



# Commercial Legal Costs Insurance

**Resolvit**

Level 12, 77 King St  
Sydney NSW 2000  
Resolvit.com  
ABN: 90 652 786 546



## Policy Wording

# Important Information

This document contains information which **You** need to read and understand before **You** purchase this Commercial Disputes Legal Costs Insurance Policy. Please take the time to read it and contact **Us** or **Your** insurance broker if **You** have any queries.

### A. About Resolvit

- (i) **Resolvit** Insure Pty Limited (ABN 90 652 786 546) (**Resolvit**) acts as the **Insurer's** agent in arranging all aspects of this **Policy** except for Claims management. **Resolvit** does not act for **You**. **Resolvit** acts under a binding authority with a unique market reference (UMR) B6083172300381 which has been issued to it to arrange this **Policy** on behalf of the **Insurer(s)** and to issue, administer, alter and organise renewals of this **Policy**.
  
- (ii) Please contact **Resolvit** in the first instance if **You** have any queries about **Your Policy**:  
  
Postal Address:  
GPO BOX 3236  
Sydney NSW 2001  
  
Phone Number:  
+612 9234 1520  
  
Email Address:  
[info@resolvitinsure.com](mailto:info@resolvitinsure.com)

### B. About Proclaim

- (i) Proclaim Management Solutions Pty Limited (ABN 74 087 666 484) (**Proclaim**) has been appointed by **Us** to manage **Claims**. **Proclaim** does not act for **You**. **Proclaim** acts under an authority the **Insurer** has issued to **Proclaim** to manage **Claims** on behalf of **Us** and the **Insurer**.

### C. General

- (i) This **Policy Wording**, together with **Your Proposal**, the **Schedule** and any other document **We** may nominate and give reasonable notice of to **You**, forms a legal contract between **You** and **Us** (**the Policy**). **We** have relied on the information which **You** have provided to **Us** in the **Proposal**. **We** agree to provide to **You** the cover set out in this wording as set out in the **Schedule**. The cover **We** provide is subject to:
  - (a) the terms and conditions set out in this wording; and
  - (b) **You** paying the premium to **Us**.
  
- (ii) Please read this document and the **Schedule** carefully to ensure that **You** are purchasing the cover which is appropriate for **Your** needs. **You** may wish to seek advice from **Your** insurance broker.
  
- (iii) If **You** do not comply with all the provisions of this **Policy**, **We** may be entitled to refuse to pay a **Claim** or reduce the amount **You** are entitled to receive by the extent of any prejudice



- (iv) **We** may suffer as a result of **Your** non-compliance. The **Policy** is in force for the **Period of Insurance** set out in **Your Schedule** or until cancelled.
- (v) **We** will provide cover up to, but not beyond, the **Limit of Liability** specified in the **Schedule**.
- (vi) If **We** decide to amend or vary the cover provided in this **Policy**, **We** will do so by sending a notice to **You** in writing at **Your** last address known to **Us** and by issuing an endorsement to the **Policy**. If there are other documents which form part of the legal contract known as the **Policy**, such as endorsements or any other document we may nominate, **We** will also give to **You** written notice of those documents.

#### **D. Duty of Disclosure**

- (i) Before **You** enter into this **Policy**, **You** have a duty to inform us of anything that **You** know, or could reasonably be expected to know, which might be relevant to **Our** decision to provide this insurance cover to **You** and to the terms upon which **We** offer that cover to **You**. This duty is known as the Duty of Disclosure. The duty is set out in section 21 of the Insurance Contracts Act 1984 (Cth).
- (ii) If **You** are not sure whether something is relevant to **Our** decision to insure **You** then should seek advice from **Your** broker or lawyer.
- (iii) **Your** Duty of Disclosure extends to informing **Us** of those matters relevant to **Our** decision to insure **You** before **You** renew, extend, vary, or reinstate **Your** contract of insurance.
- (iv) **You** are not obliged to tell **us** about matters that:
  - (a) reduce the risk for which **We** are insuring **You**;
  - (b) are common knowledge;
  - (c) **We** know or ought to know; or
  - (d) **We** have told **You** that **We** do not want to know.
- (v) If **You** do not comply with **Your** duty of disclosure, **We** may be entitled to:
  - (a) reduce **Our** liability for any claim to the extent of any prejudice which **We** may suffer as a result of **Your** non-disclosure;
  - (b) cancel the **Policy**;
  - (c) refuse to pay **Your claim(s)**; and
  - (d) if **Your** non-disclosure was fraudulent, avoid the contract from its inception.

