



One Underwriting Pty Ltd

# Mobile Plant and Equipment

Product Disclosure Statement  
and Policy Wording

**March 2026**

Arranged by One Underwriting Pty Ltd  
ABN 50 006 767 540 AFSL 236 653

**one**  
UNDERWRITING

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# Important Information

## Product Disclosure Statement

Please read this Product Disclosure Statement (PDS) carefully to ensure You understand what insurance cover is provided. If You have any questions or if You would like more information, please contact Your broker.

### About Berkshire Hathaway Specialty Insurance Company (BHSI)

We are Berkshire Hathaway Specialty Insurance Company (ABN 84 600 643 034, AFS Licence No. 466713). We are authorised by the Australian Prudential Regulation Authority to carry on general insurance business in Australia. You can reach us by email at [australia@bhspecialty.com](mailto:australia@bhspecialty.com) or You can write to us at GPO Box 650, Sydney NSW 2001.

### About Certain Underwriters at Lloyd's

Where **Policy** Section 6 is covered and shown on the **Policy Schedule** Certain Underwriters at Lloyd's, whose proportions are shown on the **Policy Schedule**. Lloyd's in Australia can be contacted at its postal address at Lloyd's Australia PO Box R1745, Royal Exchange, NSW 1225. Telephone (02) 8298 0783. Further details on the participant syndicates can be obtained by contacting One Underwriting. Certain Underwriters at Lloyd's in Australia is regulated by the Australian Prudential Regulation Authority ("APRA").

### About This PDS

This PDS, and the **Policy** wording, contains important information about the **Policy**. It aims to help You:

- decide whether the cover provided will meet Your needs; and
- compare it with other products You may be considering.

Other documents may comprise the PDS and We will tell You if this is the case.

The **Policy** provides a number of covers which may or may not be provided to You as a retail client under the Corporations Act 2001 (Cth) ("Act") depending on Your circumstances. Only the parts of the **Policy** document relevant to cover provided to You as a retail client and any other documents which We tell You are included, make up the PDS for the purposes of the Act.

We do not provide any advice in this PDS about this product and have not considered Your objectives, financial situation or needs. You should carefully consider the information provided having regard to Your personal circumstances to decide if it is right for You.

### Not Standard Cover

The cover provided under this **Policy** differs to the level of cover provided under the Prescribed Cover provisions for motor vehicle insurance contained in the *Insurance Contracts Act 1984 (Cth)*.

### Who is the Insurer?

The **Insurer** for Sections 1 to 5 of this **Policy** is Berkshire Hathaway Specialty Insurance Company (incorporated in Nebraska, USA. Liability is limited) ABN 84 600 643 034. AFS License No. 466 713.

The **Insurer** for Section 6 only of this **Policy** is Certain Underwriters at Lloyd's of London.

In this PDS and **Policy** wording any reference to 'We', 'Us', 'Our' refers to:

- a. The **Insurers** in respect of this 'Important Information'; and
- b. The **Insurer** for the relevant Section of cover, unless otherwise specified.

### Who is One Underwriting Pty Ltd?

In this PDS and **Policy** wording, One Underwriting Pty Ltd (ABN: 50 006 767 540 ASF License No. 236 653) is referred to as 'One Underwriting'.

This **Policy** is arranged by One Underwriting. In arranging this **Policy**, One Underwriting is acting under an authority given to it by Berkshire Hathaway Specialty Insurance Company (in respect of Section 1 – 5) and by Certain Underwriters at Lloyd's of London (in respect of Section 6). One Underwriting will be acting as the agent of the **Insurers**, not as the agent of the **Insured**.

### Updating This PDS

This PDS was prepared March 2026.

We may update the information contained in this PDS when necessary. One Underwriting will issue You with a new PDS or a Supplementary PDS, except in limited circumstances. Where the information is not something that would be materially adverse from the point of view of a reasonable person deciding whether to obtain or renew this insurance, One Underwriting may issue You with a copy of any updated information in other forms. You can get a paper copy of these updates free of charge by contacting One Underwriting or Us.

### About Your Policy

Where We agree to enter into a **Policy** it is a contract of insurance between Us and the **Insured**. The contract is based upon the information You gave Us when You applied for the insurance, and any subsequent information which You have supplied. You are required to pay the **Premium**, including government taxes and charges, for the relevant

**Period of Insurance** and comply with all **Policy** terms and conditions. If We issue You a **Policy**, it will consist of:

- this document, which sets out information about the insurance and the standard terms and conditions (including any limits and exclusions) that apply;
- a **Schedule** which sets out the covers relevant to You and should be read together with the **Policy** wording. It may include additional terms and conditions (including any limits and exclusions) that amend the standard terms of the **Policy** wording; and
- any other change to the terms of Your **Policy** otherwise advised by Us in writing (such as an endorsement or Supplementary PDS).

These are important documents and should be carefully read together to ensure the cover provided is accurate. They form Your legal contract with Us. Please keep them in a safe place for future reference.

## Applying for Your Policy

Please complete the proposal form and provide any additional information requested by Your broker. Your broker will then submit Your application for Our consideration.

## The Cost of Your Policy

The **Premium** payable for Your **Policy** is determined by Our assessment of the risk to be **Insured** as well as the taxes and government charges that are applicable.

When calculating Your **Premium**, We take a number of factors into account including but not limited to asset type and values, geographical location, and Your claims history.

Your **Premium** also includes amounts that take into account Our obligations in relation to any relevant compulsory government charges, taxes or levies (e.g. Stamp Duty, GST) in relation to Your **Policy**. These amounts will be set out separately in the **Schedule** as part of the total amount payable.

When You apply for this insurance, We will advise Your broker of the total **Premium** amount payable, when it needs to be paid and how it can be paid. This amount will also be set out in the **Schedule**, which will be sent to You at or immediately after the entry into the **Policy**. If You fail to pay, We may reduce any claim payment by the amount of **Premium** owing and/or cancel the **Policy**.

## Renewing the Policy

Before Your **Policy** expires One Underwriting, on Our behalf, will advise You via Your broker whether We intend to offer renewal and if so on what terms. If We decide not to offer You renewal, or Our terms are not accepted by You, You will need to arrange other insurance cover.

This PDS also applies for any offer of renewal, unless We tell You otherwise.

It is important that You check the terms of any renewal offer before renewing to ensure that the details are correct. In particular, check the **Sum(s) Insured** and any applicable **Excess(es)** to ensure the levels of cover are still appropriate for You.

Please note that You need to comply with the duty of disclosure before each renewal. Further information about the duty of disclosure is below.

We will send all notices in relation to this **Policy** to:

- the **Insured's** nominated insurance intermediary until We receive written notice to the contrary from the **Insured**; or
- if there is no nominated intermediary, the **Insured**.

Any notice We give the **Insured** will be in writing, and it will be effective:

- if it is delivered to the **Insured** or their agent personally; or
- if it is delivered or posted to the **Insured's** address (including an electronic address) or the **Insured's** intermediary's address last known to Us.

It is important for the **Insured** to tell Us of any change of address as soon as possible.

## Electronic Delivery of Policy Documents

We will send Your **Policy** documents and any notices to Your broker by email unless You tell Us otherwise. If however You wish to receive Your **Policy** documents in hard copy, please tell Your broker.

## Your Cooling Off Rights

If You want to cancel Your **Policy** after You buy it, You may do so and receive a full refund of Your **Premium**. To do this, please notify Us in writing within twenty-one (21) days from the date Your **Policy** commenced.

This cooling off right does not apply if You have made or are entitled to make a claim.

Even after the cooling off period ends, You still have cancellation rights however We may deduct certain amounts from any refund that may be due for administration costs, **Premium** pro-rated for time on risk or any non-refundable government charges and taxes.

## Duty of Disclosure

Before You enter into a contract of insurance, You have a duty under the Insurance Contracts Act 1984 (Cth) to disclose anything that You know, or could reasonably be expected to know, that may affect Our decision to insure You and on what terms. You have that duty after proposal, and up until the time We agree to insure You. You have the same duty before You renew, extend, vary or reinstate a contract of insurance.

You do not need to tell Us anything that:

- reduces the risk that is **Insured**;
- is common knowledge;
- We know or should know as an **Insurer**; or
- We waive compliance with Your duty of disclosure.

If You are uncertain about whether or not a particular matter should be disclosed to Us, please contact Your insurance broker or nominated intermediary.

### Non-disclosure

If You fail to tell us anything You are required to in accordance with the duty of disclosure, We may cancel Your contract or reduce the amount that We are required to pay You if You make a claim, or both. If Your failure is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

## Privacy

### PRIVACY NOTICE – Berkshire Hathaway Specialty Insurance Company

We, along with all companies in the Berkshire Hathaway group of insurance companies, are committed to safeguarding Your privacy and the confidentiality of Your personal information. We, and entities acting on Our behalf, only collect personal information from or about You for the purpose of assessing Your application for insurance and administering Your insurance **Policy**, including managing and administering any claim made by You. Without Your personal information, We may not be able to issue insurance cover, administer Your insurance or process Your claim. We will only use Your personal information in accordance with the *Privacy Act 1988 (Cth)* and for the purposes outlined above.

We may disclose Your personal information to other companies in the Berkshire Hathaway group and other third-party service providers for the purposes outlined above or where disclosure is permitted by law. These entities may be located in Australia or overseas, including in India, Singapore, Hong Kong, the United Kingdom and the United States of America. Where such disclosure is made, We make all reasonable efforts to ensure that the arrangements We have in place with overseas parties impose appropriate privacy and confidentiality obligations on those parties to ensure that imparted personal information is kept secure and that such information is only used for the purposes noted above.

If You wish to obtain details of the personal information We hold about You (including contacting Us to correct or update the personal information We hold about You), or if You have a complaint about a breach of Your privacy, please refer to Our privacy **Policy** available at <https://www.bhspecialty.com/privacy-policy>, or contact Our Chief Risk Officer by email to [australasia.privacy.compliance@bhspecialty.com](mailto:australasia.privacy.compliance@bhspecialty.com).

We reserve the right to refuse access under the grounds permitted by the *Privacy Act 1988 (Cth)* and if You are seeking information on another person's behalf, We will require written authorisation from that individual.

### PRIVACY NOTICE – Certain Underwriters at Lloyd's and One Underwriting

One Underwriting have always valued the privacy of personal information. When One Underwriting ('OU') collect, use, disclose or handle personal information, OU will be bound by the Privacy Act 1988 (Cth) (the 'Act').

This Notice is effective from February 2023.

#### Why do We collect Your personal information?

OU collect personal information to offer, provide, manage and administer the many financial services and products we and our group of companies are involved in. These include insurance broking and claims management, risk management consulting, and other forms of insurance services including underwriting of insurance products. OU may also collect personal information for the purpose of conducting analytics processes, to be able to develop and identify products and services that may interest You, to conduct market or customer satisfaction research or to develop, establish and administer alliances and other arrangements with other organisations in relation to the promotion, administration and use of our respective products and services.

OU may collect information about You because we are required or authorised by law to collect it. There are laws and regulations that affect the provision of our many services and products (as more fully described in the One Underwriting Privacy Statement) and require us to collect certain personal information. These laws may include the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth), the Corporations Act 2001 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth) and the Insurance Contracts Act 1984 (Cth).

