



EXCESS LIABILITY POLICY

GA_EL_V3.1

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EXCESS LIABILITY POLICY

Attestation

This Policy incorporates the Placing Schedule, Insuring Agreements, Definitions, Conditions, Exclusions, endorsements, Memoranda and any other terms attached which are to be read together.

Any word or expression to which a specific meaning has been given in any part of this Policy will bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

Recital

In consideration for the payment or agreement by the Insured to pay the Premium shown in the Placing Schedule, the Insurer agrees to indemnify the Insured subject to the terms and conditions of this Policy.

INSURING AGREEMENTS

1. Coverage

The Insurer will indemnify the Insured in accordance with the terms, exclusions, conditions, definitions and endorsements of the Primary Policy except where amended by this Policy. Provided that:

- (a) such claim is covered by, or but for the relevant limit of liability would have been covered by the Primary Policy;
- (b) the Insurer will only be liable after the Primary Policy insurer and any Underlying Excess Policy insurer have paid, or are held legally liable to pay, the limit of the applicable Primary Policy and other Underlying Excess Policy, and then only up to the Limit(s) of Liability as provided for in the Placing Schedule.

2. Limit(s) of Liability

Regardless of the number of parties nominated as Insureds under this Policy and regardless of the number of claims made and suits brought against any or all Insureds, the total limit of the Insurer's liability resulting from any one Occurrence will not exceed the amount specified in the Placing Schedule.

The liability of the Insurer will be further limited to the amount stated as the aggregate Limit(s) of Liability in the Placing Schedule on account of all Occurrences during each Period of Insurance arising out of Products Liability.

3. Additional Payments

With respect to Occurrences covered by the Primary Policy the Insurer will, in addition to the Limit(s) of Liability of this Policy, pay:

- (a) all charges, expenses and legal costs incurred or obliged to be paid by the Insurer or by the Insured with the consent of the Insurer (whose consent must not be unreasonably withheld). The Insurer's costs will include all amounts expended in the investigation, settlement or defence of any claims for Compensation (even if such claim is groundless, false or fraudulent) including amounts incurred by the Insured for actual loss of earnings and in relation to any appeal, coroner's inquest, royal commission or other enquiry in respect of which the Insured is entitled to indemnity under this Policy or if sustained would be so entitled;
- (b) all premiums on appeal bonds and security for costs required in any such suit and pay premiums on bonds to release attachments in any suit for an amount not in excess of the applicable Limit(s) of Liability of this Policy, but the Insurer will have no obligation to apply for or furnish any such bonds or security for costs;
- (c) all interest accruing after entry of judgement until the Insurer has paid, tendered or deposited in court such part of such judgement as does not exceed the Limit(s) of Liability;
- (d) all legal costs incurred by the Insured with the consent of the Insurer (whose consent must not be unreasonably withheld) arising out of the defence of any proceedings in any court arising out of any alleged breach of statutory duty resulting in a claim which may be the subject of indemnity under this Policy;

- (e) all expenses incurred by the Insured for temporary protection (which includes purchasing, hiring, erecting or dismantling hoarding, barriers, fences and any other form of temporary protection whether provided in compliance with any statutory requirement or not) of damaged or undamaged property of any person or entity, including temporary repairs, shoring up and underpinning of such property.

The Additional Payments referred to 3 (a) to (e) above does not apply to any expenses or costs for which insurance is provided by the Primary Policy and any Underlying Excess Policy unless:

- (f) the Primary Policy insurer and any Underlying Excess Policy insurer) have discharged their liability by way of payment or agreement to pay the Limit of Liability applicable to the Primary Policy and other Underlying Excess Policy in accordance with the provisions of the Primary Policy; or
- (g) the claim, suit or proceeding appears reasonably likely to involve a claim which, in the event of the Insured being held liable, is likely to involve this Policy.

Provided that:

- (i) if a payment exceeding the Insurer's Limit(s) of Liability has to be made to dispose of a claim, the liability of the Insurer for any Additional Payments will be limited to the same proportion of the Additional Payments as the Limit(s) of Liability bears to the payment;
- (ii) in the event of a claim being made against the Insured in any court or before any other legally constituted body in the United States of America or Canada the Limit(s) of Liability will apply to such claim(s) inclusive of all Additional Payments;
- (iii) in jurisdictions where the Insurer may be prevented by law or otherwise from carrying out any of 3 (a) to (d) above, the Insurer will pay any expense incurred with its written consent (whose consent must not be unreasonably withheld) for others to carry out such actions and payments on its behalf.

DEFINITIONS

The following Definitions will apply to this Policy. In the absence of a more specific definition, capitalised terms used in this Policy will be defined as per the Primary Policy, unless otherwise stated.