#### **E. Nature of Cover**

- (i) Details of how this **Policy** works are set out in the **Policy Wording** below.
- (ii) In short, this **Policy** will cover **You** for **Legal Costs** incurred in relation to a **Dispute** and/or a **Legal Proceeding** first made known to **You** in the **Policy** Period PROVIDED THAT **You** notify **Resolvit** during the **Period of Insurance** of either the **Dispute** or the **Legal Proceeding** itself or of facts and circumstances of which **You** are aware which might give rise to them.
- (iii) Usually a **Dispute** will occur before a **Legal Proceeding** but if **You** are not aware of a **Dispute** before **You** become aware of the **Legal Proceeding** then **We** will cover **You** for **Your Legal Costs** of the **Legal Proceeding** PROVIDED THAT:



- (a) **You** first became aware of the **Legal Proceeding** during the **Period of Insurance**; and that;
- (b) **You** notify **Us** of the existence of the **Legal Proceeding** during the **Period of Insurance**;
  
- (iv) This is a 'Claims Made' policy. This means that **You** must have a **Policy** in place at the time **You** notify **Us** of the **Dispute** or **Legal Proceeding** or circumstances giving rise to them for the **Policy** to respond.
  
- (v) If **You** make a **Claim** under the **Policy**, it will be the **Policy** in place at the time of Your notification to **Us** which will respond to the **Claim**. If **You** have previously given notice to **Us** of a **Dispute** and then later, in a subsequent **Period of Insurance**, **You** become aware of a **Legal Proceeding**, it will be the **Policy** in place at the time of **Your** earlier notification of the **Dispute** or of the facts and circumstances giving rise to the **Dispute** which will respond to **Your Claim**.
  
- (vi) **We** recommend that **You** discuss the operation of this **Policy** with **Your** broker to ensure that **You** understand **Your** notification obligations under the **Policy**. If **You** fail to notify **Us** as required by the **Policy**, then **We** may refuse to indemnify **You** or reduce the cover by the amount of any prejudice **We** may suffer as a result.

## F. Complaints

If **You** have any concerns or wish to make a complaint in relation to this **Policy**, **Our** services or **Your** insurance claim, please let **Us** know and **We** will attempt to resolve **Your** concerns in accordance with **Our** Internal Dispute Resolution procedure. Please contact:

Complaints Officer Resolvit  
Insure Pty Ltd  
+612 9234 1500  
[Complaints@resolveitinsure.com.au](mailto:Complaints@resolveitinsure.com.au)

**We** will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If **We** cannot resolve your complaint to your satisfaction, **We** will escalate **Your** matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited Email: [idraustralia@lloyds.com](mailto:idraustralia@lloyds.com) Telephone: (02)  
8298 0783  
Post: Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to **You** within 30 calendar days of the date on which **You** first made the complaint unless certain exceptions apply.

**You** may refer **Your** complaint to the Australian Financial Complaints Authority (AFCA), if **Your** complaint is not resolved to **Your** satisfaction within 30 calendar days of the date on which **You** first made the complaint or at any time. AFCA can be contacted as follows:

Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Post: GPO Box 3 Melbourne VIC 3001 Website: [www.afca.org.au](http://www.afca.org.au)

**Your** complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If **Your** complaint is not eligible for consideration by AFCA, **You** may be referred to the Financial Ombudsman Service (UK) or **You** can seek independent legal advice. **You** can also access any other external dispute resolution or other options that may be available to **You**.



The Underwriters accepting this Insurance agree that:

(i) if a dispute arises 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;

(ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia Suite 1603  
Level 16  
1 Macquarie Place  
Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf;

(iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

## G. Privacy

(i) **We** abide by the Australian Privacy Principles and the Privacy Act 1988 (Cth) and any other applicable State or Territory legislation when **We** collect and use **Your** personal information.

(ii) **We** collect **Your** personal information to assess **Your** application for insurance, to administer **Your** Policy, to triage and manage any claim which **You** may make and to provide other insurance services as requested by **You** from time to time. In order for **Us** to carry out these functions, **We** need to collect **Your** personal information. **We** may also need to disclose **Your** personal information to third parties such as **Your** broker, **Our** reinsurers, **Our** service providers including lawyers, assessors, loss adjusters and facilitators who carry out activities on **Our** behalf. Some of these people and/or entities may be overseas in countries such as the United Kingdom or Europe.

(iii) At the time of collecting **Your** information **We** will inform **You** of the purpose for collecting **Your** personal information and the consequences if **You** choose not to provide the personal information to **Us**.

(iv) **You** may obtain access at any time to **Your** personal information that **We** or **Our** service providers hold. If **You** would like to contact **Us** about privacy or obtain **Our** privacy policy, please contact **Us** at:

+612 9234 1500

[info@resolvitinsure.com](mailto:info@resolvitinsure.com)

## H. General Insurance Code of Practice

(i) The **Insurer(s)** and Resolvit proudly support the principles of value, transparency and fairness in products and services underlying the Insurance Council of Australia's General Insurance Code of Practice (GICOP). The purpose of the GICOP is to raise standards of practice and service in the general insurance industry. We and Resolvit support the aims of the GICOP to promote trust, integrity and respect in Our products and services.

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



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# 1. Definitions

We set out below the meaning of some of the important words in this Policy. These definitions are important in outlining the scope of cover We provide to You under this Policy. You should read them carefully. When used throughout the Policy wording, these definitions will appear with the first letter being a capital letter and in bold type so that You are able to identify easily which words are definitions.

