



## Excess Third Party Liability Policy

# Excess Third Party Liability Policy

## Issued to

## AusCycling Limited

In Consideration of the Insured named in the Schedule (hereinafter called "the Insured") paying or agreeing to pay to the Insurer(s) who have subscribed to this Policy (hereinafter called "the Insurer(s)") the premium for or on account of the insurance hereinafter contained.

The Insurer(s) agree subject to the terms, conditions, limitations, provisions and exclusions hereinafter contained to indemnify the Insured to the extent and in the manner hereinafter provided.

Provided that the liability of all of the Insurer(s) collectively shall in no case exceed the Limits of Liability stated in the Schedule or elsewhere herein.

And provided further that the liability of each of the Insurer(s) individually shall in no case exceed the proportion set against each Insurer(s) name.

Signed on behalf of the Insurer(s) on 07<sup>th</sup> March 2022.

<u>Insurer(s)</u>	<u>Proportion</u>	<u>Stamp &amp; Signature</u>
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<b>Chase Underwriting Pty Ltd</b>		
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(for and on behalf of Certain Underwriters at Lloyd's)		
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	100%	
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# Schedule

## Policy Number

08XSTPL631364

## Insured

AusCycling Limited including all affiliated clubs, all registered members, all temporary members, all officials, all accredited coaches, race directors, judges, directors, executives, committee members, employees and event promoters of the Insured including apprentices, voluntary workers and work experience students.

## Insured's Business

AusCycling was a new organisation formed from the coming together of the already well-established Cycling Australia, Mountain Bike Australia and BMX Australia. This includes a full merge of all assets, members and approximately 500 affiliated clubs.

AusCycling will be the only recognised NSO for Cycling in Australia and as such will receive support from Sport Australia. AusCycling is the pack body for mountain biking, bmxing and road cycling in Australia. They aim to lead the development and promotion in Australia for the benefit and enjoyment of all bikers.

The principal activities of AusCycling include but are not limited to:

1. Providing services, trail advocacy and communications of value to our members to enable them to enjoy cycling activities.
2. Promoting, developing and advocating cycling activities as a healthy sporting and recreational pastime.
3. Fostering and maintaining constructive relationships with cycling organisations and key stakeholders.
4. Providing a safe and fair environment for competitive cycling activities, appropriate and relevant to the various levels across the sports.
5. Managing and governing the organisation in a transparent, financially responsible and sustainable manner

## .Period of Insurance

From: 21<sup>st</sup> February 2022 at 4:00pm local standard time;

To: 21<sup>st</sup> February 2023 at 4:00pm local standard time;

Or any subsequent period for which the Insured has requested and the Insurer(s) has accepted renewal.

## Territorial Limits

Worldwide, excluding operations domiciled in the United States of America and/or Canada other than exports and non-manual visits of directors and employees.

## Limits of Liability Excess Limits

\$10,000,000 any one Occurrence unlimited in the aggregate during the Period of Insurance but limited to:

\$10,000,000 in the aggregate during the Period of Insurance arising from Products Liability and/or Completed Operations

## Primary / Underlying Limits of Liability

\$10,000,000 any one Occurrence unlimited in the aggregate during the Period of Insurance but limited to:

\$10,000,000 in the aggregate during the Period of Insurance arising from Products Liability and/or Completed Operations

## Primary / Underlying Insurers

Certain Underwriters at Lloyd's  
Layer / Limit: 1st Excess / AUD 5m x/s AUD 5m  
Policy Number: B0621CAUSC000922

Certain Underwriters at Lloyd's  
Layer / Limit: Primary / AUD 5m  
Policy Number: B0621CAUSC000422

## Unique Market Reference

B0621CAUSC001122

## Applicable Jurisdiction

This insurance shall be governed by and construed in accordance with the law of Commonwealth of Australia and each party agrees to submit to the exclusive jurisdiction of the Courts of Commonwealth of Australia in the event of a dispute arising hereunder

## Premium

As Agreed.

## Insuring Clause

Subject to the exclusions, conditions and other terms of this Policy, the Insurer(s) agree to indemnify the Insured in respect of their liability to pay compensation (including claimants' costs and expenses) for claims arising out of Personal Injury and/or Property Damage and/or Advertising Liability occurring during the Period of Insurance all as covered by and defined in the Policy specified in the Schedule and issued by the "Primary / Underlying Insurer(s)" stated therein.