Insurer means:

the Insurer detailed in the Placing Schedule which has issued this Policy.

Limit(s) of Liability means:

the applicable limit of liability specified in the Placing Schedule.

Placing Schedule means:

the schedule of insurance attaching to this Policy.

Policy means:

this contract of insurance, consisting of this document, the Placing Schedule and any endorsement or document issued by the Insurer varying coverage.

Primary Policy means:

the insurance(s) issued to the Insured, listed in the Schedule of Underlying Insurance contained in the Placing Schedule (or added by endorsement).

Underlying Excess Policy means:

the policy(ies) of excess insurance, listed in the Schedule of Underlying Insurance contained in the Placing Schedule (or added by endorsement), above the Primary Policy.

CONDITIONS

1. Appeals

In the event that the Insured or the Primary Policy insurer elects not to appeal a judgment which involves a payment in excess of the Underlying Excess Policy Limit of Liability, the Insurer may elect to make such appeal at its own cost and expense and will be liable for the taxable costs and disbursements and interest incidental to such appeal.

2. Cancellation

- (a) This Policy may be terminated at any time by the Insured tendering notice in writing to the Insurer.
- (b) The Insurer may cancel this Policy in any of the relevant circumstances set out in the Australian Insurance Contracts Act 1984 (as amended), such cancellation to take effect 60 days from the time of notification received by the Insured.

In either event, the Premium will be adjusted for the time the Policy has been in force and a refund of Premium will be allowed pro rata for the unexpired Period of Insurance.

3. Headings

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

4. Maintenance of Underlying Insurance

The Primary Policy and Underlying Excess Policy or renewals or replacement of such policies, not being more restrictive in coverage, will be maintained in force as valid collectible insurance during the currency of this Policy, except for any reduction of the aggregate limits contained therein solely by reason of claims. The failure of the Insured to comply with the foregoing will not invalidate this Policy but in the event of such failure the Insurer will only be liable to the same extent as if the Insured had complied with this Condition.

5. Notice of Occurrence

Whenever the Insured has information from which the Insured may reasonably conclude that an Occurrence covered under this Policy is likely to result in a claim on this Policy, notice must be given by or on behalf of the Insured to the Insurer or any of its authorised agents as soon as reasonably practicable.

Provided however, that failure to give notice of any Occurrence which, at the time of its happening did not appear to involve this Policy, but which at a later date would appear to give rise to a claim or claims under this Policy, will not prejudice such claim or claims.

6. Payment of Loss

Coverage under this Policy will not apply unless and until the Insured or the insurer of the Primary Policy and the insurer of any Underlying Excess Policy, is obligated to pay or has agreed to pay the limit of the applicable Primary Policy and other Underlying Excess Policy. When the amount of loss has finally been determined, the Insurer will promptly pay on behalf of the Insured the amount of loss falling within the terms of this Policy.

7. Policy Interpretations

Where words other than the Insured or the Insurer have been used in the Primary Policy or Underlying Excess Policy to represent those legal entities, it is agreed that for the purposes of this Policy and any subsequent endorsements, the words the Insured and the Insurer are deemed to have the same meaning as those alternative words used in this Policy.

It is further agreed that:

- (a) words importing persons will include corporations and other legal entities;
- (b) references in the singular will be deemed to include the plural and vice versa;
- (c) words depicting any gender include reference to all other genders;
- (d) references to money will be expressed as Australian dollars, unless otherwise stated;
- (e) references to statute law also includes all its amendments or replacements, in whole or part, whether such amendment or replacement has taken place before or after inception of this Policy.

8. Premium

Unless otherwise stated the Premium for this Policy or any renewal or replacement thereof is not adjustable.

However, where the Premium is stated to be adjustable, the Insured will within a reasonable period after the expiry of each Period of Insurance, furnish such information as the Insurer may reasonably require to adjust the Premium, and any difference in Premium will be paid by or refunded to the Insured as the case may be.

9. Proper Law

Any dispute arising under this Policy or concerning its formation will be determined in accordance with the law of the Commonwealth of Australia and the States and Territories thereof, and any disputes relating to the Policy will be submitted to the jurisdiction of the courts of such State and Territory.

10. Step-Down Provision

In the event of the exhaustion of any aggregate limit whether partial or total of the Primary Policy and any Underlying Excess Policy by reason of losses paid thereunder, this Policy will:

- (a) in the event of partial exhaustion pay in excess of the reduced Primary Policy and any Underlying Excess Policy Limit of Liability;
- (b) in the event of total exhaustion continue in force as the Primary Policy or Underlying Excess Policy subject to the terms, conditions, exclusions and endorsements of the Primary Policy.