- 1.1 **Agreement or Contract** means an agreement or contract whether oral or in writing for the sale, purchase, hire, rent or supply of goods and/or services.
- 1.2 **Alternative Dispute Resolution** means any form of resolution of a legal dispute, including but not limited to a mediation conducted by an independent and accredited mediator, outside a proceeding in a Court or Tribunal as agreed to by You and by Us. A mediation ordered by a Court or a Tribunal and conducted by a mediator appointed by that Court or Tribunal is included in this definition.
- 1.3 **Annual Aggregate Limit** means the maximum amount as specified in the **Schedule** which the **Insurer(s)** will pay for all **Claims** notified under this **Policy during the Period of Insurance**.
- 1.4 **Business** means the business, trade or profession of the **Insured** as specified in the **Schedule**.
- 1.5 **Any One Claim** means all **Claims** or possible **Claims** arising from the same original cause, event or circumstance. **Claim** means a claim made under this **Policy** for **Legal Costs** in accordance with clause 4.1 of this **Policy**, which is to be made within the **Period of Insurance**, of the existence of either;
  - 1.5.1 a **Dispute** and/ or facts and circumstances giving rise to a **Dispute**; or
  - 1.5.2 a **Legal Proceeding** and/or facts or circumstances giving rise to a **Legal Proceeding**, of which You had no knowledge prior to the start of the **Period of Insurance** in which You gave the notification, with such notification being made by You to Us for the purposes of You seeking indemnity under the **Policy**.
- 1.6 **Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.
- 1.7 **Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by You or any other party.
- 1.8 **Cyber Incident** means:
  - 1.8.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
  - 1.8.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
- 1.9 **Third Party** means an entity that has an Agreement or Contract with You which relates to **Your Usual Business Activities**.
- 1.10 **Director** means a director or other board member of the **Insured** where the **Insured** is a company.
- 1.11 **Dispute** means a dispute about an Agreement or Contract between You and a **Third Party** which relates to **Your Usual Business Activities** the quantum of which is not less than \$20,000.
- 1.12 **Electronic Data** means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.



- 1.13 **Excess** means the amount of money specified in the **Schedule** which **You** must pay in respect of **Legal Costs** in respect of **Any One Claim** before **We** shall be liable to make any payment..
- 1.14 **Insurer(s)** means certain underwriters at Lloyd's.
- 1.15 **Lawyer** means a person who is admitted to the legal profession in Australia and holds a current practising certificate in the State or Territory of Australia in which the **Dispute** or **Legal Proceeding** was commenced.
- 1.16 **Legal Costs** means the reasonable legal fees, disbursements and related expenses which the **Panel Lawyer** incurs on **Your** behalf in respect of the **Dispute** or a **Legal Proceeding** including any **Alternative Dispute Resolution** and which have been incurred with the prior written consent of, and at the direction of,  
**Us We** will be responsible for assessing the reasonableness of the fees and disbursements and will not unreasonably withhold consent to the incurring of those fees. **Legal Costs** does not include:
- 1.16.1 any time spent by **You** in relation to the **Dispute, Legal Proceeding** and/or the **Claim**;
- 1.16.2 any costs, disbursements or expenses for legal services provided to **You** other than by a **Panel Lawyer** and/or which **You** have incurred prior to receiving confirmation from **Us** of **Your** entitlement to indemnity under this **Policy**.,
- 1.17 **Legal Proceeding** means a civil proceeding in a Court or Tribunal of State or Federal jurisdiction in Australia arising from a **Dispute**.
- 1.18 **Limit of Liability** means the amount specified in the **Schedule** being the maximum amount of **Our** liability to indemnify **You** for **Your Legal Costs** in respect of **Any One Claim**..
- 1.19 **Panel Lawyer** means the firm of lawyers, appointed by **Us** to act on **Your** behalf.
- 1.20 **Period of Insurance** means the period specified in the **Schedule**.
- 1.21 **Policy** means this insurance policy issued to **You** by **Us**. The **Policy** comprises the **Policy Wording**, the **Proposal**, the **Schedule** and any other document which **We** nominate as forming part of the **Policy** provided that **We** have given to **You** written notice that such document will form part of the **Policy** prior to **You** purchasing the **Policy**.
- 1.22 **Policy Wording** means the contents of this document which sets out the terms, conditions and exclusions of the Commercial Disputes Legal Costs Insurance **Policy** issued to **You**.
- 1.23 **Premium** means the amount of money payable for this **Policy** by **You** to **Resolvit** on **Our** behalf which is specified in the **Schedule** for the **Period of Insurance**.
- 1.24 **Proclaim** means Proclaim Management Solutions Pty Limited (ABN 74 087 666 484) of Level 9 271 Collins Street Melbourne Victoria Australia, or any third party appointed by Proclaim to act on its behalf in managing Claims on **Our** behalf.
- 1.25 **Proposal** means the document completed and signed by the **Insured** in good faith setting out, in answer to questions posed by the **Insurer**, every matter which the **Insured** knows, or could reasonably be expected to know, is relevant to the **Insurer's** decision to accept the risk and provide this insurance to the **Insured** on the terms set out in the **Policy**.
- 1.26 **Reasonable Prospects of Success** means in the opinion of **Your Panel Lawyer** it is more probable than not that at a final hearing or determination of the **Legal Proceeding**, or any **Legal Proceeding** which may arise from a **Dispute**, the **Insured** will be successful and where the **Insured** is the plaintiff or applicant, the **Insured** is able to recover its damages, debt or other relief from the other party.
- 1.27 **Recovery** means any amount **You** recover from a **Third Party**, or on behalf of a **Third Party**, as a result of:
- 1.27.1 a settlement of the **Dispute** or **Legal Proceeding**; or
- 1.27.2 a judgment, order or award made in the **Legal Proceeding**, including but not limited to an order made in relation to legal costs.
- 1.28 **Schedule** means the separate document entitled 'Schedule' which forms part of the **Policy**, is signed on behalf of the **Insurer** and which sets out the particulars of cover relevant to the **Insured** and any additional terms and conditions which may apply to the **Insured**.
- 1.29 **Resolvit** means Resolvit Insure Pty Limited, the underwriting agency which at all times acts on behalf of the **Insurer(s)**.
- 1.30 **Usual Business Activities** means the activities which **Your Business** carries out in the