#### How do We collect Your personal information?

OU will generally collect information directly from You or Your agents, unless impracticable or unreasonable to do so. We may collect it from third parties such as Our affiliates or employers, claims administrators, insurance companies, insurance brokers or agents, credit organisations, motor vehicle and driver licensing authorities, financial institutions, medical professionals, third parties who may be arranging insurance cover for a group that You are a part of, law enforcement, dispute resolution, statutory and regulatory bodies, marketing lists and industry databases, publicly available sources, etc.

OU may also collect personal information from You through the use of cookies when You visit Our websites. Cookies are commonly used to make websites work more efficiently, to enrich the user experience, and to serve advertisements based on past visits to the website. We make use of them for those purposes. To prevent these activities, You need to adjust the settings on Your browser to refuse all cookies.

Upon Your request, we will take reasonable steps to let You know how we have sourced Your personal information, unless it is obvious from the circumstances that You would

know or would reasonably expect Us to have the information (such as where We are dealing with Your advisers).

When You give us personal information about other individuals, we rely on You to make them aware that You will or may provide their personal information to us, the types of third parties we may provide it to, the relevant purposes we and those third parties will use it for, and how they can access it. If it is sensitive information, we rely on You to have obtained their consent on these matters. If You have not done either of these things, You must tell us before You provide the relevant information.

### **What can happen if You don't provide us with Your information?**

If You do not provide the information we request, we or those involved with the provision of the service or product may not be able to provide the appropriate type or level of service or product.

### **To whom can we disclose Your personal information?**

We disclose personal information to third parties who we believe are necessary to assist Us in providing the relevant services and products to our clients or to enable them to offer their products and services to You. For instance, we disclose personal information to the relevant product provider and their representatives, our agents and contractors and related companies. We may also disclose Your personal information to other parts of the Aon Group, both in Australia and overseas, for other purposes, such as analytics.

Disclosure may also be made to any government, law enforcement, dispute resolution, statutory or regulatory bodies in any country, or as required by a country's laws. In addition to our affiliates, we may disclose personal information to third parties such as contractors, agents, suppliers and service providers. These affiliates, members of the Aon Group and third parties may be based locally or they may be overseas, including but not limited to the United States of America, the United Kingdom, Ireland, India, Singapore and the Philippines. In circumstances where Your personal information is disclosed overseas, we will generally take reasonable steps to ensure that we have arrangements in place with such parties that prevent them from using or disclosing personal information for any purposes other than our own. However, by providing Your personal information to us, You acknowledge that we may not always be able to guarantee that overseas parties are subject to requirements similar to those contained in the Privacy Act and consent to the disclosure on that basis.

If You would like further information about whether Your information will be disclosed to overseas recipients, please contact the Privacy Officer at [oneunderwriting@oneunderwriting.com.au](mailto:oneunderwriting@oneunderwriting.com.au).

### **How can I access and correct my personal information or resolve my privacy issues?**

If You wish to seek access to or correct the personal information we collected or disclosed about You, please telephone or email Your One Underwriting representative. The One Underwriting Privacy Statement contains details about how to make a complaint about a breach of the Act and how we deal with complaints.

If You would like a copy of the One Underwriting Privacy Statement, please telephone or email Your One Underwriting representative to request a copy, or You can access this at our website's privacy section. <https://www.oneunderwriting.com.au/privacy>

If You would like a copy of the Certain Underwriters at Lloyd's Privacy Statement, You may access it [here](#) or by copying this link <https://assets.lloyds.com/media/2756abc7-b90b-4e49-9b58-1fb7f454ea9c/Lloyd%27s%20Australia%20Privacy%20Notice.pdf>, or alternatively by contacting Lloyd's in Australia on (02) 8298 0783 for a copy.

You can choose not to receive product and service offerings from us (including product or service offerings from us on behalf of our affiliates and business partners) or related bodies, by contacting our Privacy Officer at [oneunderwriting@oneunderwriting.com.au](mailto:oneunderwriting@oneunderwriting.com.au) or Your One Underwriting representative.

### **Our contact details**

The contact details for One Underwriting Australian head office are as follows:

Address: Level 50, 80 Collins Street,  
Melbourne VIC 3000  
Switchboard: +61 3 9211 3700

The contact details for Lloyd's in Australia are as follows:

Address: PO Box R1745,  
Royal Exchange NSW 1225  
Phone: (02) 8298 0783.

### **Complaints (Applicable to Sections 1 – 5 Only)**

If You have a complaint or concern about Our insurance products or services We provide, We would like the opportunity to resolve this with You. Please contact Your intermediary or Your One Underwriting contact or alternatively You may direct Your complaint to Berkshire Hathaway Specialty Insurance by:

Email: [Complaints.Australia@bhspecialty.com](mailto:Complaints.Australia@bhspecialty.com)  
Post: Berkshire Hathaway Specialty Insurance  
GPO Box 650, Sydney NSW 2001

We will attempt to resolve the matter in accordance with Our BHSI Complaints Review Process.

For more information on how We handle complaints, or to obtain a copy of the BHSI Complaints Review Process, go to <https://www.bhspecialty.com/aus/aus-disclosures/> or contact Us.

## Review by the Australian Financial Complaints Authority

If We cannot resolve Your complaint or You are dissatisfied with the response, You can contact the Australian Financial Complaints Authority (AFCA) for an independent external review at no cost to You, subject to its terms of reference. We are bound by any determination by AFCA but the decision is not binding on You. AFCA can be contacted by:

Online: [www.afca.org.au](http://www.afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Phone: 1800 931 678  
Mail: Australian Financial Complaints Authority  
GPO Box 3 Melbourne VIC 3001

If the complaint is not covered by the AFCA scheme, BHSI will advise You of other options for resolution that may be available to You.

## Complaint And Dispute Resolution if Your Policy is underwritten by Certain Underwriters at Lloyd's (Applicable to Section 6 only)

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: [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)

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:

Phone: 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  
PO Box R1745  
Royal Exchange NSW 1225; or  
[Serviceofsuitaus@lloyds.com](mailto:Serviceofsuitaus@lloyds.com)  
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.

If You are still not satisfied with the outcome determined, You may contact the industry external Dispute Resolution Body, the Australian Financial Complaints Authority (AFCA) on the below details. You can contact AFCA at:

Phone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Website: [www.afca.org.au](http://www.afca.org.au)  
Mail: Australian Financial Complaints Authority  
GPO Box 3 Melbourne VIC 3001

If You require further information, You can access Our Complaints and Dispute Resolution Process contained in One Underwriting's Financial Services Guide (FSG) available on their website at <https://oneunderwriting.com.au/> other than as set out above, all other **Policy** terms, conditions, limits and exclusions remain unchanged.

## General Insurance Code of Practice

The **Insurers** are both signatories to the General Insurance Code of Practice. The Code aims to:

- promote more informed relations between **Insurers** and their customers;
- improve consumer confidence in the general insurance industry;
- provide fair and effective mechanisms for the resolution of complaints and disputes between **Insurers** and their customers; and
- commit **Insurers** and the professionals they rely upon to higher standards of customer service.

You can download a copy of the Code from <http://codeofpractice.com.au>.

## Financial Claims Scheme

This **Policy** may be a protected **Policy** under the Financial Claims Scheme ('FCS') which protects certain **Insureds** and claimants in the event of an **Insurer** becoming insolvent. In the unlikely event of an **Insurer** becoming insolvent You may be entitled to access the FCS, provided You meet the eligibility criteria.

More information about the FCS may be obtained from <http://www.fcs.gov.au> and the APRA hotline on 1300 55 88 49.

## Definitions and Interpretation

The following Definitions and Interpretations apply to all Sections of the **Policy**:

- 1.1 **Act of Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, by any person or group or persons, whether acting alone or on behalf of or in connection with any organisation or government, which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 1.2 **Advertising Injury** means:
  - 1.2.1 defamation;
  - 1.2.2 infringement of copyright or of title or of slogan;
  - 1.2.3 piracy or unfair competition or idea misappropriation under an implied contract;
  - 1.2.4 Infringement of trade mark or service mark; or
  - 1.2.5 invasion of privacy,  
committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the **Insured's** advertising activities or any advertising activities conducted on behalf of the **Insured** in the course of advertising the products goods or services or in the course of the **Business**.
- 1.3 **Agreed Value** means the agreed value of a **Machine** specified in the **Schedule**.
- 1.4 **Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.
- 1.5 **Asbestos** means asbestos in any form, including its presence or use in any alloy, by-product, compound or other material or **Waste**.
- 1.6 **Attachment** means any item attachable to and detachable from a **Machine** that, when attached, is intended to enable the **Machine** to perform its functions or increase the **Machine's** operational capacity.
- 1.7 **Average Weekly Income** means the average **Weekly Income** derived from the **Machine** calculated having regard to the twelve (12) month period (or actual period of possession or ownership if less than twelve (12) months) immediately preceding the **Occurrence** of **Damage**.
- 1.8 **Business** means the activities of the **Insured** specified in the **Schedule**.
- 1.9 **Consumer Credit Arrangement** means any agreement, arrangement or contract of whatsoever nature which is subject to or otherwise governed by the provisions of the National Consumer Credit Protection Act 2009 or the National Credit Code as amended from time to time.
- 1.10 **Damage** (with **Damaged** having a corresponding meaning) means:
  - 1.10.1 sudden and unexpected physical loss, **Damage** or destruction (including the inability to recover or retrieve a **Machine** as a consequence of **Damage**); or
  - 1.10.2 loss by theft.
- 1.11 **Dangerous or Hazardous Goods** means things identified as "Dangerous or Hazardous Goods" or their equivalent in the Australian Dangerous Goods Code.
- 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 programs, software and other coded instructions for the processing and manipulating of data or the direction and manipulation of such equipment.
- 1.13 **Employee** means a natural person who is:
  - 1.13.1 employed by the **Insured** under a contract of service; or
  - 1.13.2 apprenticed to the **Insured**.
- 1.14 **Excess** means the amount specified in the **Schedule** applicable to a specific section of the **Policy** which the **Insured** must bear in relation to any loss.  
Unless stated otherwise, if more than one **Excess** applies under this **Policy** for any claim or series of claims arising from one original source or cause, such **Excesses** shall not be aggregated and the highest single level of **Excess** only shall apply.
- 1.15 **Financial Agreement** means a contract entered into by the **Insured** and a lender for the provision of credit, loan, financial accommodation made in favour of the **Insured** in respect of a **Machine**, but not including any arrangement which is a **Consumer Credit Arrangement**.

