

Professional Indemnity Insurance Policy

WHEREAS the person or persons, partnership, corporation or other entity named in the Schedule (hereinafter referred to as "the Assured") have made to certain Underwriters at Lloyd's who have hereunto subscribed their names (hereinafter referred to as "the Underwriters") a written proposal bearing the date stated in the Schedule, and in consideration of the payment of the Premium specified in the Schedule,

1. Insuring Clauses

1.1 Indemnity

The Underwriters agree to indemnify the Assured against legal liability for any Claim first made against the Assured during the Period of Insurance and which is notified in writing to the Underwriters as soon as reasonably practicable thereafter but still during the Period of Insurance, in respect of any civil liability incurred or alleged in the conduct of the Professional Practice.

1.2 Costs and Expenses

The Underwriters will pay, in addition to the Limit of Indemnity, the Costs and/or Expenses incurred with the Underwriters' prior written consent in the investigation, defence or settlement of any Claim covered by this Policy; provided always that if a payment in excess of the amount of indemnity available under this Policy is made to dispose of a Claim, the Underwriters' liability for such Costs and/or Expenses incurred with their consent shall be such proportion thereof as the amount of indemnity available under this Policy bears to the amount paid to dispose of the claim.

1.3 Liability for Consultants

The Underwriters agree to indemnify the Assured against legal liability for any Claim first made against the Assured during the Period of Insurance and which is notified in writing to the Underwriters as soon as reasonably practicable thereafter but still during the Period of Insurance, in respect of any civil liability incurred or alleged in connection with the Professional Practice of the Assured which arises from any act, error or omission of any consultant, sub-contractor or agent for whose professional activities the Assured is legally liable; provided always that such coverage shall not extend to indemnify any such consultant, sub-contractor or agent.

1.4 Loss of Documents (Material Damage)

The Underwriters agree to indemnify the Assured in respect of costs, charges and expenses incurred by the Assured in replacing or restoring any Documents (including but not limited to Documents which are the property of the Assured) which have been or may be destroyed, damaged, lost or mislaid and, after diligent search, cannot be found; provided always that:

- a) the discovery of such loss of or damage to Documents occurs during the Period of Insurance and is notified in writing to the Underwriters as soon as reasonably practicable thereafter but still during the Period of Insurance;
- b) any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by the Underwriters with the approval of the Assured;
- c) such coverage shall be limited to the loss of or damage to Documents which are or were in the physical custody or control of the Assured.

2. Exclusions

The Underwriters shall not provide indemnity in respect of any Claim:

2.1 Claims and Circumstances Already Known

- a) made, threatened or intimated against the Assured prior to the Period of Insurance;
- b) arising out of any fact(s) that might give rise to a claim against the Assured which the Assured was aware of, or ought reasonably to have been aware of, prior to the inception of this Policy, whether notified under any other insurance or not;
- c) arising out of any matter the subject of any claim(s) or fact(s) that might give rise to a claim against the Assured referred to in the Assured's proposal form, declaration or underwriting information being the basis of this policy.

2.2 Dishonesty

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any Assured or their consultants, sub-contractors or agents; provided always that this exclusion shall not deny indemnity to any Assured not committing or condoning any such act or omission, except with respect to loss of money, negotiable instruments, bearer bonds or coupons, stamps, cheques, bank or currency notes,

2.3 Trading Debts

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by the Assured or any guarantee given by the Assured for any debt,

2.4 Related Person/Entity

brought or maintained by or on behalf of:-

- a) any person or entity named as an Assured in this Policy; or
- b) any firm, corporation, partnership, trust or other entity in which the Assured or any director or partner of the Assured has a financial or executive interest.

For the purposes of this Exclusion 2.4 b), financial interest shall not mean any financial interest of less than 10% of the issued capital of a corporation.

2.5 Employers' Liability

directly or indirectly based upon, attributable to, or in consequence of bodily injury, mental injury, sickness, disease or death sustained by any person arising out of and in the course of his or her employment by the Assured under any contract of service or apprenticeship, or for any breach of any obligation owed by the Assured as an employer to any Employee,

2.6 Land, Buildings etc.

directly or indirectly based upon, attributable to, or in consequence of the ownership, possession or use by or on behalf of the Assured of any land, buildings, aircraft, watercraft, vessel, mechanically propelled vehicle or any other property,

2.7 **Fines/Penalties and Punitive Damages**

in respect of any fines, penalties, punitive, aggravated, multiple or exemplary damages, however, this Exclusion shall not apply to compensatory civil penalties,

2.8 **Nuclear**

directly or indirectly caused by or contributed to by or arising from:

- a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,

2.9 **War and Terrorism**

or loss, liability, Costs and/or Expenses directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss or Claim:-

- a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- b) confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority; or
- c) any act of terrorism.

