



Combined Liability Insurance (Australia) SJC2005WW-AUS

Wording



COMBINED LIABILITY INSURANCE (AUSTRALIA)
(FORM SJC2005WW-AUS)

1 Operative Clause

The Underwriters will indemnify the Insured against their legal liability to pay damages (including claimants' costs, fees and expenses) in accordance with the law of any country stated in the Schedule as a third party jurisdiction covered by the Policy.

This indemnity applies only to such legal liability as defined by each insured Section of this Policy arising out of the Business, subject always to the terms, conditions and exclusions of such Section and of the Policy as a whole.

2 Definitions

For the purpose of this Policy:

2.1 Insured means:

2.1.1 the person, persons or corporate body named in the Schedule

2.1.2 subsidiary companies of the Insured notified to and accepted in writing by the Underwriters.

2.2 Business means the business stated in the Schedule conducted at or from premises of the Insured and shall include:

2.2.1 the ownership, repair and maintenance of the Insured's own property

2.2.2 provision and management of canteen, social, sports and welfare organisations for the benefit of any Person Employed and medical, firefighting, and security services

2.2.3 private work undertaken by any Person Employed for any director or partner of the Insured with the prior consent of the Insured.

2.3 **Injury** means death, bodily injury, illness or disease of or to any person.

2.4 **Damage** means loss of possession of or physical damage to tangible property.

2.5 **Person Employed** means any:

2.5.1 employee being a person under a contract of service or apprenticeship with the Insured

2.5.2 labour master and persons supplied by him

2.5.3 person employed by labour only sub-contractors



- 2.5.4 self employed person under the control of the Insured
- 2.5.5 person hired to or borrowed by the Insured
- 2.5.6 person undertaking study or work experience or youth training scheme with the Insured working for the Insured in connection with the Business.
- 2.6 **Product** means any tangible property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured.
- 2.7 **Pollution** means pollution or contamination of the atmosphere or of any water, land, buildings or other tangible property.
- 2.8 **Defence Costs** means costs, fees and expenses incurred by the Insured with the written consent of the Underwriters in the defence or settlement of any claim, suit or proceedings which are or would, if successful, be covered under this Policy, including legal expenses arising out of representation at any inquest or inquiry or arising out of the defence of any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of indemnity by this Policy.
- 2.9 **Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

3 Indemnity to Others

The indemnity granted extends to:

- 3.1 managerial or supervisory Persons Employed in their business capacity for legal liabilities arising out of the performance of the business and any director or partner of the Insured in respect of private work undertaken by any Person Employed for such director or partner with the prior consent of the Insured
- 3.2 the officers, committees and members of the Insured's canteen, social, sports, medical, fire fighting, security services and welfare organisations for legal liabilities incurred in their respective capacity as such
- 3.3 any person or firm for legal liabilities arising out of the performance of a contract with the Insured constituting the provision of labour only
- 3.4 any principal for legal liabilities arising out of work carried out by the Insured under a contract or agreement in respect of which the Insured would have been entitled to indemnity under this Policy if the claim had been made against the Insured



3.5 the personal representatives of any person or party indemnified by reason of this Clause 3 in respect of legal liability incurred by such person or party.

Provided always that all such persons or parties shall observe, fulfil and be subject to the terms, conditions and exclusions of this Policy as though they were the Insured.

4 Cross Liabilities

Each person or party specified as the Insured in the Schedule is separately indemnified in respect of claims made against any of them by any other such person or party subject to the Underwriters' total liability not exceeding the stated Limits of Indemnity.

5 Limits of Indemnity

SECTIONS A, B and C– The Underwriters' total liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the Schedule in respect of any one occurrence or series of occurrences arising from one originating cause. Each Section shall be subject to its own Limit of Indemnity, provided always that should the same originating cause or occurrence give rise to indemnity under more than one Section, the total amount of Underwriters' liability for all claims arising out of one originating cause or occurrence under all such Sections combined shall not exceed the single greatest Limit of Indemnity available under the Sections providing indemnity.