- 1.16 Flood** means the covering of normally dry land by water that has escaped or being released from the normal confines of any of the following:
- 1.16.1** a lake (whether or not it has been altered or modified);
  - 1.16.2** a river (whether or not it has been altered or modified);
  - 1.16.3** a creek (whether or not it has been altered or modified);
  - 1.16.4** another natural watercourse (whether or not it has been altered or modified);
  - 1.16.5** a reservoir;
  - 1.16.6** a canal; or
  - 1.16.7** a dam.
- 1.17 Geographical Limits** means Australia only in respect of Sections 1 - 5 of this **Policy**, and Worldwide except the United States of America and Canada in respect of Section 6 of this **Policy**.
- 1.18 Improper Employment Practices** means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, sexual harassment or discrimination in respect of employment by the **Insured**.
- 1.19 Income** means the gross income derived from the **Machine** in the course of the **Business** after deducting the ordinary costs of operating the **Machine**.
- 1.20 Increased Costs of Working** means the additional expenditure reasonably incurred for the purpose of avoiding or diminishing the reduction of **Income** resulting from **Damage** to a **Machine** including using or hiring substitutes or alternatives for the **Machine**.
- 1.21 Indemnity Period** means the period beginning with the **Occurrence** of **Damage** and ending at the earlier of the following:
- 1.21.1** the date the **Machine** is fully repaired and returned to the **Insured**; or
  - 1.21.2** the date the **Machine** is permanently replaced and such replacement is provided to the **Insured**; or
  - 1.21.3** the date the indemnity period shown in the **Schedule** as applying to Sections 2 and 3 expires.
- 1.22 Injury** means the following to any person:
- 1.22.1** injury, death, illness, disease, disability, shock, fright, mental anguish and mental injury including loss of consortium or services;
  - 1.22.2** defamation, except where:
    - 1.22.2.1** the first publication or utterance happened prior to the commencement of this **Policy**; or
    - 1.22.2.2** the **Injury** arises out of **Advertising Injury**;
  - 1.22.3** assault and battery provided that it is committed for the purpose of preventing **Injury** or **Property Damage** or eliminating or preventing danger to persons or property.
- 1.23 Insured** means:
- 1.23.1** the **Named Insured**;
  - 1.23.2** all subsidiary companies and other entities under the control of the **Named Insured** and over which it is exercising active management;
  - 1.23.3** all persons, companies and other entities that have a financial or insurable interest in a **Machine**.
- For the purposes of Section 6 (Broadform Liability) only, the definition of **Insured** is extended to also mean:
- 1.23.4** any director, officer, **Employee**, partner or shareholder of the **Insured**, but only whilst acting within the scope of their duties in such capacity;
  - 1.23.5** any office bearer or member or voluntary helper of the **Insured's** social and/or sporting clubs, canteen, security, first aid, fire and ambulance services, educational, welfare or childcare facilities formed with the consent of the **Insured** in respect of claims arising from duties connected with activities of any such club or facility;
  - 1.23.6** any director or executive officer of the **Insured** in respect of private work undertaken by **Employees** for such persons;
  - 1.23.7** any **Employee** whilst undertaking private work for any director or senior executive of the **Insured**;
  - 1.23.8** if the **Insured** is declared in the **Schedule** as a partnership or joint venture, any partner or member thereof but only with respect to their liability as a partner or member of such partnership or joint venture;
  - 1.23.9** the personal representatives of the **Insured** in respect of liability incurred by the **Insured** whilst acting on behalf of the **Insured**.
  - 1.23.10** the principal in any contract with an **Insured**, but only against the principal's vicarious liability for **Injury** or **Property Damage** caused by or arising from the **Insured** performing work for the principal under the contract with the principal in the course of the **Business**.
- 1.24 Insurer** means:
- 1.24.1** For the purposes of Sections 1 to 5, Berkshire Hathaway Specialty Insurance Company

(incorporated in Nebraska, USA. Liability is limited) ABN 84 600 643 034. AFS License No. 466 713; or

- 1.24.2 For the purposes of Section 6, Certain Underwriters at Lloyd's of London. (together, **Insurers**).
- 1.25 **Labour Hire Worker** means a person who is employed by an employment agency, placement agency, labour hire company or by any other person or organisation whose business is or includes the supply of personnel or labour that works for an **Insured**.
- 1.26 **Legal Costs** means the costs, charges, fees (including legal and expert fees) incurred in defending, investigating and/or monitoring a claim against the **Insured** under Sections 5 and 6 of the **Policy** only.
- 1.27 **Machine** means:
- 1.27.1 a machine specified in the **Schedule** and any **Attachments** to that machine, the value for which is included within the **Sum Insured** for that machine; or
- 1.27.2 a machine that is being used by the **Insured** as a substitute machine while a machine specified in the **Schedule** is being serviced, repaired or is not operable, provided that such machine is not covered under another insurance policy; and/or
- 1.27.3 a machine covered by the Additional Cover afforded by Clauses 4.1.7 (Hired Out Machines), 4.1.8 (Protection, Recovery & Removal) and 4.2.1 (Hired In Machines).
- 1.28 **Machinery Breakdown** means the breaking, seizing, deformation or burning out of any part of a **Machine** whilst in use and arising from mechanical, or electrical, or electronic defects in the **Machine** necessitating repair or replacement before it can resume working.
- 1.29 **Market Value** means the cost of buying a **Machine** of the same age, condition, model and make in the **Insured's** local area taking into account, amongst other things, depreciation and wear and tear, but excludes stamp duty on transfers, registration and dealer warranty and charges. Recognised industry publications may be used in assessing **Market Value**.
- 1.30 **Medical Persons** means legally qualified medical practitioners, legally qualified registered nurses, dentists and first aid attendants.
- 1.31 **Mixed Dust** means any combination or mixture of **Asbestos** or **Silica** and any other dust, fibres or particles, in any form, including any presence or use in any alloy, by-product, compound or other material or **Waste**.
- 1.32 **Named Insured** means the first named **Insured** and other **Insureds** stated in the **Schedule**.
- 1.33 **Occurrence** means any loss or series of losses including continuous or repeated exposure to substantially the same general conditions which results in **Injury, Property Damage** or **Advertising Injury** where such **Injury, Property Damage** or **Advertising Injury** is not intended from the standpoint of the **Insured**.
- 1.34 **Period of Insurance** is the period specified in the **Schedule** and any further extension thereof that has been agreed by the **Insurer**. The term "Local Time" means the time at the **Insured's** principal place of **Business**.
- 1.35 **Policy** means this document, the **Schedule** and any endorsement to the **Policy**.
- 1.36 **Pollution** means the discharge, dispersal, seepage, release or escape of smoke, vapours, fumes, acids, alkalis, toxic chemicals, liquids or gases, **Waste** materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or water.
- 1.37 **Premium** means the amount the **Insured** must pay in consideration for the cover it selects.
- 1.38 **Product** means anything which was, or is deemed by law to have been, manufactured, grown, extracted, treated, produced, processed, sold, supplied, distributed, imported, exported, repaired, serviced, renovated, installed, assembled, erected or constructed in the course of the **Business** by the **Insured**, including labels, packaging or containers (other than a **Machine**), and directions or instructions, or advice given or omitted to be given in connection with such **Product**, after ceasing to be in the possession or under the control of the **Insured**.
- 1.39 **Product Defect** means a defect in or harmful quality of a **Product** caused by an unknown and unintended error or omission by the **Insured**, including an error in or omission of advice given by the **Insured** concerning the use or storage of the **Product**.
- 1.40 **Property Damage** means physical **Damage** to or destruction of tangible property unintended and unforeseen by the **Insured** including resultant loss of use.
- 1.41 **Replacement Value** means replacement with a new **Machine** of equal performance, capability and capacity, or if such replacement is not possible, replacement with a **Machine** of the nearest higher performance, capability and capacity but in either case excludes GST, registration costs, compulsory third-party insurance and stamp duty fees.
- 1.42 **Schedule** means the schedule attached to this **Policy**.
- 1.43 **Shortfall in Weekly Income** means the amount by which the **Weekly Income** falls short of the **Average Weekly Income** as a result of the **Damage**.

- 1.44 **Silica** means silica in any form (including silicates or other similar silicon compounds), including its presence or use in any alloy, by-product, compound or other material or **Waste**.
- 1.45 **Sum Insured** means the sum specified in the **Schedule** applicable to a specific section of the **Policy**.
- 1.46 **Total Loss** means a **Machine** which:
- 1.46.1 is lost or stolen and not recovered; or
  - 1.46.2 is **Damaged** to such an extent it cannot be repaired; or
  - 1.46.3 the **Insurer** considers the cost of repairing to be uneconomical or greater than the **Sum Insured** for that **Machine** less the value of any salvage.
- 1.47 **Waste** includes material to be recycled, reconditioned or reclaimed.
- 1.48 **Watercraft** means any vessel, craft or thing made or intended to float on or travel on or through water.
- 1.49 **Weekly Income** means the actual **Income** for each week the **Machine** is in operation.
- 1.50 **Working Tool** means the performance by a **Machine**, in the course of work operations, of a function that it is designed to perform including setting up or disassembly in connection with performing such a function but not including travel within or outside any site at which the **Insured** is carrying out work in connection with the **Business**.

## Interpretation

- 1.51 **Headings:** clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this **Policy**.
- 1.52 **Parties:** references to parties are reference to parties to this **Policy**.
- 1.53 **Persons:** references to persons shall be deemed to include references to individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, States or agencies of State Government departments and local and municipal authorities.
- 1.54 **Plural and singular:** words importing the singular shall include the plural and vice versa, as appropriate.

# Section 1 - Damage to Machines

## 2. Scope of Cover

The **Insurer** will indemnify the **Insured** against **Damage** to any **Machine** that occurs anywhere within the **Geographical Limits** during the **Period of Insurance** in accordance with the Basis of Settlement set out in Clause 3 and shall provide the Additional Covers referred to in Clause 4 subject to:

- 2.1 the General Exclusions Applying to All Sections set out in Clause 20;
- 2.2 the Exclusions Applying to Sections 1 - 5 Only set out in Clause 21; and
- 2.3 the Conditions Applicable to All Sections set out in Clause 23.

## 3. Basis of Settlement

- 3.1 The **Insurer** will (subject to Clause 3.2) pay to the **Insured**, after deducting the **Excess** and taking into account the preference of the **Insured**, the lesser of:
- 3.1.1 the cost of repairing the **Machine** to restore it to its condition immediately prior to the **Damage**, including any costs of dismantling, transporting, commissioning, erecting and reinstalling the **Machine**;
  - 3.1.2 the **Market Value** of the **Machine** immediately prior to the **Damage** occurring; or
  - 3.1.3 the **Sum Insured** of the **Machine** specified in the **Schedule** of Machinery.
- 3.2 If the **Damaged Machine** is designated as being subject to an **Agreed Value**, the **Insurer** will, in the event of **Total Loss**, pay to the **Insured** that **Agreed Value**.
- 3.3 If a **Machine** is deemed a **Total Loss** by the **Insurer** and:
- 3.3.1 is within three years of its date of manufacture or original commissioning (whichever is later), the **Insurer** will pay the lesser of:
    - 3.3.1.1 the **Replacement Value** of the **Machine** as at the date of the **Total Loss**; or
    - 3.3.1.2 up to one hundred and ten percent (110%) of the **Sum Insured** of the **Machine** specified in the **Schedule** of Machinery.
  - 3.3.2 is equal to, or greater than, three years from its date of manufacture or original commissioning (whichever is later), the **Insurer** will pay the lesser of:
    - 3.3.2.1 the **Market Value** of the **Machine**

immediately prior to **Damage** occurring, however, if the **Market Value** is less than 85% of the **Sum Insured** then an additional 15% will apply; or

- 3.3.2.2 the **Sum Insured** of the **Machine** specified in the **Schedule** of Machinery.

## 4. Additional Covers

- 4.1 The **Insurer** will pay the following Additional Covers in addition to any payment made under Clause 3 (Basis of Settlement):

### 4.1.1 Accessories, Tools and Spare Parts

Where a **Machine** is **Damaged**, the **Insurer** shall pay for the cost of repairing or replacing any lost or **Damaged** accessories, tools or spare parts related to the **Business** that were attached to or within the **Machine** at the time of **Damage** and not otherwise specified in the **Schedule** (other than an **Attachment**), provided that such indemnity is limited to the sum specified in the **Schedule** as the sub-limit of liability applicable to this Additional Cover.