## Limits

PROVIDED ALWAYS THAT:

- (a) liability attaches to the Insurer(s) only after the "Primary / Underlying Insurer(s)" have paid or have been held liable to pay the full amount of their respective Ultimate Net Loss liability as specified in the Schedule and designated "Primary / Underlying Limits(s)" and the Insurer(s) shall only be liable for a further amount of Ultimate Net Loss as is set forth in the Schedule under the designation "Excess Limit(s)" in excess of the "Primary / Underlying Limit(s)".
- (b) Neither the inclusion of more than one entity in the name of the Insured nor the addition of any additional Insured under this Policy shall, in any way, operate to increase the Insurer(s) "Limit of Liability" beyond that provided for under "Excess Limit(s)" in the Schedule.

## Definitions

- (a) Ultimate Net Loss: The words "Ultimate Net Loss" shall be understood to mean the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and for other valid and collectible insurances, excepting however the policy(ies) of the "Primary / Underlying Insurer(s)", and shall exclude all Costs.
- (b) Costs: The word "Costs" shall be understood to mean investigation, adjustment and legal expenses (excluding, however, all office expenses of the Insured, all expenses for salaried employees of the Insured and general retainer fees for counsel normally paid by the Insured).

## Conditions

- (a) **INCURRING OF COSTS:** In the event of a claim or claims arising which appear likely to exceed the “Primary / Underlying Limit(s)”, no Costs shall be incurred by the Insured without the written consent of the Insurer(s).
- (b) **APPORTIONMENT OF COSTS:** Costs incurred by or on behalf of the Insured with the written consent of the Insurer(s) and for which the Insured is not covered by the “Primary / Underlying Insurer(s)”, shall be apportioned as follows:
- (i) should any claim or claims become adjustable prior to the commencement of trial for not more than the “Primary / Underlying Limit(s)”, then no such costs shall be payable by the Insurer(s)
  - (ii) should, however, the amount for which the said claim or claims may be so adjustable exceed the “Primary / Underlying Limit(s)” then the Insurer(s), if they consent to the proceedings continuing, shall contribute to the Costs incurred by or on behalf of the Insured in the ratio that their proportion of the Ultimate Net Loss as finally adjusted bears to the whole amount of such Ultimate Net Loss
  - (iii) in the event that the Insured elects not to appeal a judgment in excess of the “Primary / Underlying Limit(s)”, the Insurer(s) may elect to conduct such appeal at their own cost and expense and shall be liable for the court costs and interest incidental thereto, but in no event shall the total liability of the Insurer(s) exceed the “Limit of Liability” as provided for herein, plus the expenses of such appeal.
- (c) **APPLICATION OF RECOVERIES:** All recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured and Insurer(s), provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not payable until the Insured’s Ultimate Net Loss has been finally ascertained.
- (d) **ATTACHMENT OF LIABILITY:** Liability to pay under this Policy shall not attach unless and until the “Primary / Underlying Insurer(s)” shall have admitted liability for the “Primary / Underlying Limit(s)” or unless and until the Insured has by final judgment been adjudged to pay an amount which exceeds such “Primary / Underlying Limit(s)” and then only after the “Primary / Underlying Insurer(s)” have paid or been held liable to pay the full amount of the “Primary / Underlying Limit(s)”.
- (e) **MAINTENANCE OF UNDERLYING INSURANCE:** This Policy is subject to the same terms, Definitions, Exclusions and Conditions (except as regards the premium, the obligation to investigate and defend, the renewal agreement (if any), the amount and limits of liability other than any deductible or self-insurance provisions and except as otherwise provided herein) as are contained in or as may be added to the policy of the “Primary / Underlying Insurer(s)” prior to the happening of an occurrence for which claim is made hereunder. Should, however, any alteration be made in the premium for the policy of the “Primary / Underlying Insurer(s)” during the currency of this Policy, Insurer(s) reserve the right to adjust the premium hereon accordingly.

It is a condition of this Policy that the policy(ies) of the “Primary / Underlying Insurer(s)” shall be maintained in full effect during the currency of this Policy

except for any reduction of the aggregate limits contained therein solely by payment of claims in respect of occurrences during the "Period of Insurance".

In the event of reduction of the aggregate limits of liability of the Primary / Underlying insurance(s), this Policy shall pay the excess of the reduced aggregate limit. In the event of exhaustion of the aggregate limits of liability of the Primary / Underlying insurance(s) this Policy shall continue in force as Primary insurance and the deductible set forth under the said Primary / Underlying insurance shall apply to this Policy.

- (f) **CANCELLATION:** The Insured may cancel this Policy by giving thirty (30) days' notice in writing to the Insurer(s).

After cancellation by the Insured the premium for the period to cancellation shall be adjusted on a pro-rata basis and the Insured shall be allowed a return premium of ninety (90) per cent of the premium amount so calculated.

