Premises tenanted by the Insured;
  - 7.2.3 Directors', employees' and visitors' clothing and personal effects; or
  - 7.2.4 Other property not owned by the Insured but temporarily in the Insured's possession provided:
    - 7.2.4.1 No indemnity is granted for liability in respect of physical damage to or destruction of that part of any property upon which the Insured is or has been working on if the physical damage or destruction arises from such work; and
    - 7.2.4.2 LIU's limit of liability under this Clause 7.2.4 does not exceed AUD100,000 each and every Occurrence and in the aggregate for any one Period of Insurance,



Provided further that no indemnity is granted under this Policy in respect of liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.

- 7.3 Damages claimed for, and/or the costs of withdrawal, recall, inspection, repair, replacement, disposal or loss of use of the Insured's Products or of any property of which such Products form a part, if such Products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein.
- 7.4 The cost of performing, completing, correcting or improving any work undertaken by the Insured.
- 7.5 Any Product guarantee or warranty given by or on behalf of the Insured but this exclusion shall not apply to the requirements of any Federal or State legislation with respect to Product safety and information.
- 7.6 Liability assumed under the terms of a contract, agreement or warranty unless and only to the extent that the Insured would have been liable in the absence of such contract, agreement or warranty.

Provided that this exclusion will not operate in respect of a liability assumed by the Insured under a contract or agreement for the negligent acts or omissions of any subcontractor of the Insured undertaking work for or on behalf of the Insured in connection with the Insured's Business.

- 7.7 Liability assumed where the Insured may have been able to recover from another party but for an agreement between the Insured and such party where the Insured has waived, released or abandoned any right of recourse or recovery against any party.
- 7.8 Any Product which is incorporated into the structure, machinery or controls of any aircraft, aerial device, watercraft or hovercraft.
- 7.9 Injury to any Worker.

Provided that if the Insured:

- 7.9.1 Is required by law to insure or otherwise fund, whether through self insurance, statutory fund or other statutory scheme, all or part of any common law liability (whether limited in amount or not) for such Injury; or
- 7.9.2 Is not required to so insure or otherwise fund such liability by reason only that the Injury is to a person who is not a Worker or "employee" within the meaning of the relevant Workers' Compensation Law or the Injury is not an Injury which is subject to such Law,

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

- 7.10 7.10.1 Any Workers' Compensation Law;

7.10.2 The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination; or

7.10.3 Employment Practices.

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

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

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

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

7.12.1 Occurred during the currency of this Policy; and

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

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

7.13 Advice, design, consultancy, specification, formulae, supervision or professional service given or undertaken for a fee by the Insured or any person covered by Clause 3 of this Policy.

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

7.14 7.14.1 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants;

7.14.2 Testing, monitoring, clean up, removal, containment, treatment, detoxifying or neutralising of Pollutants or their effect;

7.14.3 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants caused by any Product that has been discarded, dumped, abandoned or thrown away by others; or

7.14.4 Any expenses for the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.

Provided always that exclusions 7.14.1, 7.14.2 and 7.14.3 shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.

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

7.15 Injury sustained due to the inhalation or ingestion of, or exposure to:

7.15.1 Tobacco or tobacco smoke; or

7.15.2 Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

7.16 7.16.1 Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion; or

7.16.2 Nuclear weapons material.

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

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

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

7.17.1.2 Warlike action by military force, including action by hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

7.17.1.3 Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

7.17.2 Any actual or threatened act of domestic or international Terrorism committed by a person or persons acting:

7.17.2.1 Alone or on behalf of or in connection with any organisation; or

7.17.2.2 With the goal of furthering any political, social, religious, ideological or similar objective.

7.17.3 Action taken to prevent or defend against an act of Terrorism.

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

If an act of Terrorism involves nuclear reaction, nuclear radiation, or radioactive contamination, this Terrorism exclusion will apply to liabilities that result from such nuclear reaction or radiation or radioactive contamination in place of Exclusion 7.16.

7.18 The ownership, maintenance, operation, possession or use by or on behalf of the Insured of any aircraft, aerial device, watercraft or hovercraft.

7.19 The Deductible shown in the Schedule.

7.20 The erection, demolition, alteration of and/or addition to buildings by or on behalf of the Insured except for contracts not exceeding in cost the sum of AUD500,000 or 10% of the Limit of Indemnity whichever is the lesser.

7.21 Asbestos.

7.22 7.22.1 Claims made and actions instituted within the United States of America or Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or Canada; or

7.22.2 Claims and actions to which the laws of the United States of America or Canada and their respective territories and protectorates apply.

Provided that this exclusion does not apply to claims and actions caused by an employee of the Insured who normally resides in Australia while such employee is temporarily travelling on behalf of the Insured outside Australia.

7.23 Fines, penalties, punitive damages, exemplary damages, multiplication of compensatory damages, liquidated damages and/or aggravated damages.

7.24 Any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured or any person covered by Clause 3 of this Policy.

7.25 Damage to underground services (such as but not limited to water, gas, sewerage or fuel pipes, electric or telephone cables) or any underground property or structure for the purpose of storing,

conveying, transporting, transmitting or delivering of electricity, water, gas, fuel, telecommunications media, signals, radio or other waves unless:

7.25.1 Prior to the commencement of any work the Insured has inquired with the relevant public authority or owner of such service, property or structure as to the exact location of such service, property or structure, and has taken all precautions to avoid such service, property or structure; and

7.25.2 Any indemnity provided by the proviso to this exclusion shall be limited to the cost of repair, replacement or reinstatement of such damaged services, property or structure and shall not extend to any consequential loss resulting therefrom.