SECTIONS B AND C separately – The Underwriters' total liability to pay damages (including claimants' costs, fees and expenses) shall not exceed the sum stated in the Schedule against each Section in respect of all occurrences combined during the Period of Insurance.

6 Defence Costs

The Underwriters will also pay Defence Costs provided that Underwriters' shall not be liable for any fines or penalties imposed as a consequence of any claim, suit or proceedings. Defence Costs will be payable in addition to or inclusive within the Limits of Indemnity as stated in the Schedule. Where Defence Costs are payable in addition to the Limit of Indemnity, if the amount required in settlement of the third party claim is greater than the Limit of Indemnity available under this Policy in respect of such claim, then the Underwriters will not pay more than their corresponding proportional share of the associated Defence Costs.



Section A – Public Liability

7 Section A – Indemnity

The Insured is indemnified by this Section in accordance with the Operative Clause for and/or arising out of accidental Injury and/or Damage occurring during the Period of Insurance.

8 Section A – Exclusions

This Section does not apply to or include legal liability:

- 8.1 arising out of Pollution or arising out of any Product
- 8.2 arising out of the ownership, possession or use by or on behalf of the Insured or any person or party entitled to indemnity of any vehicle or trailer which is either registered or is required to be registered under law other than legal liability:
- 8.3 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
- 8.4 arising beyond the limits of any carriageway or thoroughfare caused by the loading or unloading of any motor vehicle or trailer
- 8.5 arising out of any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking

Provided always that no indemnity is granted against liability for which compulsory insurance or security is required by legislation or for which the government or other authority has accepted responsibility

- 8.6 arising out of the ownership, possession or use by or on behalf of the Insured of any aircraft, spacecraft, hovercraft, offshore installation, rig, platform or watercraft (other than watercraft not exceeding 10 metres in length whilst on inland waterways)
- 8.7 for Damage to property owned, leased to, hired by, under hire purchase, on loan to, held in trust by or otherwise in the Insured's care, custody or control other than:
 - 8.7.1 clothing and personal effects of Persons Employed and visitors
 - 8.7.2 premises (including contents therein) temporarily occupied by the Insured for work therein or thereon but no indemnity shall be granted for Damage to that part of the property on which the Insured is or has been working and which arises out of such work
 - 8.7.3 premises tenanted by the Insured but always excluding liability for Damage
 - (i) arising out of any perils which the tenancy agreement requires the Insured to insure against or



- (ii) to any property which the tenancy agreement requires the Insured to insure or
- (iii) to any property which the tenancy agreement requires the Insured to be responsible for

except if such Damage is the proven consequence of the Insured's own negligence.

- 8.8 arising out of breach of professional duty or wrongful or inadequate advice given separately for a fee.

Section B – Products Liability

9 Section B – Indemnity

The Insured is indemnified by this Section in accordance with the Operative Clause for and/or arising out of accidental Injury and/or Damage occurring during the Period of Insurance and arising out of or in connection with any Product.

10 Section B – Exclusions

This Section does not apply to or include legal liability:

- 10.1 arising out of Pollution
- 10.2 for costs incurred in the repair, reconditioning or replacement of any Product or part thereof which is or is alleged to be defective
- 10.3 arising out of the recall of any Product or part thereof
- 10.4 arising out of any Product which with the Insured's knowledge is intended for incorporation into the structure, machinery or controls of any aircraft, other aerial device, hovercraft or waterborne craft
- 10.5 arising by virtue of a contract or agreement other than a warranty of fitness or quality of the Insured's Products established or implied by virtue of the Sale of Goods Act or equivalent legislation or a warranty that work done will be performed in a workmanlike manner

Section C – Pollution Liability

11 Section C – Indemnity

The Insured is indemnified by this Section in accordance with the Operative Clause for and/or arising out of accidental Injury and/or Damage occurring during the Period of Insurance and arising out of Pollution which was the direct result of a sudden, identifiable, unintended and unexpected event occurring in its entirety at a specific time and place during the Period of Insurance.