The Insurer(s) may cancel this Policy in any of the circumstances set out in Sections 60 and 61 of the Insurance Contracts Act, 1984 (as amended).

- (g) **NOTIFICATION OF CLAIMS:** The Insured shall give written notice as soon as reasonably practical to the insurance intermediary through whom you arranged this insurance in the first instance of any claim made against the Insured (or any specific event or circumstance that may give rise to a claim being made against the Insured) which is likely to exceed 25% of the total "Primary / Underlying Limit(s)".

## Attaching to and forming part of this Contract

### Terrorism Exclusion Endorsement

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes liability 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.

For the purpose of this endorsement an act of 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.

This endorsement also excludes 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 Insurers 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 endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

### Drop Down Exclusion

It is understood and agreed that coverage hereon is excluded in respect of Sub-Limited coverages within the Primary / Underlying Policy(ies).

### Sanction Limitation and Exclusion Clause

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.

### Insurance Council of Australia's General Insurance Code of Practice

This Insurance does not comply with the Insurance Council of Australia's General Insurance Code of Practice.

Within the clauses set out below, the terms 'Retail Business' and 'Wholesale Business', shall carry the meaning ascribed to them within the Insurance Council of Australia's General Insurance Code of Practice.



The following clause applies to Wholesale Business:

## Australian Litigation Dispute Resolution Endorsement

The Insurers hereon agree that:

- (i) In the event of a dispute arising under this Insurance, the Insurer at the request of the Insured will 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.
- (ii) Any summons notice or process to be served upon the Insurers may be served upon:

Lloyd's Underwriters' General Representative in Australia

Suite 1603

Level 16

1 Macquarie Place

Sydney NSW 2000

Telephone Number: (02) 8298 0753

Email: idraustralia@lloyds.com

who has authority to accept service and to enter an appearance on the Insurer's behalf, and who is directed at the request of the Insured to give a written undertaking to the Insured that he will enter an appearance on the Insurer's behalf.

- (iii) If a suit is instituted against any one of the Insurers, all Insurers hereon will abide by the final decision of such Court or any competent Appellate Court.

The amount of Premium specified herein is the amount due to the Insurers and any commission allowed by them is to be regarded as remuneration of the insurance intermediary placing this Insurance.

In the event of a claim arising under this Insurance IMMEDIATE NOTICE should be given to the insurance intermediary through whom you arranged this insurance in the first instance.

**Subject otherwise to the Terms, Conditions, Limitations and Exclusions of the Contract**

# ENDORSEMENT - LMA5470

The following Endorsement forms part of this Third Party Liability Policy :

It is hereby noted and agreed that this Policy is endorsed to include the following Exclusion:

## Cyber and Data Total Exclusion

1. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy does not apply to any loss, damage, liability, claim, fines, penalties, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any:
  - 1.1 **Cyber Act** or **Cyber Incident** including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any **Cyber Act** or **Cyber Incident**; or
  - 1.2 loss of use, reduction in functionality, repair, replacement, restoration, reproduction, loss or theft of any **Data**, including any amount pertaining to the value of such **Data**;

Regardless of any other cause or event contributing concurrently or in any other sequence thereto, unless subject to provisions of paragraph 5.

2. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
3. This endorsement supersedes any other wording in the Policy or any endorsement thereto having a bearing on a **Cyber Act**, **Cyber Incident** or **Data**, and, if in conflict with such wording, replaces it.
4. If the Underwriters allege that by reason of this endorsement that loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.
5. However, clause 1.1 of this Exclusion shall not apply in respect of any actual or alleged liability for and/or arising out of:
  - 5.1 Any ensuing third party bodily injury (other than mental injury, mental anguish or mental disease), or
  - 5.2 Any ensuing physical damage to or destruction of third party property

Resulting from or arising out of a **Cyber Incident** or a **Cyber Act**. Nothing contained in the foregoing shall provide any coverage for any action taken in controlling, preventing, suppressing or remediating a **Cyber Incident** or a **Cyber Act**.

### Definitions

- 6 **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 the Insured or any other party.

- 7 **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**.
- 8 **Cyber Incident** means:
  - 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
  - 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**.
9. **Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

# ENDORSEMENT - LMA5396

The following Endorsement forms part of this Third Party Liability Policy :

It is hereby noted and agreed that this Policy is endorsed to include the following Exclusion:

## Communicable Disease Exclusion

1. Notwithstanding any provision to the contrary within this policy, this policy does not cover all 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.
2. For the purposes of this endorsement, 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. 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:
  - 3.1. 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
  - 3.2. 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
  - 3.3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage

In all other respects this Policy remains unaltered.