## 8 General Conditions

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8.1 The Insured shall give written notice to LIU as soon as possible of any claim under this Policy and shall give all such additional information as LIU may require.

8.2 No admission, offer, promise, or payment shall be made or given by or on behalf of the Insured without the prior written consent of LIU who shall be entitled but not obligated to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as LIU shall require.

8.3 This Policy and any endorsements attached to this Policy shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.

8.4 The amount shown within the Schedule as a Deductible is the first amount for all claims arising out of any one Occurrence which is to be borne by the Insured or any person covered by Clause 3 of this Policy.

8.5 LIU may at any time discharge its total liability to the Insured in respect of any one claim or series of claims arising from one Occurrence by paying to or on behalf of the Insured:

8.5.1 The total amount in respect of such claim to which the Insured is entitled to indemnity under this Policy;

8.5.2 The total amount sought by the claimant for such claim; or

8.5.3 The total amount for which such claim can be settled,

And in addition to such payment LIU will pay Defence Costs incurred up to the date of payment as provided for by Clause 6 of this Policy.



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

8.6 This Policy shall be interpreted in accordance with the laws of Australia and all claims for indemnity under this Policy shall be decided in accordance with those laws. All matters arising from or relating to the construction, operation or interpretation of the Policy shall be submitted to the exclusive jurisdiction of the Australian Courts.

8.7 The Insured must:

8.7.1 Exercise reasonable care that only competent Workers and/or employees are employed and take reasonable measures to maintain all premises, fittings and plant in sound condition;

8.7.2 Take all reasonable precautions to:

8.7.2.1 Prevent Injury and Damage;

8.7.2.2 Prevent the manufacture, sale or supply of defective Products; and

8.7.2.3 Comply and ensure that its Workers, servants and agents comply with all statutory obligations, by-laws or regulations imposed by any public authority for the safety of persons or property;

8.7.3 At its own expense take reasonable action to trace, recall or modify any Products containing any defect or deficiency which defect or deficiency the Insured has knowledge of or has reason to suspect; and

8.7.4 Assist and cooperate fully and promptly with LIU in the investigation, settlement or defence of any claim or matter, relating or in connection thereto.

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

8.8 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and after expiry of the Period of Insurance declare as soon as possible such details as LIU requires and the premium shall be adjusted and any difference paid by or allowed to the Insured as the case may be subject to any minimum premium that may apply.

8.9 The Insured may cancel this Policy at any time by giving notice in writing to LIU.

LIU may cancel this Policy at any time where:

8.9.1 It is entitled to do so pursuant to the *Insurance Contracts Act 1984* or any amendments thereto;



8.9.2 The Insured has failed to notify LIU of any specific act or omission where such notification is required under the terms or conditions of this Policy; or

8.9.3 The Insured has acted in contravention of or omitted to act in compliance with any term of this Policy which empowers LIU to refuse to pay a claim in the event of such contravention or omission.

Any notice of cancellation given by LIU shall take effect either at the time when another contract of insurance between the Insured and LIU or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4pm on the 3rd business day after the date on which notice was given to the Insured by LIU, whichever is the earlier.

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

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

8.10 Notwithstanding anything else to the contrary in the Policy, whenever coverage provided by this Policy would be in violation of any applicable economic, trade or other sanction or law, such coverage shall be null and void and LIU has no obligation to pay a claim if to do so would breach that sanction or law.

8.11 8.11.1 Words importing persons shall include corporations and other legal entities;

8.11.2 References in the singular shall be deemed to include the plural and vice versa;

8.11.3 Words depicting any gender include reference to all other genders;

8.11.4 References to any legislation or subordinate instruments shall refer to such legislation or subordinate instruments as amended from time to time and in force; and

8.11.5 Headings have been included for ease of reference and it is understood and agreed that this Policy is not to be construed or interpreted by reference to such headings.


8.12 Each Insured agrees that LIU may issue by electronic mail or post any notices required to be given under the Insurance Contracts Act 1984 or otherwise.

8.13 Liberty International Underwriters is a trading name of Liberty Mutual Insurance Company ("LMIC"), a stock insurance company incorporated in Massachusetts USA. LMIC is an



indirect subsidiary of Liberty Mutual Holding Company Inc. ("LMHC"), a Massachusetts USA mutual holding company. NOTICE IS HEREBY GIVEN that the annual meeting of LMHC is held on the second Wednesday in April of each year at ten o'clock in the morning, local time, at LMHC's office at 175 Berkeley Street, Boston, Massachusetts USA. This notice is for members of LMHC only. One becomes a member of LMHC by virtue of being a policyholder of LMIC. Membership rights terminate when one ceases to be a policyholder of LMIC. Members of LMHC may request a copy of LMHC's annual financial statements, which are posted on Liberty Mutual's website at [www.libertymutual.com](http://www.libertymutual.com), by writing to Liberty Mutual Holding Company Inc., 175 Berkeley Street, Boston, Massachusetts 02116.

Signed on behalf of Liberty International Underwriters



For and on behalf of  
Liberty International Underwriters

\_\_\_\_\_  
Date