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

This Exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 2.9 a), b) or c) above.

In the event that any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

2.10 **Refund of Professional Fees**

directly or indirectly based upon, attributable to, or in consequence of any action for a refund of the Assured's professional fees whether by way of damages or otherwise,

2.11 **Assumed/Contractual/Additional Liability**

directly or indirectly based upon, attributable to, or in consequence of any liability assumed by the Assured under any contract, warranty, guarantee or agreement unless such liability would have attached to the Assured in the absence of such contract, warranty, guarantee or agreement,

2.12 **USA/Canada**

- a) brought in a court of law of the United States of America or the Dominion of Canada, or their territories, protectorates, dependencies, colonies or states; or
- b) in respect of the enforcement of any judgement, order or award obtained within, or determined pursuant to, the laws of the United States of America or the Dominion of Canada, or their territories, protectorates, dependencies, colonies or states.

2.13 **Intellectual Property**

directly or indirectly based upon, attributable to, or in consequence of any plagiarism, breach of confidentiality or infringement of any copyright, trademark, design or patent.

2.14 **Retroactive Date**

arising from any act, error or omission occurring or committed, or allegedly committed or occurring, prior to the Retroactive Date specified in the Schedule.

2.15 **Directors'/Officers' Liability**

arising from any act, error or omission whilst acting in the capacity as a director, secretary or officer of any corporation.

2.16 **Asbestos & Toxic Mould**

or any liability whatsoever arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:-

- a) asbestos, or any materials containing asbestos in whatever form or quantity; or
- b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- c) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
- d) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.

3. Conditions

3.1 Limit of Underwriters' Liability

- a) The Underwriters' total liability under this Policy for any one Claim shall not exceed the Limit of Indemnity specified in the Schedule and in respect of the aggregate of all Claims in any one Period of Insurance an amount equal to twice the Limit of Indemnity so specified, except that (subject to the provisions of Insuring Clause 1.2) the Underwriters will pay, in addition to the Limit of Indemnity, the Costs and/or Expenses incurred in the investigation, defence or settlement of any Claim(s).
- b) Notwithstanding Condition 3.1 a) above, the Underwriters' total liability for all costs, charges and expenses covered under Insuring Clause 1.4 shall not exceed \$50,000 in the aggregate.

3.2 Excess

The Underwriters are only liable for that part of each and every Claim which exceeds the amount of the Excess specified in the Schedule. Where the Schedule specifies that the Excess is Inclusive of Costs and/or Expenses, the Excess applies firstly to any Costs and/or Expenses covered under Insuring Clause 1.2 and thereafter to amounts which are covered under any other Insuring Clause(s).

If the Underwriters incur any expenditure, which by virtue of this Condition is the responsibility of the Assured, then the Assured shall reimburse such amount to the Underwriters forthwith.

3.3 Multiple Claims

- a) All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under this Policy.
- b) Where a single act, error or omission gives rise to more than one Claim, all such Claim(s) shall jointly constitute one Claim under the Policy, and only one Limit of Indemnity and one Excess shall be applicable in respect of such Claim(s).

3.4 Severability & Non-Imputation

In the event that an Assured:

- a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984; or
- b) made a misrepresentation to the Underwriters before this Policy incepted; or
- c) failed to comply with any terms or conditions of this Policy;

the Underwriters agree that such failure or misrepresentation shall not prejudice the right of any other Assured(s) to indemnity under this Policy; provided always that such other Assured(s) shall:

- i) be entirely innocent of and have had no prior knowledge of such failure or misrepresentation; and
- ii) advise the Underwriters in writing as soon as reasonably practicable upon becoming aware of such failure or misrepresentation.

3.5 Claims Handling

- a) The Assured shall not admit liability for or settle any Claim or incur any Costs and/or Expenses in connection therewith without the written consent of the Underwriters, such consent not to be unreasonably withheld, who shall be entitled to take over and conduct in the name of the Assured the defence or settlement of any Claim.
- b) The Assured shall not be required to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Assured and the Underwriters) shall advise that such Claim should be contested. The costs of such Senior Counsel's advice shall be borne equally by the Assured and the Underwriters.
- c) The Assured shall be entitled at their own risk to contest any Claim which in the opinion of the Underwriters should be compromised or settled provided that the Underwriters shall not be liable for any damages, costs or expenses incurred directly or indirectly as a result of the Assured's refusal to compromise or settle such Claim.
- d) The Assured shall give the Underwriters such information and co-operation as the Underwriters may reasonably require.
- e) The Assured shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.