normal course of its business as specified in the Schedule.

- 1.31 **'We', 'Us', 'Our'**, means Resolvit Insure Pty Ltd.
- 1.32 **'You', 'Your', 'Yours'** means the person(s) or entity(ies) specified as the Insured in the **Schedule** including all subsidiaries incorporated in Australia which engage in the **Business** described in the **Schedule** and if requested by you and agreed in writing by **Us**, also to include any employee, partner or director, conditional on the same **Panel Lawyer acting** for all parties insured under this **Policy**.
- 1.33 A reference in this Policy:
  - 1.33.1 to the singular includes the plural;
  - 1.33.2 to one gender is a reference to any gender;
  - 1.33.3 to another grammatical form of a defined term has the same meaning as the defined term;
  - 1.33.4 to an amount of money are references to Australian dollars;
  - 1.33.5 to legislation, orders or regulations includes a reference to that legislation as amended, re-encated or replaced from time to time.

## 2. The Cover

- 2.1 **We** will cover **You** up to the **Limit of Liability** for the **Legal Costs** which **You** incur in pursuit of a **Dispute** or **Legal Proceedings** arising from a contract for the sale of goods, hire of goods or for the supply of a service provided that:

- 2.1.1 **Legal Costs** incurred in the pursuit of any **Dispute** or **Legal Proceedings** shall be limited to 75% of the amount in dispute.
- 2.1.2 Where the **Dispute** or **Legal Proceedings** arise from an undisputed debt, **You** have exhausted all reasonable methods of recovery and the **Panel Lawyer** recommends legal action.

PROVIDED that:

- 2.1.3 **You** have paid the **Premium** when due;
- 2.1.4 **You** were not aware of the **Dispute** or **Legal Proceeding** prior to the commencement of the **Period of Insurance** unless **You** have given notice to **Us** under an earlier **Policy** of the facts and circumstances the subject of the **Dispute**;
- 2.1.5 after consultation with **You** and, at all times having regard to **Your** interests, **We** determine that:
  - (a) **You** have **Reasonable Prospects of Success** in the **Dispute** and/or **Legal Proceeding**; and
  - (b) it is reasonable to provide cover for **Your Legal Costs** in the circumstances, including but not limited to, having regard to the prospects of any recovery;
  - (c) **You** have complied with the terms and conditions of this **Policy**.
- 2.2 **We** will not indemnify **You** for any **Legal Costs** incurred in connection with a **Dispute** and/or **Legal Proceeding**, which have not been incurred with the prior written consent of **Us**. **We** will not withhold such consent unreasonably.
- 2.3 **Our** liability to indemnify **You** in respect of **Any One Claim** shall not exceed the **Limit of Liability** specified in the **Schedule**. **Our** total aggregate liability to indemnify **You** for all **Claims** during any one **Period of Insurance** shall not exceed the Annual Aggregate Limit of Liability specified in the **Schedule**. This **Policy** does not contain a Reinstatement Clause.