12 Section C – Exclusions

This Section is subject to the Exclusions of Sections A and B other than 8.1 (as regards Pollution) and 10.1 and also does not apply to or include legal liability for:

- 12.1 Damage to premises presently or at any time previously owned or tenanted by the Insured
- 12.2 Damage to land or water within the boundaries of or below any land or premises presently or at any time previously owned or leased by the Insured
- 12.3 Damage caused or contributed to by the Insured's failure to take reasonable precautions to prevent Pollution.

General Exclusions

13 Exclusions applicable to all Sections of the Policy

This Policy does not apply to or include legal liability:

- 13.1 for or arising out of the deliberate, conscious or intentional disregard by the Insured's technical or administrative management of the need to take all reasonable steps to prevent Injury or Damage
- 13.2 for or arising out of Injury to a Person Employed where such Injury arises out of and in the course of employment by the Insured or any liability arising out of the Workers' Compensation Act or any similar legislation anywhere in the world
- 13.3 for or arising out of liquidated damages clauses, penalty clauses or performance warranties unless it is proven that liability would have attached in the absence of such clauses or warranties
- 13.4 directly or indirectly occasioned by, happening through or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.
- 13.5 directly or indirectly caused by or contributed to by or arising out of:
 - 13.5.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
 - 13.5.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof
- 13.6 for any award of punitive or exemplary damages whether as fines, penalties, multiplication of compensatory awards or damages, or in any other form whatsoever
- 13.7 for the Excess stated in the Schedule in respect of the first amount of each occurrence



- 13.8 arising from circumstances known to the Insured or which the Insured ought reasonably to have known prior to the inception date of this Policy
- 13.9 for any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss
- 13.10 for loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This exclusion also applies to loss, injury, 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 any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, injury, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

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

This exclusion shall take precedence over any other term of the Policy, including any endorsement added at any time, which does not expressly override it.

General Conditions

14 General Conditions applicable to all Sections of the Policy

- 14.1 The Insured shall give notice in writing to the Underwriters of any occurrence that may give rise to a claim under this Policy and shall give all such additional information as the Underwriters may require as soon as reasonably practicable. Every claim, writ, summons, notice of adjudication, referral notice or process and all documents relating thereto shall be forwarded to the Underwriters as soon as reasonably practicable.
- 14.2 No admission, offer, promise or payment shall be made or given by or on behalf of the Insured without the written consent of the Underwriters, who shall be entitled to take over and conduct in the name of the Insured 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 the Underwriters may reasonably require.



- 14.3 The Underwriters may at any time pay to the Insured in connection with any claim or series of claims under this Policy to which a Limit of Indemnity applies the amount of such Limit (after deduction of any sums already paid) or any lesser amount for which such claims can be settled and upon such payment being made the Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claims except for the payment of Defence Costs incurred prior to the date of such payment.

This clause does not apply where and to the extent Defence Costs are inclusive within the Limit of Indemnity.

Provided that if the Underwriters exercise the above option and the amount required to dispose of any claim or series of claims exceeds the Limit of Indemnity and such excess amount is insured either in whole or in part, with Defence Costs payable in addition to the Limit of Indemnity under this Policy then the Underwriters will also contribute their proportion of subsequent Defence Costs incurred with their prior written consent as the Limit of Indemnity bears to the amount paid to dispose of a claim.

- 14.4 The Insured shall give notice to the Underwriters of any alteration or circumstance which materially affects the risks insured under this Policy and until the Underwriters are advised of such alteration or circumstance and shall have expressly agreed in writing to accept liability for such altered risk and the Insured has paid or agreed to pay the additional premium, if any, the Underwriters shall not be liable in respect of any claim or claims due wholly or partially to any such alteration or circumstance.
- 14.5 Where the premium is provisionally based on the Insured's estimates, the Insured shall keep accurate records and within 90 days of expiry of the Period of Insurance declare such particulars as the Underwriters require. The premium shall then be adjusted and any difference paid or allowed to the Insured as the case may be subject to any minimum premium that may apply. Failure to declare such particulars to the Underwriters shall entitle the Underwriters to estimate if they so wish such particulars and to assess the further premium payment due calculated on such estimated particulars.
- 14.6 Any written proposal and/or declaration made by the Insured shall form the basis of this contract of insurance and is deemed to be incorporated herein.
- 14.7 If any claim under this Policy is in any respect fraudulent all benefit in respect of such claim shall be forfeited.
- 14.8 The Underwriters may cancel this Policy for any of the reasons allowed by the Insurance Contracts Act 1984 (as amended) by giving 3 working days notice in writing of such cancellation to the Insured's last known address, subject to any longer notice period provided for in the Premium Payment Condition, if any, contained herein.