Where an unspecified **Attachment** is **Damaged** and not attached to the **Machine** at the time of **Damage**, the maximum amount payable is up to 10% of the **Sum Insured** of the **Machine** or a maximum of \$10,000 any one item (whichever the lesser) and \$25,000 any one event causing **Damage**.

### 4.1.2 Appreciation in Market Value

The **Insurer** shall increase the **Sum Insured** of a **Machine** greater than three years from its date of manufacture or original commissioning (whichever is later) by the amount of any appreciation in its **Market Value** during the **Period of Insurance** (being the time from the commencement of the **Period of Insurance** to the date of **Damage** or **Total Loss**) up to a maximum of twenty five percent (25%) of its **Market Value**, provided that the **Sum Insured** of the **Machine** was no less than the **Market Value** at the date:

- 4.1.2.1 of the commencement of the **Period of Insurance**; or
- 4.1.2.2 when the **Machine** was endorsed onto the **Policy**.

### 4.1.3 Damage to Lifted Goods

The **Insurer** shall indemnify the **Insured** in respect of **Damage** to goods that are both:

- 4.1.3.1 in the possession and control of the **Insured**; and

- 4.1.3.2 suspended from a **Machine** designed to lift those goods,

provided that:

- 4.1.3.3 the amount payable by the **Insurer** in respect of such **Damaged** goods shall not exceed the amount specified in the **Schedule** as the sub-limit of liability applicable to this Additional Cover in the aggregate for the **Period of Insurance**; and

- 4.1.3.4 the **Insurer** shall not indemnify the **Insured** under this Additional Cover against:

- 4.1.3.4.1 **Damage** to such goods caused directly or indirectly by or arising from a defect in or the fragility of the goods or their container and the **Insured** was aware of that defect; or

- 4.1.3.4.2 any other legal liability of whatsoever nature.

### 4.1.4 Deemed Total Loss

When a **Machine** or any part thereof is so **Damaged** or unavoidably abandoned that the cost of repairs and/or recovery, plus the salvage value of the **Machine**, exceeds the **Market Value** of the **Machine** taking into account State and Territory legislation relevant to this determination, then at the **Insured's** option, such **Damage** will be deemed to be a **Total Loss** for the purposes of the Basis of Settlement in Clause 3.

The **Insurer** will also reimburse the **Insured** for all expenditure reasonably incurred by the **Insured** (having regard to costs of repair, recovery and write-off) in attempting to preserve a **Machine**, or any part thereof, from actual **Total Loss** or destruction up to the amount specified in the **Schedule** as the sub-limit of liability applicable to this Additional Cover.

### 4.1.5 Employees' Personal Property

The **Insurer** shall indemnify the **Insured** in respect of any personal property of an **Employee** that is lost or **Damaged** as a result of an event which has caused **Damage** to a **Machine** which is covered under Section 1 (**Damage** to Machines). Such indemnity is limited to the amount specified in the **Schedule** as the sub-limit of liability applicable to this Additional Cover.

#### 4.1.6 Expediting Costs

Where a **Machine** is **Damaged**, the **Insurer** shall pay the additional costs of effecting immediate temporary repairs or to expedite permanent repairs to the **Machine**, including but not limited to the additional costs for overtime, shift-work, night-work, work on weekend or public holidays, express freight by road, train, or air. Such indemnity is limited to the amount specified in the **Schedule** as the sub-limit of liability applicable to this Additional Cover.

#### 4.1.7 Hired Out Machines – Damage Waivers

The **Insurer** shall provide cover in accordance with the terms of Section 1 (**Damage to Machines**) for **Machines** hired out without an **Employee** as an operator, provided that the hire agreement between the **Insured** and the hirer is in writing, identifies the hirer, the **Machine(s)** being hired, the hire period and the hire fees, and provides that the **Insured** either:

- 4.1.7.1 arranges for the hirer to be **Insured** against **Damage**; or
- 4.1.7.2 releases the hirer from liability for **Damage**.

The indemnity under this Additional Cover shall not exceed the insurance or release that the hire agreement provides to the hirer.

#### 4.1.8 Protection, Recovery and Removal (Damage)

Where a **Machine** is **Damaged**, the **Insurer** shall pay the costs of protecting, recovering and removing the **Machine** to a place of safety or the premises of the nearest repairer and to redeliver the **Machine** from such premises after repair to its usual place of keeping, provided that:

- 4.1.8.1 The **Insurer's** liability under this Additional Cover shall not exceed the sub-limit of liability specified in the **Schedule** in respect of any one event, and shall be payable in addition to the **Sum Insured**; and
- 4.1.8.2 if at any stage it becomes apparent that the cost of protecting, recovering and removing the **Machine** will exceed the **Sum Insured**, the **Insurer**, acting reasonably and taking into account the **Insured's** interests, may settle the claim in the manner set out in Clause 4.1.4 (Deemed **Total Loss**).

#### 4.1.9 Recovery Costs (No Damage)

The **Insurer** shall pay the actual costs incurred by the **Insured** for the purpose of recovery and/or withdrawal of any **Machine** in the event of such **Machine** becoming unintentionally immobilised where **Damage** has not occurred, provided that:

- 4.1.9.1 no indemnity shall be provided in respect of the cost of rectifying **Machinery Breakdown** where that is the sole reason the **Machine** requires recovery and/or withdrawal; and
- 4.1.9.2 the **Insurer's** liability under this Additional Cover shall not exceed the sub-limit of liability stated in the **Schedule** in respect of any one event, and shall be payable in addition to the **Sum Insured**.

#### 4.1.10 Removal of Debris

Where a **Machine** is **Damaged**, the **Insurer** shall pay the costs of cleaning up and removing debris from the site of **Damage**. This Additional Cover does not include paying any costs of cleaning up or removing any load or cargo being carried, other than another **Machine**.

#### 4.1.11 Signwriting

Where a **Machine** is **Damaged**, the **Insurer** shall pay the costs of restoring any signwriting, advertising signs and artwork on, in or attaching to the **Machine**, to the extent of the **Damage**.

#### 4.1.12 UnDamaged Ancillary and/or Peripheral Equipment

Where a **Machine** is destroyed, but its ancillary and/or peripheral equipment is not **Damaged** but is rendered superfluous, the **Insurer** will treat such ancillary and/or peripheral equipment as having been destroyed.

Provided that its salvage value shall be payable to the **Insurer** by the **Insured** upon completion of its sale or shall be deducted from the final amount of any monies payable by the **Insurer** under this **Policy**, whichever shall occur later.

#### 4.1.13 Non-Owned Trailer in Control

The **Insurer** shall cover the cost of repairing or replacing any **Damage** occurring during the **Period of Insurance** to trailers that:

- 4.1.13.1 are in the **Insured's** physical or legal control or possession; and
- 4.1.13.2 are not owned, leased or hired by the **Insured**; and

4.1.13.3 are used by the **Insured** in as part of the **Insured's Business**,

at the time of such **Damage** but only up to the sum specified in the **Schedule** as the sub-limit of liability applicable to this Additional Cover and in the aggregate for the **Period of Insurance**.

Any claim under this Additional Cover is subject to the standard **Excess** specified in the **Schedule**. This **Excess** is payable in addition to the **Excess** applicable to the **Machine** if the **Insured** also claims for **Damage** arising from the same accident.

#### ***Temperature-Controlled or Tanker Trailer Exclusion***

No cover will apply under this Additional Cover if such trailer is manufactured as, or is capable of being, a temperature-controlled trailer or a tanker trailer.

#### **4.1.14 Hire Costs following Theft**

If theft of a **Machine** covered by this **Policy** occurs, the **Insurer** will pay the hire costs of a similar make and model to the **Machine** that was stolen, for up to 30 days. This Additional Cover will stop at the earlier of:

4.1.14.1 The **Machine** being returned un**Damaged**; or

4.1.14.2 The **Machine** being repaired and returned to the **Insured**; or

4.1.14.3 The claim being settled by the **Insurer**.

Such liability is limited to the amount specified in the **Schedule** as the sub-limit of liability applicable to this Additional Cover.

#### **4.1.15 Locks and Keys**

Where keys to a **Machine** have been lost, **Damaged**, destroyed or duplicated, or the **Insured** has reasonable grounds to believe the keys to a **Machine** have been lost, **Damaged**, destroyed or duplicated, the **Insurer** will pay up to the limit specified in the **Schedule** as the sub-limit of liability applicable to this Additional Cover.

#### **4.1.16 Finance Gap Protection (Total Loss)**

Where a **Machine** suffers a **Total Loss** and where the **Market Value** for this **Machine**, at the time of **Total Loss**, is less than the amount owed by the **Insured** under a **Financial Agreement**, then the **Insurer** will cover the difference, between the **Market Value** at the time of the **Total Loss**, and the amount owed, less:

4.1.16.1 any payments and interest of finance in arrears at the date of the **Damage**;

4.1.16.2 any discount in respect of finance charges and interest for the unexpired term of such **Financial Agreement** at a date not exceeding thirty (30) days after the date of the **Damage**; and

4.1.16.3 any payment which on the date of **Damage** has not been made solely because such payment under the terms and conditions of the **Financial Agreement** has not actually become due.

Provided that:

4.1.16.4 the **Insured** is not more than thirty (30) days in arrears with any payments at the date of **Damage**;

4.1.16.5 in addition to the **Excess** applicable for **Damage**, notwithstanding Clause 1.14 (Definitions and Interpretation – **Excess**), an **Excess** of 10% of such difference shall apply, and

4.1.16.6 the limit of liability under this Additional Cover does not exceed twenty-five percent (25%) of the **Market Value** at the time of **Damage**.

#### ***Consumer Credit Arrangement Exclusion***

Additional Cover 4.1.16 (Finance Gap Protection) does not extend to or otherwise apply to any loss, **Damage** or liability caused directly or indirectly by, arising out of or in connection with finance or credit arrangements in respect of a **Machine** which arrangements constitute **Consumer Credit Arrangements**.

#### **4.1.17 Fire Brigade and or Emergency Services Charges**

Where there is **Damage** to a **Machine** covered by this **Policy**, the **Insurer** will indemnify the **Insured** in respect of the **Insured's** legal liability for fire extinguishment costs charged by the Fire Brigade or Emergency services costs, up to the sub-limit of liability specified in the **Schedule** for this Additional Cover.

#### **4.1.18 Windscreen – Nil Excess for First Claim**

In the event of **Damage** covered by this **Policy** occurring only to the windscreen and or window glass of a **Machine**, the **Insurer** shall indemnify the **Insured** without deduction of the **Excess**. Cover under this extension is limited to one (1) **Excess** free windscreen claim per **Machine** within the **Period of Insurance** up to a maximum of \$5,000.

#### 4.1.19 Hired in Plant

The **Insurer** shall indemnify the **Insured** in respect of the **Insured's** legal liability under the terms of its hiring agreement or otherwise, to pay compensation for **Damage** to hired in plant, being of a similar nature or type to those listed on the **Schedule**, whilst in the **Insured's** custody, care or control or on-hired to another person or company at any location within the **Geographical Limits** and whilst in transit (other than by sea or air) between such locations.

Such liability is limited to the amount specified in the **Schedule** as the sub-limit of liability applicable for this Additional Cover.

#### **Excluded Vehicles**

This Additional Cover 4.1.19 does not include cover for road vehicles including, but not limited to, prime movers, rigid trucks, sedans, 4 x 4, light commercial vehicles, buses and utility vehicles.

## 4.2 Optional Endorsements

The following Optional Endorsements to the standard cover will be deemed to be incorporated in this **Policy** only when specified as "Included" in the **Schedule** by the appropriate number and title.