### 3. Exclusions

- 3.1 **We will NOT cover You for any Claim for Legal Costs or other legal costs, disbursements and/or expenses arising from or relating to:**
- 3.1.1 Any **Dispute or Legal Proceedings** which the **Panel Lawyer** determines that **You** do not have **Reasonable Prospects of Success**;
  - 3.1.2 a breach or alleged breach of the Privacy Act 1988 (Cth) or any State legislation relating to privacy;
  - 3.1.3 Any legal costs and expenses for, incurred as a result of, or arising out of a **Cyber Act or Cyber Incident**.
  - 3.1.4 an insurance contract, except for a **Dispute or Legal Proceedings** where the Insurer would, but for section 54 of the Insurance Contracts Act 1984, be entitled to refuse to pay a claim in whole or in part, by reason of some act of the Insured or of some other person, and the Insured is able to establish that the Insurer may not refuse to pay that claim by reason only of that act;
  - 3.1.5 a contract of employment;
  - 3.1.6 the sale or purchase of real property involving the **Insured**;
  - 3.1.7 a franchise agreement entered into by the **Insured**;
  - 3.1.8 contracts that provide or arrange credit, securities, guarantees or other financial products and financial services;
  - 3.1.9 contracts involving mergers and acquisitions;
  - 3.1.10 contracts arising from or related to intellectual property, whether registered or not;
  - 3.1.11 any dishonest, false or fraudulent conduct by the **Insured**;
  - 3.1.12 works by or under the order of any government, public or local authority;
  - 3.1.13 subsidence, land heave, landslip, mining or quarrying;
  - 3.1.14 libel, slander, malicious falsehood or defamation;
  - 3.1.15 activities outside Your **Usual Business Activities**;
  - 3.1.16 a dispute between current or former directors, shareholders, partners or employees of the **Insured**;
  - 3.1.17 any act, error or omission by **You** or any of partners, employees or directors which would give rise to a liability usually covered under a professional indemnity, directors' and officers' or management liability policy;
  - 3.1.18 Any **Dispute or Legal Proceedings** between **You** and **Us**, **You** and the **Insurer** or **You** and **Your** legal representative, or **You** and **Your** insurance intermediary.
- 3.2 The **Insurer(s)** will not provide cover for any damages, compensation, interest, penalties, fines or taxes which **You** or any partner, director or employee of **You** are ordered by an Australian or overseas Court or Tribunal to pay or which they may agree to pay.
- 3.3 This **Policy** does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of **Electronic Data** from any cause (including but not limited to **Computer Virus**) or loss of use, reduction in functionality, cost or expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any sequence to the loss.
- 3.4 This **Policy** excludes cover for any loss, damage, liability, expense, fines or penalties or any other amount directly or indirectly caused by or arising from riot, civil commotion, strikers, locked out workers, or persons in labour disturbances.
- 3.5 This **Policy** excludes loss, destruction, damage, costs or expense of any nature 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 other sequence to the loss:
- 3.5.1 war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, conspiracy, rebellion, revolution, insurrection, mutiny, military or usurped power; or
  - 3.5.2 confiscation or nationalisation, or requisition or destruction of or damage to property by or under the order of any government (whether lawfully constituted or otherwise) or public or local authority; or



- 3.5.3 discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason; or
  - 3.5.4 any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with any terrorist action (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing terrorist action.
- 3.6 This **Policy** also excludes any loss, destruction or damage, cost or expense of any 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 clauses 3.5.1 or 3.5.2.
- 3.7 This **Policy** does not cover any claims or legal proceedings (including any costs or expenses of any description) arising out of or in connection with any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind; or ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive.
- 3.8 Any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
- 3.8.1 For the purposes of this exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.
  - 3.8.2 As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 3.8.3 the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 3.8.4 the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 3.8.5 the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

## 4. Conditions

### Making a Claim under this Policy

- 4.1 As soon as reasonably practicable after becoming aware of a **Dispute** and/or any **Legal Proceeding**, **You** must notify **Us** in writing of the following in relation to the Dispute and/or any resultant **Legal Proceeding** and provide to **Us**:
  - 4.1.1 a summary of the facts;
  - 4.1.2 copies of the relevant contract or agreement and any other relevant documents;
  - 4.1.3 if the agreement is oral, a description of the terms of that agreement;
  - 4.1.4 copies of all relevant correspondence, including any particulars or reports;
  - 4.1.5 copies of any letters or demand, all legal process including but not limited to initiating legal process, summons, statement of claim or statement of liquidated claim, defences, cross claims, subpoenas and any other notices or formal documents;
  - 4.1.6 copies of any advices received from any lawyer or other professional acting on Your behalf.



- 4.2 If a **Legal Proceeding** arises out of a **Dispute** which **You** have notified to **Us** under a previous **Policy**, any **Claim** which **You** make in relation to that **Legal Proceeding** will be deemed to be made in the previous **Policy** period in which the earlier **Dispute** or facts and/or circumstances of the earlier **Dispute** was first known to **You** and notified to **Us**.
- 4.3 This **Policy** and any rights under this **Policy** cannot be assigned without **Our** prior written consent.