3.6 Several Liability of the Underwriters

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

3.7 Service of Suit

The Underwriters hereon agree that:

- a) In the event of a dispute arising under this insurance, this insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent court in the Commonwealth of Australia.
- b) Any summons, notice or process to be served upon the Underwriters may be served upon:

Lloyd's Australia
Level 9
1 O'Connell Street
Sydney NSW 2000
- c) If a suit is instituted against any one of the Underwriters, all the Underwriters hereon will abide by the final decision of such Court or any competent Appellate Court.

3.8 Notices and Enquiries

Notices to be given to the Underwriters shall be deemed to be properly made if given to, and all enquiries shall be addressed to:

Tasman Underwriting Pty Limited
A Corporate Authorised Representative of Austagencies Pty Ltd
Level 13, 141 Walker Street
North Sydney NSW 2060

Fax: (02) 9930 9501

Email: roy.daly@tasmanunderwriting.com.au

3. Definitions

- 4.1 **"Assured"** shall mean:
- a) the person, persons, partnership, corporation or other entity specified as the Assured in the Schedule including their predecessors in business; and
 - b) any person who is, becomes, was or ceases to be a principal, partner, director or Employee of the Assured solely in respect of work carried out for or on behalf of the Assured; and
 - c) the estate, heirs, legal representatives or assigns of any Assured person(s) in the event of the death or incapacity of such Assured person(s).
- 4.2 **"Claim"** shall mean:
- a) the receipt by the Assured of any written notice of demand for compensation made by a third party against the Assured; or
 - b) any writ, statement of claim, summons or other application issued against or served upon the Assured in connection with the Professional Practice.
- 4.3 **"Costs and/or Expenses"** shall mean the costs, charges and/or expenses incurred by or on behalf of the Assured or the Underwriters in the investigation, defence or settlement of a Claim and shall include legal costs and disbursements.
- 4.4 **"Documents"** shall mean deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic data material but shall not include bearer bonds or coupons, stamps, bank or currency notes, cheques or any other negotiable instruments.
- 4.5 **"Employee"** shall mean any person employed under a contract of service or apprenticeship with the Assured at any time during or prior to commencement of the Period of Insurance provided that in the case of an incorporated body a director shall in no case be deemed to be an employee of such incorporated body.
- 4.6 **"Excess"** shall mean the amount of excess specified in the Schedule.
- 4.7 **"Limit of Indemnity"** shall mean the limit of indemnity specified in the Schedule.
- 4.8 **"Period of Insurance"** shall mean the period of insurance specified in the Schedule.
- 4.9 **"Professional Practice"** shall mean the carrying out of those functions by or on behalf of the Assured normally associated with the conduct of the profession specified in the Schedule.
- 4.10 **"Policy"** shall mean:
- a) the Schedule, Insuring Clauses, Exclusions, Conditions, Definitions and other terms contained herein; and
 - b) any endorsement(s) attaching to and forming part of this Policy.
- 4.11 **"Premium"** shall mean the premium specified in the Schedule or in any endorsement(s) attaching to and forming part of this Policy.
- 4.12 **"Schedule"** shall mean the schedule attached to and forming part of this Policy.
- 4.13 **"Senior Counsel"** shall mean a barrister in active practice who is entitled to use the post nominals Q.C. or S.C. in any one or more superior court in Australia or New Zealand.
- 4.14 **"The Underwriters"** shall mean the Underwriters at Lloyd's subscribing to the Contract specified in the Schedule.
- 4.15 **"You", "Your", "Yours"** means the Assured person or entity named in the Policy Schedule.

5. IMPORTANT INFORMATION

5.1 About Tasman Underwriting

Tasman Underwriting Pty Limited ABN 63 140 084 224 is an Authorised Representative of Austagencies Pty Limited ABN 76 006 090 464 AFSL 244 584. In issuing this Policy, Austagencies and its Authorised Representative Tasman Underwriting will be acting under an authority given to it by the Underwriters. This means that when issuing this Policy, Austagencies and its Authorised Representative Tasman Underwriting will be acting as an agent for the Underwriters, not for you.

Our contact details are:

Level 13, 141 Walker Street
North Sydney NSW 2060

Fax: (02) 9930 9501

Email: roy.daly@tasmanunderwriting.com.au

5.2 About the Underwriters

This insurance is underwritten by certain Underwriters at Lloyd's. Lloyd's has been insuring Australian risks for over 150 years and is licensed to write non-life insurance business under the Australian Insurance Act 1973.

Lloyd's Underwriters have strong financial security characteristics. However, please note that ratings can vary from time to time. You or your representatives can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Underwriters at Lloyd's is liable by requesting them from us. In the event of loss, each Underwriter (and their Executors and Administrators) is only liable for their own share of the loss.