### 4.2.1 Hired in Machines (Blanket Cover)

Section 1 (**Damage** to Machines) is extended to cover the **Insured's** legal liability under the terms of a hiring agreement or otherwise, to pay compensation for **Damage** to hired in **Machines** whilst in the **Insured's** custody, care or control or on-hired to another person or company, at any location within the **Geographical Limits** and whilst in transit (other than by sea or air) between such locations.

Such liability is limited to the amount specified in the **Schedule** as the sub-limit of liability applicable to this Optional Endorsement.

### 4.2.2 Continuing Hire Charges

Section 1 (**Damage** to Machines) is extended to cover the **Insured's** legal liability to pay continuing hire charges for which it is responsible under the terms of a hiring agreement and as a result of the **Damage**.

Such indemnity is limited in respect of each **Damaged Machine** to the lesser of:

- 4.2.2.1 the amount specified for 'Hiring Charges' in the **Schedule**, less the aggregate of all amounts already paid by the **Insurer** for hiring charges in respect of the **Machine** under this Section; or

- 4.2.2.2 the amount of hiring charges for the **Machine** payable by the **Insured** under the hire contract for the period commencing on the fifteenth (15th) day after the **Damage** and ending at the earlier of:

- 4.2.2.2.1 the end of the '**Indemnity Period**' applying to this Optional Endorsement specified in the **Schedule**; or

- 4.2.2.2.2 the date on which the **Machine** is repaired or replaced.

### **Demurrage and Consequential Loss Exclusion**

The indemnity provided under this Clause 4.2.2 does not include the **Insured's** legal liability for demurrage and any other consequential loss, for example, loss of use, loss due to delay, lack of performance, loss of contract or depreciation in the value of any un**Damaged** property.

### 4.2.3 Finance Payments Protection

Where a **Machine** has suffered **Damage** covered by this **Policy**, the **Insurer** will indemnify the **Insured** against its liability to meet the ordinarily occurring payments under a **Financial Agreement** in respect of the **Machine** provided that:

- 4.2.3.1 no change is or has been made after the **Damage** is suffered to alter the **Financial Agreement** arrangements or repayment, including frequency or size of repayments;
- 4.2.3.2 the indemnity provided by this Optional Endorsement will cease after twelve (12) months from the **Occurrence** of **Damage** or the date on which the **Machine** is repaired or replaced, whichever is the earlier;
- 4.2.3.3 the **Insured** will with due diligence do and concur in doing and permit to be done all things which may be reasonably practicable to minimise or avoid or diminish loss; and
- 4.2.3.4 this Optional Endorsement will only apply when the period for repair or replacement exceeds fourteen (14) consecutive days.

### **Basis of Settlement:**

The amount payable under this Optional Endorsement is calculated as follows:

- 4.2.3.5 where the period for repair or replacement exceeds fourteen (14) days but does not exceed one (1) calendar month, one (1) full monthly payment or its equivalent; or
- 4.2.3.6 where the repair or replacement period exceeds one (1) calendar month, payment for the period of repair or replacement will be calculated on a daily pro-rata basis.

The **Insurer** will not be liable for any more than the aggregate **Sum Insured** as specified in the **Schedule** for Finance Payment Protection during the **Period of Insurance**.

#### ***Balloon or Residual Payment Exclusion***

Optional Endorsement 4.2.3 (Finance Payment Protection) does not provide indemnity for any balloon or residual value payments which may be due during the repair or replacement period.

#### ***Consumer Credit Arrangement Exclusion***

Optional Endorsement 4.2.3 (Finance Payment Protection) does not extend to or otherwise apply to any loss, **Damage** or liability caused directly or indirectly by, arising out of or in connection with finance or credit arrangements in respect of a **Machine** which arrangements constitute **Consumer Credit Arrangements**.

## Section 2 - Increased Costs of Working

Where this cover is identified in the **Schedule** as having been selected by the **Insured** and the appropriate **Premium** is paid, the **Insurer** will provide the following cover.

### 5. Scope of Cover

- 5.1 If the **Business** is interrupted or interfered with as a consequence of **Damage** to a **Machine** in respect of which the **Insured** is entitled to indemnity under Section 1 (**Damage to Machines**) of this **Policy**, the **Insurer** will indemnify the **Insured** during the **Indemnity Period** against the **Increased Costs of Working** resulting from such reduction or interference in accordance with the Basis of Settlement set out in Clause 6, subject to:
- 5.1.1 the General Exclusions Applying to All Sections set out in Clause 20;
  - 5.1.2 the Exclusions Applying to Sections 1 - 5 Only set out in Clause 21;
  - 5.1.3 the Conditions Applicable to All Sections set out in Clause 23; and
  - 5.1.4 the Condition Applicable to Sections 2 and 3 Only set out in Clause 24.

### 6. Basis of Settlement

- 6.1 The **Insurer** will pay to the **Insured** after deducting the **Excess**, the **Increased Costs of Working** during the **Indemnity Period** up to the **Sum Insured** applicable to Section 2 (Increased Costs of Working).

## Section 3 – Loss of Income

Where this cover is identified in the **Schedule** as having been selected by the **Insured** and the appropriate **Premium** paid, the **Insurer** will provide the following cover.

### 7. Scope of Cover

7.1 If the **Business** is interrupted or interfered with as a consequence of **Damage** to a **Machine** in respect of which the **Insured** is entitled to indemnity under Section 1 (**Damage** to Machines) of this **Policy**, the **Insurer** will indemnify the **Insured** during the **Indemnity Period** for the **Shortfall in Weekly Income** resulting from such reduction or interference in accordance with the Basis of Settlement set out in Clause 8 subject to:

- 7.1.1 the General Exclusions Applying to All Sections set out in Clause 20;
- 7.1.2 the Exclusions Applying to Sections 1 - 5 Only set out in Clause 21;
- 7.1.3 the Conditions Applicable to All Sections set out in Clause 23; and
- 7.1.4 the Condition Applicable to Sections 2 and 3 Only set out in Clause 24.

### 8. Basis of Settlement

8.1 The **Insurer** will pay to the **Insured** after deducting the **Excess**, the **Shortfall in Weekly Income** during the **Indemnity Period** less any savings in the costs of working of the **Machine** that cease or are reduced as a result of the **Damage** up to the **Sum Insured** applicable to Section 3 (Loss of **Income**).

## Section 4 – Machinery Breakdown

Where this cover is identified in the **Schedule** as having been selected by the **Insured** and the appropriate **Premium** is paid, the **Insurer** will provide the following cover.

### 9. Scope of Cover

The **Insurer** will indemnify the **Insured** against **Machinery Breakdown** that occurs anywhere within the **Geographical Limits** during the **Period of Insurance** in accordance with the Basis of Settlement set out in Clause 10 and shall provide the Additional Covers referred to in Clause 4 of Section 1 (**Damage** to Machines), subject to:

- 9.1 the General Exclusions Applying to All Sections set out in Clause 20;
- 9.2 the Exclusions Applying to Sections 1 - 5 Only set out in Clause 21; and
- 9.3 the Conditions Applicable to All Sections set out in Clause 23.

### 10. Basis of Settlement

The **Insurer** will pay to the **Insured** after deducting the **Excess** and taking into account the preference of the **Insured** the lesser of:

- 10.1 the reasonable cost of repairing or replacing the **Machine** to a condition equal to its condition immediately prior to the **Machinery Breakdown** plus any costs of dismantling, transporting, commissioning, erecting and reinstalling the **Machine**; or
- 10.2 the **Market Value** of the **Machine** immediately prior to **Damage** occurring; or
- 10.3 the **Sum Insured** per **Machine** as specified in the **Schedule** applicable to Section 4 (**Machinery Breakdown**).

## Section 5 – Registered Machine Liability

Where this cover is identified in the **Schedule** as having been selected by the **Insured** and the appropriate **Premium** is paid the **Insurer** will provide the following cover.

### 11. Scope of Cover

The **Insurer** shall provide the cover as set out in Section 5 below subject to:

- 11.1 the General Exclusions Applying to All Sections set out in Clause 20;
- 11.2 the Exclusions Applying to Sections 1 - 5 Only set out in Clause 21; and
- 11.3 the Conditions Applicable to All Sections set out in Clause 23.

### 12. Third Party Liability – Property Damage

Subject to the Limit of Liability set out in Clause 15, the **Insurer** will indemnify the **Insured** against any legal liability of the **Insured** to pay compensation in respect of **Property Damage** caused by, through or in connection with the use in the **Business** of a **Machine** that is required by law to be registered for use on a public road and happening within the **Geographical Limits** during the **Period of Insurance** as a result of an **Occurrence**.

### 13. Third Party Liability – Injury

Subject to the Limit of Liability set out in Clause 15, the **Insurer** will indemnify the **Insured** against any legal liability of the **Insured** to pay compensation in respect of **Injury** caused by, through or in connection with the use in the **Business** of a **Machine** that is required by law to be registered for use on a public road and happening within the **Geographical Limits** during the **Period of Insurance** as a result of an **Occurrence**.

### 14. Extensions to Clauses 12 & 13 – Additional Benefits

#### 14.1 Legal Costs

The **Insurer** will pay all **Legal Costs** incurred by the **Insured** with its prior written consent, such consent not to be unreasonably withheld in the defence of any claim in respect of which the **Insured** is entitled to indemnity under Clause 12 or 13 of the **Policy**. Furthermore, the **Insurer** will pay legal expenses incurred by the **Insured** with its prior written consent, for representation at any formal legal inquiry or at any coroner's inquest. The **Insurer's** consent will not be unreasonably withheld and will be provided with due promptness having regard to the **Insured's** interests and acting reasonably. If You breach the requirement to obtain the **Insurer's** prior consent, We may reduce

Our liability for this element of Your claim by the extent to which We are prejudiced by Your failure to do so, unless and to the extent You incurred those costs on an emergency basis in which You had no opportunity to first seek Our consent.

#### 14.2 Indemnity to Other Persons

The **Insurer** will extend the protection provided to an **Insured** under Clauses 12 and 13 of the **Policy** to:

- 14.2.1 any person who was driving, using or in charge of a **Machine** of a type described in Clauses 12 and 13 of the **Policy** with the **Insured's** express or implied permission, provided:
  - 14.2.1.1 that person holds a valid driver's licence; and
  - 14.2.1.2 is appropriately authorised, qualified, licensed and/or trained to operate the **Machine**; and
  - 14.2.1.3 has neither been deemed ineligible for nor previously refused motor vehicle insurance of any description;
- 14.2.2 any passenger travelling in or on, entering into or alighting from a **Machine** of a type described in Clauses 12 and 13 of the **Policy**.

#### 14.3 The Insured's liability as a Principal

The **Insurer** will indemnify the **Insured** in accordance with the cover under Clauses 12 and 13 in respect of a **Machine** that is not owned or supplied by the **Insured** but which is in the charge of or being driven by a person authorised to use the **Machine** on behalf of the **Insured** in connection with the **Business**.

#### 14.4 Towing

The **Insurer** will indemnify the **Insured** in accordance with the cover under Clauses 12 and 13 of the **Policy** against legal liability arising from the towing of a trailer or other machine or vehicle by a **Machine** of a type described in Clauses 12 and 13 of the **Policy**, provided that not more than one trailer, machine or vehicle is being towed by any one **Machine** at any one time.