## 5. Claim Determination

- 5.1 As soon as reasonably practicable, after receiving the **Claim**, **We** will review and investigate the **Claim** and write to **You** informing **You** of **Your** entitlement to indemnity under the **Policy** and providing written reasons for the decision on indemnity.
- 5.2 **We** will select a **Panel Lawyer** to act for **You** in relation to the **Dispute** and/or the **Legal Proceeding**.
- 5.3 **You** will authorise the **Panel Lawyer** to provide an advice to **You**, and to share that advice with **Us**, within fifteen (15) business days of being instructed, as to:
  - 5.3.1 the likelihood that **You** have **Reasonable Prospects of Success** in, the **Dispute** and/or **Legal Proceeding**;
  - 5.3.2 the amount of likely **Legal Costs** to be incurred by the **Panel Lawyer** in pursuing the **Dispute** and/or **Legal Proceeding** on **Your** behalf;
- 5.4 Pending a determination on **Your** entitlement to indemnity, **You** may arrange for the **Panel Lawyer** to take all necessary steps to protect **Your** interests pending a determination of indemnity by **Us** including but not limited to filing whatever documents are necessary to protect **Your** interests in the **Dispute** or **Legal Proceeding**. Any **Legal Costs** incurred prior to written confirmation of **Our** indemnity determination shall be payable by **You** directly to the **Panel Lawyer**.
- 5.5 In the event of a disagreement between **You** and the **Panel Lawyer** on **Reasonable Prospects of Success**, **We** shall require **You** to obtain an opinion from Counsel at **Your** expense as to the merits of success. If based upon such opinion **We** are satisfied **Reasonable Prospects of Success** exist, the **Policy** will pay the costs of obtaining this opinion.
- 5.6 In the event of **Your Claim** not being indemnified due to lack of **Reasonable Prospects of Success** following the opinion of **Your** Panel Lawyer and/or Counsel, if **You** elect to continue **Your Dispute** or **Legal Proceedings** and are subsequently successful, the **Policy** will indemnify **Your** reasonable costs incurred. Reasonable costs shall be deemed to be the equivalent costs which would have been incurred by the **Panel Lawyer** had the **Claim** been originally indemnified.

## 6. Claim Administration and Conduct

- 6.1 If **We** confirm that **You** are entitled to indemnity under the **Policy**, then **You** must offer all cooperation and assistance as is reasonably required by **Us** and authorise the **Panel Lawyer** to report to **Us**, as and when **We** require, on:
  - 6.1.1 The strategy and estimate of time taken to resolve the **Claim**;
  - 6.1.2 The estimate of likely **Legal Costs**;
  - 6.1.3 The reasonableness or otherwise of **Us** advancing those costs to the **Panel Lawyer** on **Your** behalf over the course of the **Dispute** and/or **Legal Proceeding**, including, but not limited to, taking into account factors such as prospects of recovery;
  - 6.1.4 Any change in their views on the likely **Legal Costs**, the strategy and time taken to resolve the **Dispute** and/or the **Legal Proceeding** and also the **Reasonable Prospects of Success** in the **Dispute** and/or **Legal Proceeding**;
  - 6.1.5 Any information about the **Claim**, whether privileged or not, which **We** may request.



- 6.2 In accepting **Our** offer to indemnify **You**, **You** agree that:
- 6.2.1 **You** will cooperate with **Us** and the **Panel Lawyer** at all times in relation to the **Dispute** and, or the **Legal Proceeding**;
  - 6.2.2 **You** authorise the **Panel Lawyer** to disclose all information in relation to the **Dispute** and/or **Legal Proceedings** to **Us** even if that information is privileged or confidential;
  - 6.2.3 **You** authorise the **Panel Lawyer** to keep **Us** informed of any change in either the likely **Legal Costs**, **Your Reasonable Prospects of Success**, the reasonableness or otherwise of **Us** advancing **Legal Costs** to the **Panel Lawyer** or the likely time frame for conclusion of the **Dispute** or **Legal Proceeding** and any other material change in the circumstances relating to the **Dispute** and/or the **Legal Proceeding**;
  - 6.2.4 **You** will respond as soon as reasonably practicable to correspondence from **Us** about the **Claim**;
  - 6.2.5 **You** acknowledge that at any time after **We** have confirmed indemnity to **You**, if there is a change in the **Dispute** or the **Legal Proceeding** which leads **Us** to conclude that **You** no longer have **Reasonable Prospects of Success**, **Our** indemnity shall cease. If this occurs, **We** will not require **You** to repay **Legal Costs** already advanced to the **Panel Lawyer** if **You** were in fact entitled to indemnity for those **Legal Costs**; and
  - 6.2.6 If **We** determine that **You** are no longer entitled to cover under the **Policy**, as referred to in clause 6.2.5 above, **You** may continue to retain the **Panel Lawyer** at **Your** own expense should **You** choose to do so.

## 7. Premium

- 7.1 If the **Insured** fails to pay the **Premium** specified in the **Schedule** or in an invoice issued by **Us** to the **Insured**, the **Insured** will not be entitled to indemnity under this **Policy**.