You should contact Tasman Underwriting in the first instance in relation to this insurance.

Lloyd's contact details are:

Lloyd's Australia
Level 9
1 O'Connell Street
Sydney NSW 2000

Telephone Number: (02) 8298 0700

Fax: (02) 8298 0788

5.3 Complaints and Dispute Resolution Process

We view seriously any complaint made about Our products or services and will deal with it promptly and fairly.

If You have a complaint please first try to resolve it by contacting the relevant member of Our staff. We will seek to resolve the matter in accordance with the General Insurance Code of Practice and Our Dispute Resolution procedures. You can contact Us if You want more information on Our Dispute Resolution procedures.

If the matter is still not resolved, or You are not satisfied with the way a complaint has been dealt with, You should write to:

Lloyd's Australia
Level 9
1 O'Connell Street
Sydney, NSW 2000

If You are a natural person or a small business, and You are not satisfied with the final decision, You may wish to contact the Financial Ombudsman Service Australia ("FOS"). The FOS is a free independent external disputes resolution service provided to customers to review and resolve complaints where We have been unable to satisfy Your concerns.

For further details You can visit their website at www.fos.org.au or contact them:

The Financial Ombudsman Service Australia
PO Box 3,
Melbourne, VIC, 3001
T: 1800 367 287
E: info@fos.org.au

5.4 Duty of Disclosure

This Policy is subject to the Insurance Contracts Act 1984 (Act).

Under that Act You have a Duty of Disclosure.

Before You take out insurance with Us, You have a duty to tell Us of everything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. If You are not sure whether something is relevant You should inform Us anyway.

You have the same duty to inform Us of those matters before You renew, extend, vary, or reinstate Your contract of insurance. The duty applies until the Policy is entered into, or where relevant, renewed, extended, varied or reinstated (Relevant Time). If anything changes between when the answers are provided to Us or disclosures are made and the Relevant Time, You need to tell Us.

Your duty however does not require disclosure of matters that:

- reduce the risk;
- are common knowledge;
- We know or, in the ordinary course of Our business, ought to know; or
- We have indicated We do not want to know.

If You do not comply with Your duty of disclosure, We may be entitled to:

- reduce Our liability for any claim;
- cancel the contract;
- refuse to pay the claim; or
- avoid the contract from its beginning, if Your non-disclosure was fraudulent.

5.5 General Insurance Code of Practice

We proudly support the General Insurance Code of Practice.

The purpose of the Code is to raise the standards of practice and service in the general insurance industry.

The Code aims to improve:

- the quality, comprehension and accuracy of policy documents and other information provided to consumers;
- employee and agent training and supervision;
- Claims handling and dispute resolution.

For further information on the Code, please visit www.codeofpractice.com.au or alternatively You can request a brochure on the Code from Us.

5.6 GST

The amount payable by You for this Policy includes an amount for GST.

When We pay a Claim, Your GST status will determine the amount We pay.

The amount that We are liable to pay under this Policy will be reduced by the amount of any Input Tax Credit (ITC) that You are or may be entitled to Claim for the supply of goods or services covered by that payment.

You must advise Us of Your correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is Your entitlement to an ITC on Your Premium as a percentage of the total GST on that Premium. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a Claim is less than the applicable Limit of Indemnity or the other limits applicable to this Policy, We will only pay the GST (less Your ITC) applicable to the settlement. This means that if these amounts are not sufficient to cover the whole Claim, We will only pay the GST relating to Our share of the settlement for the whole Claim.

We will pay the Claim by reference to the GST exclusive amount of any supply made by any Business of Yours which is relevant to the Claim.

GST, ITC, BAS and Acquisition have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

5.7 Privacy Statement

In this Privacy Statement the use of "We", "Our" or "Us" means Tasman Underwriting Pty Ltd and the Underwriters unless specified otherwise.

In this Privacy Statement the use of "personal information" includes sensitive information.

We are committed to protecting the privacy of the personal information You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- deciding whether to issue a policy,
- determining the terms and conditions of Your Policy,
- compiling data to help develop and identify other products and services that may interest clients, and
- handling Claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not;
- (b) whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual's racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal and sensitive information in order to provide You with the relevant services and/or products.

When You give Us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant personal information to Us.

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling Claims, We may have to disclose Your personal and other information to other parties and service providers such as Our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas, including but not limited to New Zealand, Singapore, United Kingdom, the Philippines, the European Union, India and the United States of America.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer Your Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Duty of Disclosure in this document.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Our privacy or You have any query on how Your personal information is collected or used, or any other query relating to Our Privacy Policies, please contact Us.

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