#### 14.5 Dangerous or Hazardous Goods

The **Insurer** will indemnify the **Insured** for legal liability arising from or in connection with **Dangerous or Hazardous Goods** arising directly and solely from **Damage** to a **Machine** provided the indemnity shall be sub-limited to the amount specified in the **Schedule** for this Additional Benefit for any one **Occurrence**.

#### 14.6 Hired in Machines (Blanket Cover)

When the optional endorsement provided by Section 1 (**Damage to Machines**) - **4.2.1 Hired in Machines (Blanket Cover)** is shown as "Included" in the **Schedule**, the **Insurer** will indemnify the **Insured** in accordance with the cover under

Clauses 12 and 13 of the **Policy** against legal liability arising from the use of an item covered by Section 1 (**Damage to Machines**) - **4.2.1 Hired in Machines (Blanket Cover)**.

#### 14.7 Removal of Debris

The **Insurer** will indemnify the **Insured** for the actual costs incurred to clean up or remove debris following a claim for which the **Insured** is entitled to indemnity under Clause 12 and 13 of the **Policy**, provided the indemnity shall be sub-limited to the amount specified in the **Schedule** for this Additional Benefit for any one **Occurrence**.

## 15. Limit of Liability

### 15.1 Clauses 12 and 13 and 14 Combined

The total liability of the **Insurer** under Clauses 12 and 13 and 14 combined in respect of all claims arising out of any one **Occurrence** is limited to the **Sum Insured** applicable to Section 5 (Registered Machine Liability).

## 16. Exclusions

The following Exclusions apply to Section 5 (Registered Machine Liability) only.

16.1 The **Insurer** will not indemnify the **Insured** or any other person claiming indemnity under this Section 5 (Registered Machine Liability) for or in respect of:

- 16.1.1 any liability which is covered by or within the scope of any statutory scheme operating anywhere in Australia governing the payment of **Damages**, compensation or expenses (whether limited in amount or not) for **Injury**, or the compulsory insurance of any liability for such payment, caused by, through, or in connection with the use of a **Machine**;
- 16.1.2 any amount in excess of that recoverable under any statutory compulsory insurance or fund or accident compensation scheme;
- 16.1.3 any claim for which the **Insured** would have been partially or wholly compensated but for the **Insured's** failure to insure or to register the **Machine** or to lodge a claim in accordance with a requirement of any statutory compulsory insurance or fund, or accident compensation scheme;
- 16.1.4 any liability for **Damages**, compensation or expenses for which the right to claim has been abolished or in any way limited by any law operating anywhere in Australia;
- 16.1.5 any liability arising from the use of a **Machine** in a race, speed trial or reliability trial;
- 16.1.6 any liability arising from carrying a larger number of passengers than is permitted by law or by the **Machine's** specifications but only to the extent this caused or contributed the loss;

16.1.7 any liability arising from carrying or towing a load heavier or larger than is permitted by law or by the **Machine's** specifications but only to the extent this caused or contributed to the loss;

16.1.8 any liability arising from the use of a **Machine** for carrying, or otherwise in connection with, a substance identified as "Goods Too Dangerous to Transport" or their equivalent in the Australian Dangerous Goods Code;

16.1.9 any liability arising from the use of any **Machine** as a **Working Tool**; or

16.1.10 any liability arising from the loading or unloading of things on or from a **Machine**, except where such loading or unloading occurs on a public carriageway or thoroughfare.

## Section 6 – Broadform Liability

Where this cover is identified in the **Schedule** as having been selected by the **Insured** and the appropriate **Premium** is paid, the **Insurer** will provide the following cover.

### 17. Scope of Cover

#### 17.1 Legal Liability

Subject to the Limits of Liability set out in Clause 18, the **Insurer** will indemnify the **Insured** against any legal liability of the **Insured** to pay compensation in respect of:

- 17.1.1 **Injury**; or
- 17.1.2 **Property Damage**; or
- 17.1.3 **Advertising Injury**,

happening within the **Geographical Limits** during the **Period of Insurance** as a result of an **Occurrence** in connection with the **Business**.

#### 17.2 Legal Costs & Other Expenses

The **Insurer** will pay the following costs and expenses in addition to the Limits of Liability set out in Clause 18:

- 17.2.1 all **Legal Costs** incurred with the **Insurer's** prior written consent, such consent not to be unreasonably withheld, in the defence of any claim in respect of which the **Insured** is entitled to indemnity under Clause 17.1 of the **Policy**;
- 17.2.2 all **Legal Costs** incurred with the **Insurer's** prior written consent, such consent not to be unreasonably withheld, for representation at any formal legal inquiry or at any coroner's inquest held in connection with any claim in respect of which the **Insured** is entitled to indemnity under Clause 17.1 of the **Policy**;
- 17.2.3 all expenses incurred by the **Insured** for first aid rendered for **Injury** to others at the time of an **Occurrence**, except any medical expenses which the **Insurer** is prohibited by law from paying; and
- 17.2.4 all expenses incurred by the **Insured** for temporary repairs, shoring up or protection of property of others that has been **Damaged** as a result of an **Occurrence** which is the subject of indemnity under this Section 6 (Broadform Liability).

Even if the allegations of a claim are groundless, false or fraudulent, the **Insurer** will indemnify the **Insured** in respect of any claim against the **Insured** for compensation or **Damages** to which indemnity under this Section 6 (Broadform Liability) applies (or would apply if the claim was sustained) and the **Insurer** may

make such investigations and settlement of any claim as the **Insurer** deems expedient, taking into account the interests of the **Insured**.

If a payment exceeding the **Sum Insured** applicable to Section 6 (Broadform Liability) has to be made to dispose of a claim, the **Insurer's** liability to pay **Legal Costs** and other expenses under this Clause 17.2 will be limited to that proportion of **Legal Costs** and other expenses as the **Sum Insured** bears to the amount paid to dispose of the claim.

### 18. Limits of Liability

- 18.1 The limit of the **Insurer's** liability in respect of any one **Occurrence** shall not exceed the **Sum Insured** applicable to Section 6 (Broadform Liability) as stated in the **Schedule**.
- 18.2 The total aggregate liability of the **Insurer** during any one **Period of Insurance** for all claims arising out of the **Products** shall not exceed the **Sum Insured** applicable to Section 6 (Broadform Liability) as stated in the **Schedule**.
- 18.3 The total aggregate liability of the **Insurer** during any one **Period of Insurance** for all claims arising out of **Pollution** shall not exceed the **Sum Insured** applicable to Section 6 (Broadform Liability) as stated in the **Schedule**.
- 18.4 The total aggregate liability of the **Insurer** during any one **Period of Insurance** for all claims under this Section 6 (Broadform Liability) arising from or in connection with:
  - 18.4.1 vibration; or
  - 18.4.2 removal or weakening of or interference with support for land or buildings,shall not exceed the amount shown in the **Schedule** as **Insured** for "Vibration and Weakening of Support".

### 19. Exclusions

The following Exclusions apply to Section 6 (Broadform Liability) Only.

The **Insurer** shall not be liable for:

#### 19.1 Advertising Injury

Liability arising out of **Advertising Injury** for:

- 19.1.1 acts or omissions committed prior to the inception date of this **Policy**;
- 19.1.2 acts or omissions made at the direction of the **Insured** with knowledge of the illegality or falsity thereof;
- 19.1.3 breach of contract, other than misappropriation of advertising ideas under an implied contract;

- 19.1.4 incorrect description of the price of the **Products**, goods or services;
- 19.1.5 infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the **Products**, goods or services sold, offered for sale or advertised, but this Exclusion 19.1.5 does not apply to titles or slogans;
- 19.1.6 failure of the **Products**, goods or services to conform with advertised performance, quality, fitness or durability; or
- 19.1.7 any **Insured** whose **Business** is advertising, broadcasting, publishing or telecasting.

## 19.2 Professional Liability

Liability arising out of the rendering of or failure to render professional advice or service by the **Insured**, but this Exclusion 19.2 does not apply to:

- 19.2.1 **Injury** or **Property Damage** arising therefrom, provided that such professional advice or service is not given for a specific fee; or
- 19.2.2 the rendering of or failure to render professional medical advice by **Medical Persons** employed by the **Insured** to provide first aid and other medical services on the **Insured's** premises.

## 19.3 Designs, Plans, Specifications, Patterns and Formulas

Liability arising from or in connection with any design, plan, specification, pattern or formula provided by the **Insured**, but this Exclusion 19.3 does not apply when such design, plan, specification, pattern or formula was provided by the **Insured** for no charge or fee.

## 19.4 Requirement to Insure

**Property Damage** to property that is rented to, leased to, occupied by, or used by, or in the care, custody or control of the **Insured** to the extent the **Insured** is required under contract to provide insurance thereof.

## 19.5 Registered Machines

**Injury** or **Property Damage** arising from the ownership, maintenance, possession or use by the **Insured** of any **Machine** whilst used in circumstances whereby such **Machine** is required to be registered for use as a motor vehicle by law.

Provided that this Exclusion 19.5 shall not apply:

- 19.5.1 to **Injury** where compulsory liability insurance or a statutory scheme does not provide indemnity for reasons that do not involve a breach by the **Insured** of legislation relating to motor vehicles;

- 19.5.2 where such **Injury** or **Property Damage**:

19.5.2.1 is caused by or arises from the loading or unloading of things on or from any **Machine** that occurs beyond the limits of any carriageway or thoroughfare; or

19.5.2.2 arises out of the use of any **Machine** as a **Working Tool**.

## 19.6 Electronic Data

Liability arising out of:

- 19.6.1 communication, display, distribution or publication of **Electronic Data** - however, this Exclusion 19.6.1 does not apply to **Injury** or **Advertising Injury** resulting from any of them; or
- 19.6.2 total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of **Electronic Data**; or
- 19.6.3 error in creating, amending, entering, deleting or using **Electronic Data**; or

total or partial inability or failure to receive, send, access or use **Electronic Data** for any time or at all, from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

## 20. General Exclusions Applying to All Sections

This **Policy** does not cover any loss, **Damage** or liability caused by, arising out of or resulting from:

- 20.1 any **Act of Terrorism**;
- 20.2 the actual, alleged or threatened contaminative, pathogenic, toxic or other hazardous properties of:
  - 20.2.1 **Asbestos**; or
  - 20.2.2 **Silica**; or
  - 20.2.3 **Mixed Dust**;
- 20.3 any demand, order, request or regulatory or statutory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assessing the effects of:
  - 20.3.1 **Asbestos**; or
  - 20.3.2 **Silica**; or
  - 20.3.3 **Mixed Dust**;
- 20.4 any claim or proceeding by or on behalf of a governmental authority or others for any **Damages**, loss, cost or expense because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of:

20.4.1 **Asbestos**; or

20.4.2 **Silica**; or

20.4.3 **Mixed Dust**;

- 20.5 radioactivity or the use, existence or escape of any nuclear fuel, nuclear material, or nuclear **Waste** or action of nuclear fission or fusion;
- 20.6 sonic pressure waves in connection with **Aircraft** and other aerial devices;
- 20.7 expropriation including lawful seizure, resumption, confiscation, nationalisation, destruction or **Damage** to property by or under the order of any government or public or local authority;
- 20.8 looting, sacking or pillaging following any events stated in 20.1, 20.7 and 20.12;
- 20.9 any business activities other than the **Business** unless otherwise agreed by the applicable **Insurer** in writing;
- 20.10 the **Insured** being entitled to indemnity under another contract of insurance that is required to be effected by or under a law in Australia.