## 8. No Admission

- 8.1 **You** must not, without the prior written consent of **Us**:
- 8.1.1 Admit liability in relation to a **Dispute** or a **Legal Proceeding** in relation to which **You** are seeking indemnity for **Legal Costs** from **Us**;
  - 8.1.2 Settle a **Claim**;
  - 8.1.3 Incur any costs or expenses in relation to which **You** are seeking indemnity from **Us**.

## 9. Settlement and Discontinuance

- 9.1 **You** and/ or the **Panel Lawyer** must inform **Us** of all settlement offers which are made or received during the **Dispute** and/or the **Legal Proceeding**. **You** must first obtain **Our** written consent before **You** accept any offer of settlement. **We** will not withhold such consent unreasonably. If **You** refuse to accept or make an offer of settlement which **We** consider to be reasonable having regard to whether or not you have **Reasonable Prospects of Success**, then **We** will cease providing cover to **You** for **Your** further **Legal Costs**.
- 9.2 If **You** withdraw from or discontinue the **Legal Proceeding** without first obtaining **Our** written consent of to do so, **We** will not provide **You** with any further cover for **Legal Costs**. **We** will not withhold such consent unreasonably. Depending upon the circumstances of the withdrawal or discontinuance, if **You** fail to obtain **Our** prior written consent, **We** may recover from **You** any **Legal Costs** previously advanced to **You** under the **Policy**.

## 10. Appeal

- 10.1 If **You** wish to lodge or defend an appeal in respect of any decision of a Court or a Tribunal in a



**Legal Proceeding** in relation to which **We** have previously confirmed indemnity to **You**, **You** must seek **Our** prior written consent to do so as least ten (10) business days before the time for expiry of lodging the appeal. **You** must also authorise the **Panel Lawyer** to provide to **Us** whatever information **We** may request to determine **Your Reasonable Prospects of Success**.

- 10.2 If **You** wish to lodge or defend an appeal in respect of any decision of a Court or a Tribunal in a **Legal Proceeding** in relation to which **We** have not previously confirmed indemnity to **You**, **You** must notify **Us** of this appeal under Insuring Clause 2 of this **Policy** wording as if it were a **Dispute** or a **Legal Proceeding** and await **Our** determination on indemnity. **You** must also authorise Your Lawyer to provide to **Us** whatever information **We** may request to determine Your Reasonable Prospects of Success and Your entitlement to indemnity in relation to the appeal.
- 10.3 **We** will not withhold consent in relation to an appeal unreasonably.
- 10.4 If **We** are dissatisfied with the decision of any Court or a Tribunal in a **Legal Proceeding** in relation to which **We** have previously confirmed indemnity to **You**, then **We** may lodge or defend an appeal and **You** must cooperate fully with **Us** in doing so. **We** will fund the **Legal Costs** of any such appeal subject to the **Annual Aggregate Limit** and the terms of the **Policy**.

## 11. Assessment

- 11.1 If **We** ask for the **Legal Costs** to be assessed by a Court appointed or qualified costs assessor, then **You** must authorise and direct the **Panel Lawyer** to send all files the subject of the **Legal Costs** to be sent to an assessor as nominated by **Us**.

## 12. Recovery

- 12.1 If **We** have indemnified **You** for **Your Legal Costs** and there is a **Recovery** then the **Recovery** will be held on trust for **Us** and **You** for our respective interests as follows:
- 12.1.1 **We** will be entitled to:
- (a) Such proportion as the **Legal Costs** that **We** have paid to **You** bears to the total amount of the **Recovery**; and
  - (b) Any other monies owing to **Us** for unpaid **Premium** or monies due to **Us** under the **Policy**; and
- 12.1.2 **You** will be entitled to the balance.
- 12.2 **You** agree that any **Recovery** payable to **You** by a **Third Party** is to be paid by the **Third Party** to the **Panel Lawyer** to be held on trust in accordance with clause 12.1 of this **Policy Wording**.
- 12.3 If **You** receive a **Recovery** **You** will notify **Us** in writing immediately and will pay to **Us** the amount calculated in accordance with clause 12.1.1 of this **Policy** within five (5) business days.
- 12.4 If in any **Legal Proceeding** an order, award or judgement is obtained in Your favour which entitles **You** to be paid a **Recovery** **You** must take all reasonable and necessary steps to ensure that the **Third Party** pays to **You** the full amount of the **Recovery** for which **You** are entitled.

**You** must always take reasonable and necessary steps to recover any costs paid by **Us** which are recoverable by **You** and pay the recovered amount(s) to **Us**.

## 13. Administration and Claims Management

- 13.1 **We** have appointed **Proclaim** to manage all **Claims** made by **You** in relation to the **Policy**. **Proclaim** does not act for **You**. Unless **We** notify you in writing to the contrary **Proclaim** are



authorised to act on **Our** behalf in relation to all aspects of **Claims** management.