- 14.9 This Policy and the Schedule will be interpreted in accordance with the law of Australia. The Policy and the Schedule 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.
- 14.10 All disputes concerning the interpretation of this Policy are understood and agreed by both the Insured and the Underwriters to be subject to Australian Law. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within Australia and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.
- 14.11 The Insured shall advise the Underwriters at the time of any claim under this Policy of the details of all other liability insurance from which the Insured may benefit, regardless of whether such claim is in the Insured's opinion recoverable from such other insurance, in order for the Underwriters to establish rights of contribution which they may have.
- 14.12 No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

**Endorsement****Australia Terrorism Insurance Act 2003 Notice**

The Underwriters have treated this Insurance (or part of it) as an Insurance to which the Australia Terrorism Insurance Act 2003 (ATIA) applies.

ATIA and the supporting regulations made under the Act deem cover into certain policies and provide that the Terrorism exclusion to which this Insurance is subject shall not apply to any "eligible terrorism loss" as defined in ATIA.

Any coverage established by ATIA is only in respect of any "eligible terrorism loss" resulting from a "terrorist act" which is a "declared terrorist incident" as defined in ATIA. The Terrorism exclusion to which this Insurance is subject applies in full force and effect to any other loss and any act or event that is not a "declared terrorist incident".

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and Deductibles remain unchanged.

If any or all of the Underwriters have reinsured this Insurance with the Australian Reinsurance Pool Corporation, then any such Underwriters will not be liable for any amounts for which they are not responsible under the terms of ATIA due to the application of a "reduction percentage" as defined in ATIA which results in a cap on the Underwriter's liability for payment for "eligible terrorism losses".

NMA 2984**27/01/04**

Form approved by Lloyd's Market Association [Non-Marine]



Endorsement

Combined Liability Insurance (Australia) SJC2005WW-AUS

Advertising Injury

It is hereby understood and agreed:

2 ‘Definitions’ is amended to include the following:

2.10 **Advertising Injury** means libel, slander, defamation, infringement of copyright, title or slogan, piracy, idea misappropriation or invasion of rights of privacy, unfair competition, unintentional breach of the misleading or deceptive conduct provisions of any consumer protection legislation or similar legislation of any country, arising out of the Insured’s advertising activities.

7 ‘Section A – Public Liability, Section A – Indemnity’ is replaced with the following:

The Insured is indemnified by this Section in accordance with the Operative Clause for and/or arising out of accidental Injury, Damage occurring or Advertising Injury caused by material first published or broadcast during the Period of Insurance.

All other terms, conditions and limitations remain unaltered.



Endorsement

Combined Liability Insurance (Australia) SJC2005WW-AUS

Communicable Disease Exclusion

1. Notwithstanding any provision to the contrary within this insurance, this insurance does not insure any loss, damage, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of, or in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto.

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:
 - 2.1. 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
 - 2.2. 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
 - 2.3. the disease, substance or agent can cause or threaten bodily injury, illness, damage to human health, human welfare or property.

LMA5397

29 April 2020



Endorsement

Combined Liability Insurance (Australia) SJC2005WW-AUS

Financial Claims Scheme

This policy may be a protected Policy under Federal Government's Financial Claims Scheme (FCS), which is administered by the Australian Prudential Regulation Authority (APRA). The FCS may apply in the event that a general insurance company becomes insolvent. If the FCS applies a person who is entitled to make a claim under this policy may be entitled to a payment under the FCS. Access to the FCS is subject to eligibility criteria. You may obtain further information about the FCS from www.fcs.gov.au and the APRA hotline on 1300 55 88 49.