#### 20.11 **Sanction Limitation and Exclusion Clause**

No **Insurer** shall be deemed to provide cover and no **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 **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

#### 20.12 **War Exclusion**

Notwithstanding any provision to the contrary within this **Policy** or any endorsement thereto, it is agreed that this **Policy** excludes loss, **Damage**, cost or expense of whatsoever 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 any other sequence to the loss;

20.12.1 War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.

This excludes loss, **Damage**, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

In the event any portion of this exclusion 20.12 is found to be invalid or unenforceable, that remainder shall remain in full force and effect. 08/10/01 NMA 2918

#### 20.13 **Communicable Disease Exclusion**

20.13.1 Notwithstanding any provision to the contrary within this **Policy**, this **Policy** does not cover 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**.

20.13.2 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**.

20.13.3 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:

20.13.3.1 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

20.13.3.2 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

20.13.3.3 the disease, substance or agent can cause or threaten bodily **Injury**, illness, emotional distress, **Damage** to human health, human welfare or **Property Damage**.

#### 20.14 **Radioactive Contamination Exclusion Clause – Physical Damage – Direct**

(Approved by Lloyd's Underwriters' Non-Marine Association)

This **Policy** does not cover any loss or **Damage** arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, however such nuclear reaction radiation or radioactive contamination may have been caused \* NEVERTHELESS if fire is an **Insured** peril and a

fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination, any loss or **Damage** arising directly from the fire shall (subject to the provisions of this **Policy**) be covered EXCLUDING however all loss or **Damage** caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly or indirectly from that fire.

\*Note – If fire is not an **Insured** peril under this **Policy**, the words from “NEVERTHELESS” to the end of the clause do not apply and should be disregarded. 0/05/59 NMA 1191.

#### 20.15 Cyber and Data Total Exclusion

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:

**20.15.1 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

**20.15.2** 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.

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

**20.15.4** 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.

**20.15.5** If the **Insurer** alleges 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**.

#### Definitions

**20.16 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.

**20.17 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**.

**20.18 Cyber Incident** means:

**20.18.1** 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

**20.18.2** 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**.

**20.19 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**.

#### 20.20 Perfluorinated Compounds, Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) Exclusion No.1

1. This **Policy** does not cover any claim for 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 any PFAS.

2. 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, contain, test for or in any way respond to or assess the effect of any PFAS.

3. PFAS means any organic molecule, salt, free radical or ion, the composition of which includes at least one:

- a. perfluorinated methyl group (-CF<sub>3</sub>); or
  - b. perfluorinated methylene group (-CF<sub>2</sub>-).
- LMA5595 – 29 July 2022

#### 20.21 Several Liability Clause

The liability of an **Insurer** under this contract is several and not joint with other insurers party to this contract. An **Insurer** is liable only for the proportion of liability it has underwritten. An **Insurer** is not jointly liable for the proportion of liability underwritten by any other **Insurer**. Nor is an **Insurer** otherwise responsible for any liability of any other **Insurer** that may underwrite this contract.

The proportion of liability under this contract underwritten by an **Insurer** (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an **Insurer**. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other **Insurer** that may underwrite this contract.

The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

LMA 5096

## 21. Exclusions Applying to Sections 1 - 5 Only

Sections 1 to 5 shall not cover any loss, **Damage** or liability caused by arising out of, or resulting from:

**21.1** a **Machine** being used as a crane or lifting device in:

- 21.1.1** contravention of any applicable statutory requirements; or
- 21.1.2** excess of the safe working load specified by any relevant statutory authority or manufacturer's specification.

But only to the extent that the circumstances in clauses 21.1.1 and 21.1.2 caused or contributed to the loss, the subject of a claim.

**21.2** a **Machine** being used in an unsafe or unroadworthy condition but only to the extent that the unsafe or unroadworthy condition caused or contributed to the loss, the subject of a claim;

**21.3** an act or omission of the **Insured**, a director or partner of the **Insured** or an **Employee**, or a person engaged in the operation of a **Machine** with the intention of causing, or with reckless disregard of the risk of causing, **Injury** or **Damage** to person or property;

**21.4** a **Machine** being used for an unlawful purpose;

**21.5** a **Machine** being driven by or in the charge of a person who is not appropriately authorised, qualified, licensed and/or trained to operate the **Machine**.

However, Exclusions 21.1, 21.2, 21.3, 21.4 and 21.5 will not apply if the **Insured** provided permission for such person to use the **Machine**, however, did not know, or could not reasonably have known, that the **Machine** was being utilised in a manner excluded by Exclusions 21.1- 21.5 inclusive;

**21.6** a **Machine** being used by a person:

- 21.6.1** under the influence of any drug or alcohol; or
- 21.6.2** with a level of drugs or alcohol in that person's blood or urine in excess of the level permitted by law to operate the **Machine**.

However, Exclusion 21.6 will not apply if the **Insured** provided permission for such person to use the **Machine**, however, did not know, or could not reasonably have known, that the person was so affected;

**21.7** any fault in, or failure of, the design or specification of the **Machine** provided that this Exclusion 21.7 does not apply to:

**21.7.1** any **Damage** resulting from such fault or failure; or

**21.8** any liability arising from such fault or failure tests or trials imposing abnormal conditions on the **Machine**;

**21.9** scratching or chipping of painted or polished surfaces;

**21.10** corrosion, rusting, erosion, gradual deterioration, wear and tear, fatigue, lack of lubricant, lack of coolant, incorrect lubricant, incorrect coolant or electrical failure.

This Exclusion does not apply to resultant **Damage** to the **Machine** where prior to the **Damage** such condition was not known by or could not have been reasonably detected by the **Insured** or any **Employee** or any person engaged in the operation of the **Machine**. This Exclusion 21.10 shall not, however, apply to Section 4 (Machinery Breakdown) if operational.

**21.11** a **Machine** which is a prototype or experimental machine;

**21.12** unauthorized or improper access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of **Electronic Data**, including, but not limited to, any patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of non-public information;

**21.13** violation of any statute, regulation, common-law, or any other law regulating or protecting access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information in the form of **Electronic Data**.

Exclusions 21.12 and 21.13 also applies to **Damages** or amounts associated with any notification costs, credit monitoring expenses, forensic expenses, public relations

expenses, or any other loss, cost or expense, whether incurred by the **Insured** or others, arising out of any access to, collection, use or disclosure of, or failure to protect any non-public confidential or personal information that is subject to these exclusions.

However, Exclusions 21.12 and 21.13 do not apply to:

- a. Direct Personal **Injury**, which, for purposes of this Exclusion only, means: bodily **Injury**, death, sickness, disease, disability, shock, fright, mental anguish or mental **Injury**; or
- b. Direct **Property Damage**, which, for purposes of this Exclusion only, means: physical **Damage** to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical **Damage** that caused it.

For the purposes of Exclusions 21.12 and 21.13, tangible property does not include any information, facts, programs, instructions, commands, **Electronic Data**, and anything else stored as or on, created or used on, or transmitted to or from computers or their software, including, but not limited to, systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices, networks, clouds, or other media used with electronically controlled equipment.

**21.14 Damages**, penalties, or interest for delay or detention;

**21.15** legal liability of whatsoever nature, except to the extent covered under: Clauses 4.1.3 (Damage to Lifted Goods), 4.1.5 (**Employees'** Personal Property), 4.1.7 (Hired Out Machines), 4.1.13 (Non-Owned Trailer in Control), 4.2.1 (Hired In Machines), 4.2.2 (Continuing Hire Charges), 4.2.3 (Finance Payment Protection) and Section 5 (Registered Machine Liability);

**21.16** loss of a **Machine** or any part of a **Machine** arising from the exercise by another of a right or alleged right to ownership or possession of the **Machine**;

**21.17 Damage** to:

**21.17.1** safety devices caused by the unintentional operation or activation of such devices; or

**21.17.2** tyres caused by bursting, cutting, wearing or the application of brakes; or

**21.17.3** batteries caused by a defect in such batteries unconnected with other **Damage**; or

**21.17.4** bits, drills, knives, discs, cutting edges, blades, dies, moulds, pulverising or crushing surfaces, belts, bands or any other parts requiring regular periodic replacement;

**21.18 Machinery Breakdown** other than the cover provided when Section 4 (**Machinery Breakdown**) is operative and limited to the cover afforded by Section 4 (**Machinery Breakdown**).

**21.19 Damage** to general miscellaneous contents of any demountable building, site shed, container or other similar storage facility other than:

**21.19.1** where cover is provided by an Additional Cover in clause 4 of Section 1 (**Damage to Machines**);

**21.19.2 Attachments**; or

**21.19.3** where individually specified in the **Policy Schedule**.

#### **21.20 Asbestos Exclusion**

This **Policy** does not cover 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. Microorganism Exclusion (MAP) (Absolute)

This **Policy** does not insure any loss, **Damage**, claim, cost, expense, or other sum directly or indirectly arising out of or relating to mould, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless of whether there is:

- a. any physical loss or **Damage** to **Insured** property;
- b. any **Insured** peril or cause, whether or not contributing concurrently or in any sequence;
- c. any loss of use, occupancy, or functionality; or
- d. any action required, including but not limited to repair, replacement, removal, clean up, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in the **Policy** that provides insurance, in whole or in part, for these matters.

#### **21.21 Solidification Exclusion**

This **Policy** does not cover any loss, **Damage**, liability or costs caused directly by, as a result of, arising from or in connection with the hardening, settling, or solidification of any asphalt, bitumen, concrete, or similar product, either in or on a **Machine**. This exclusion will not apply if the hardening, settling, or solidification results from an **Occurrence** of **Damage** to the **Machine** otherwise **Insured** under this **Policy**.

#### **21.22 Drilling Exclusion**

This **Policy** does not cover any loss, **Damage**, liability or costs in respect of:

- a. A **Machine** being a drilling rig, or other drilling, tunnelling, or trenching equipment used, or operated with:

- a. Oil, gas, or geothermal drilling; or
- b. Oil, gas, or geothermal wells.
- b. Drill pipes, collars, rock bits, reamers, core barrels, stabilisers, lugging equipment, casings and tools of any kind while below the rotary table, below ground or underground.

### 21.23 Machines Underground

Whilst any **Machine** or part thereof is below ground or underground, this **Policy** does not provide cover for any loss, **Damage**, liability, or costs

## 22. Exclusions Applying to Sections 5 and 6 Only

The **Insurer** shall not be liable for:

### 22.1 Aircraft, Hovercraft and Watercraft

Liability arising out of the ownership, operation or use by the **Insured** of any:

- 22.1.1 **Aircraft**; or
- 22.1.2 hovercraft; or
- 22.1.3 **Watercraft** greater than 8 metres in length, unless:
  - 22.1.3.1 the **Watercraft** is being operated by an independent contractor or operator;
  - 22.1.3.2 the **Watercraft** is not owned by an **Insured** but is being used for entertainment for the purpose of the **Business**.

### 22.2 Aggravated, Punitive or Exemplary Damages

Aggravated, punitive or exemplary **Damages**.

### 22.3 Contractual Liability

Liability assumed by the **Insured** under any contract or agreement but this Exclusion 22.3 does not apply to the extent that such liability would have been implied by law or would otherwise have existed in the absence of such contract or agreement.