## 14. Service of Suit

- 14.1 **We** agree that in the event of a dispute arising under this **Policy**, **We** will at **Your** request submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court.
- 14.2 Any summons, notice or other initiating process to be served upon **Us** may be served upon who has authority to accept service and to enter an appearance on **Our** behalf.  
**Bankruptcy/Insolvency/Winding-Up**
- 14.3 If during the **Period of Insurance** or the duration of any **Dispute** and/or **Legal Proceeding** notified to **Us** during the **Period of Insurance** **You** file for bankruptcy, file a winding up petition, go into liquidation, enter any arrangement with creditors, or have a receiver or an administrator appointed, **We** may refuse to indemnify **You** for **further Legal Costs** under this **Policy**.
- 14.4 **You** must inform **Us** as soon as reasonably practicable if any of the events referred to in clause 15.1 above occur to **You** during the **Period of Insurance** or **Dispute** and/or **Legal Proceeding**.
- 14.5 **We** will contact **You** to discuss any options which may be available to **You**.

## 15. Cancellation

- 15.1 **You** may cancel this **Policy** at any time by telling **Us** or **Your** broker that **You** want to cancel the **Policy**.
- 15.2 **We** may only cancel this **Policy** in accordance with the provisions of the Insurance Contracts Act 1984 (Cth) (**ICA**).
- 15.3 **We** may cancel this **Policy** if:
  - 15.3.1 **You** fail to comply with the duty of utmost good faith;
  - 15.3.2 **You** fail to comply with a provision of this **Policy** including – failure to pay the **Premium**.
- 15.4 If **We** wish to cancel the **Policy**, **We** will give written notice to **You** informing **You** of **Our** intention to cancel. That cancellation will take effect at the earlier of the following times:
  - 15.4.1 the time when another policy of insurance between **You** and **Us** or some other insurer, being a policy that is intended by **You** to replace this **Policy**, is entered into; or
  - 15.4.2 at 4.00 pm on the thirtieth (30th) business day after the day on which **We** notified **You** of **Our** intention to cancel.
- 15.5 **We** will cancel **Your Policy** by sending a written notice to **Your** last address known to **Us**. **We** will return the **Premium** that **You** have paid for the remaining balance of the **Period of Insurance** (along with GST and any relevant charges where this is allowed).
- 15.6 If the **Premium** which **You** paid to **Us** was funded by a premium funding company which holds a legal right over the **Policy** by virtue of a notice of assignment and irrevocable power of attorney, **We** will return the **Premium** to the premium funding company calculated on the basis set out above.

## 16. Fraud and Dishonesty

- 16.1 If any **Claim** is brought about by any fraudulent or dishonest conduct on **Your** part or with **Your** actual knowledge, **We** shall be entitled to refuse to pay such **Claim** in accordance with the provisions of the **ICA**.



## 17. Change to Risk

- 17.1 During the **Period of Insurance** and again at renewal, **You** must inform **Us** of any material change in **Your Business** or in the contractual arrangements which **You** are entering which may affect the risk **We** are insuring under this **Policy**.

## 18. Jurisdiction

- 18.1 All disputes arising under this **Policy** between the **Insured** and the **Insurer(s)** will be determined by a Court of competent jurisdiction within the State or Territory of Australia in which the **Insured's** principal place of Business is located according to the law of that jurisdiction.

## 19. Waiver or Subrogation

- 19.1 Any waiver must be in writing signed by **Us** and **You** and stating specifically that it was intended to modify this **Policy**. No waiver of any provision of this **Policy** shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver unless otherwise provided. No provision of this **Policy** shall be deemed to be waived by a course of conduct.
- 19.2 In the event that **We** pay **Your Legal Costs** or any part of them as part of **Our** indemnity to **You** under this **Policy**, **We** will be subrogated to the extent of such payment to all **Your** rights to recover **Your Legal Costs** from the **Third Party**. In such case **You** will execute all documents required and will do everything necessary to secure and preserve **Your** rights including the executions of such documents necessary to enable **Us** effectively to bring legal proceedings in **Your** name.

## 20. Non-Imputation

- 20.1 If this **Policy** is arranged in the joint names of more than one person or entity as the **Insured**, then:
- 20.1.1 each insured person and/or entity shall be covered as if it made its own Proposal for this **Policy**;
  - 20.1.2 any declaration, statement or representation made by a person or entity in any **Proposal** shall be construed as a separate declaration, statement or representation by each insured person or entity;
  - 20.1.3 any knowledge possessed by any one insured person and/or entity shall not be imputed to the other.

## 21. Sanction Limitation and Exclusion

- 21.1 **We** will not be deemed to provide cover and **We** will not be liable to pay any **Claim**, pay and **Legal Costs** or provide any other benefit under this **Policy** to the extent that the payment of any **Claim** or **Legal Costs** or the provision of such benefit would expose **Us** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

## 22. Territorial Limits

- 22.1 This **Policy** only covers **Insureds** in relation to the **Business** they conduct within the Commonwealth of Australia and in relation to a **Dispute** and/or **Legal Proceeding** within Australia.





## 23. Goods and Services Tax

23.1 If **You** are registered for GST, **We** will not pay the GST element of any **Legal Costs**.