### 22.4 Employers' Liability

- 22.4.1 Liability for **Injury** for which insurance against such liability (whether the insurance is limited in amount or not) is or would have been provided through licensed self-insurance or under a **Policy** in a form prescribed or approved under or issued in pursuance of any Workers' Compensation or Accident Compensation legislation applicable to the **Insured** or any extension of such **Policy** granted on request as a matter of usual practice by entities authorised to issue such policies; or
- 22.4.2 Liability for **Injury** relating to **Improper Employment Practices**.

Provided that Exclusions 22.4.1 and 22.4.2 shall not apply with respect to:

- 22.4.3 liability of others assumed by the **Insured** under written contract; or
- 22.4.4 claims for loss of consortium from the spouse of an **Employee**.

### 22.5 Fines, Penalties and/or Liquidated Damages

Fines, penalties and/or liquidated **Damages** imposed by law or assumed by the **Insured** under any contract, warranty or agreement.

### 22.6 Industrial Awards

Liability to or of any **Employee** of the **Insured** imposed by the provisions of any industrial award or agreement or determination where such liability would not otherwise have attached.

### 22.7 Pollution

- 22.7.1 Liability arising directly or indirectly out of or caused by, though or in connection with the actual, alleged or threatened **Pollution**, but this Exclusion 22.7.1 does not apply where the liability arises from a sudden identifiable event, unintended and unexpected from the standpoint of the **Insured** which takes place in its entirety at a specific time and place.
- 22.7.2 Any costs and expenses incurred in the prevention, removing, nullifying or clean-up of such **Pollution**, but this Exclusion 22.7.2 does not apply where clean-up, removal or nullifying expenses are incurred consequent upon a sudden identifiable event, unintended and unexpected from the standpoint of the **Insured** which takes place in its entirety at a specific time and place.
- 22.7.3 Liability for **Injury** or **Property Damage** caused by or arising out of the actual, alleged or threatened **Pollution** caused by any **Product** that has been discarded, dumped, abandoned or thrown away by others.

### 22.8 Products and Work Performed

Liability for:

- 22.8.1 the cost of making good, replacing or reinstating work performed by or for the **Insured** which is or is alleged to be or was faulty, but this Exclusion 22.8.1 does not apply to **Property Damage** resulting from such faulty work;
- 22.8.2 the cost of making any refund of the price paid for any **Products** or work performed by or for the **Insured**;
- 22.8.3 the cost of or **Damages** claimed in relation

to the withdrawal, recall, inspection, repair, replacement or loss of use of the **Products** or any property of which such **Products** form a part, if such **Products** or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

**22.8.4 Property Damage** to the **Products**, however this Exclusion 22.8.4 shall be restricted to the defective or harmful or unsuitable part of the **Product** and shall not apply to **Property Damage** to the remainder of such **Product** or **Products**;

**22.8.5** any **Product** that is, or an **Insured** could reasonably be expected to know is, installed in, or used in **Aircraft**, hovercraft or **Watercraft**.

## **22.9 Property owned by or in the Care, Custody or Control of the Insured**

**Property Damage** to property owned by the **Insured** or held in trust or in the custody or control of the **Insured**, but this Exclusion 22.9 does not apply to **Property Damage** to:

**22.9.1** personal property of directors, **Employees** and visitors of the **Insured**;

**22.9.2** premises (including fixtures and fittings) not owned by the **Insured**:

**22.9.2.1** at which the **Insured** is undertaking work in connection with the **Business** but no indemnity is granted for **Property Damage** to that part of the property on which the **Insured** is working and which arises out of such work;

**22.9.2.1** which are leased, rented or loaned to the **Insured**;

**22.9.3** vehicles (including spare parts and accessories thereon) not owned or used by the **Insured** in connection with the **Business** whilst within a car park belonging to or under the control of the **Insured** provided that the **Insured**, as a principal part of the **Business**, does not operate the car park for reward;

**22.9.4** any other property (except property owned by the **Insured** and property described in 22.9.2.1, 22.9.2.2 and 22.9.3 above).

The total liability of the **Insurer** under this clause 22.9 in respect of all claims arising out of any one **Occurrence** is limited to the amount specified in the **Schedule**.

## **23. Conditions Applicable to All Sections of the Policy**

### **23.1 Automatic Additions**

This **Policy** extends to include any **Machines** purchased/acquired by the **Insured** during the **Period of Insurance** provided that:

**23.1.1** the **Machines** are of a similar kind and value to the **Machines** currently **Insured** under the **Policy**; and

**23.1.2** the **Insured** declares to the **Insurer** no later than ninety (90) days after the purchase/acquisition the value of the purchased/acquired **Machines**; and

**23.1.3** the **Insured** must pay the rateable proportion of the **Premium** from the date of purchase/acquisition of such **Machines** to the expiry of the **Period of Insurance**; and

**23.1.4** the value of such newly purchased/acquired **Machines** does not exceed the amount shown in the **Schedule** as the sub-limit for Automatic Additions.

If the **Market Value** of the item of newly purchased and/or acquired **Machine** is in excess of the value declared in the **Schedule** for Additions and Deletions, no cover shall attach unless agreed by the **Insurer** in writing.

Any cover extended under Additions and Deletions shall cease after ninety (90) days from the purchase/acquisition.

### **23.2 Acquired Entities**

This **Policy** extends to include any company, subsidiary, organisation, firm or other entity formed, purchased or otherwise acquired by the **Named Insured** during the **Period of Insurance** provided that the **Named Insured**:

**23.2.1** holds a controlling interest in such entity;

**23.2.2** advises the **Insurer** of its interest in such entity within thirty (30) days following the date of attachment of such interest; and

**23.2.3** declares to the **Insurer** the number of any additional **Machines** to be **Insured** and pays such additional **Premium** as may be required by the **Insurer**.

### **23.3 Cancellation**

NOTWITHSTANDING anything contained in this Insurance to the contrary, this Insurance may be cancelled by the **Named Insured** at any time by written notice, provided no claims have been made.

This Insurance may also be cancelled by or on behalf of the **Insurer/s** by delivering to the **Named Insured** or

their appointed agent by mailing (including electronic) to the **Named Insured** or their appointed agent at the last advised address as shown in this Insurance, written notice stating when, not less than seven (7) business days thereafter, the cancellation shall be effective in the event of cancellation by the **Insurer/s** on any grounds set out in the Insurance Contracts Act 1984 (Cth), otherwise the date **You** request cancellation. The mailing of notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the **Named Insured** the **Insurer/s** shall retain the customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis the **Insurer/s** shall receive the earned premium hereon or the customary short rate proportion of any minimum premium stipulated herein whichever is the greater.

If this Insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein whichever is the greater.

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## 23.4 Care of Machines

The **Insured** must take reasonable steps when it was safe to take such steps to safeguard the **Machines** from **Damage** and to maintain them in accordance with:

23.4.1 manufacturers' or distributors' specifications; and

23.4.2 applicable laws and standards.

## 23.5 Changes Only by Endorsement

This **Policy** may only be amended by a written endorsement that becomes part of this **Policy** and will be shown in the **Schedule**. The endorsement must be signed by one of the **Insurer's** authorised representatives.

## 23.6 Claims Procedure

### 23.6.1 Notification

The **Insured**, or someone with appropriate authority acting on the **Insured's** behalf, must:

23.6.1.1 notify the **Insurer** in writing of any accident or **Damage** or loss as soon as reasonably practicable after the **Insured** receives notice of any **Occurrence** that is reasonably likely to give rise to a claim. The notice should include:

23.6.1.1.1 if there is **Damage** to property, details of the **Damage** and the steps taken to mitigate the loss;

23.6.1.1.2 if there is an **Injury** to any person, details of how, when and where such **Injury** happened;

23.6.1.1.3 the names and addresses of any injured persons and any witnesses;

23.6.1.1.4 the nature and location of any **Injury** or **Damage**; and

23.6.1.1.5 any other information the **Insurer** may reasonably require.

23.6.1.2 make reasonable efforts to notify the police of theft losses;

23.6.1.3 send to the **Insurer** any letter of demand notice, claim notice, writ or summons relating to an accident involving a **Machine**;

23.6.1.4 assist the **Insurer** in connection with any claim or legal action relating to that loss, **Damage** or **Occurrence**. The **Insurer** shall have the right but not the duty, having regard to the **Insured's** interests and acting reasonably, 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 the **Insurer's** own benefit any claim for indemnity or **Damages** or otherwise and shall have discretion in the conduct of any proceedings or in the settlement of any claim. The **Insurer** will keep the **Insured** apprised of the status of proceedings, informed of material developments and will consult with the **Insured** where appropriate. The **Insured** shall give all such information and assistance as the **Insurer** may reasonably require.

23.6.1.5 take all reasonable precautions to prevent or reduce **Damage**, **Advertising Injury**, **Property Damage**, or **Injury**, including carrying out minor repairs without first obtaining the approval of the **Insurer**, as soon as the **Insured** becomes aware of anything that gives rise to or could give rise to a claim under the **Policy**.

### 23.6.2 Liability not to be Admitted

23.6.2.1 No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurer**, which will not be unreasonably withheld. If the **Insured** does make an admission, offer, promise, payment or indemnity without the **Insurer's** consent, the **Insurer** may reduce or refuse the claim to the extent the **Insurer** is prejudiced by the **Insured's** admission, offer, promise, payment or indemnity.

### 23.7 Compliance with Recommendations, Guidelines, Standards and Legislation

The **Insured** shall at all times during the **Period of Insurance**:

23.7.1 service, maintain, use and operate any **Machine** in accordance with:

23.7.1.1 manufacturers' and distributors' recommendations and guidelines;

23.7.1.2 systems and procedures imposed or recommended by law, International Standards, Australian Standards and industry standards;

23.7.2 to the extent that is reasonably possible, ensure that anyone servicing, maintaining, using, or engaging in the operation of any **Machine**:

23.7.2.1 complies with manufacturers' and distributors' recommendations and guidelines;

23.7.2.2 uses systems and procedures imposed or recommended by law, International Standards, Australian Standards and industry standards; and is appropriately qualified and adequately experienced to service, maintain, use or engage in the operation of any **Machine** (for testing purposes or otherwise);

23.7.2.3 is qualified and adequately experienced to operate or use it; and

23.7.2.4 is provided with suitable training in its operation or use before operating or using it.

### 23.8 Severability

In the event any term or condition of this **Policy** is found to be invalid, illegal or unenforceable, in whole or in part, such term or condition or part thereof shall be deemed not to apply to this **Policy**. However, the validity, legality and enforceability of all other terms and conditions remains unchanged.

### 23.9 Cross Liability

23.9.1 Where the **Insured** is comprised of more than one party, the words "the **Insured**" shall be considered as applying to each party comprising the **Insured** in the same manner as if that party were the only party named herein as the **Insured**. Further, neither the inclusion of more than one **Insured** under this **Policy** nor any act, omission, breach, or default by any **Insured** shall in any way affect the rights of any other **Insured**. Nothing contained in this clause shall operate to increase the relevant **Sum Insured**, amend Clause 23.3 (Cancellation) or impair any rights or duties specifically assigned to the **Named Insured**.

23.9.2 Where the **Insured** is comprised of more than one party:

23.9.2.1 each **Insured** party must comply with the Conditions of the **Policy** to the extent that the Conditions are relevant to that **Insured** party. Any information or knowledge possessed by one party, whether possessed before or after the contract was entered into, shall not be imputed to any other such party.

23.9.2.2 the **Insurer** will not seek any relief whatsoever (including cancellation of the **Policy**) for non-disclosure and/or misrepresentation against an **Insured** party unless the **Insurer** would have been entitled to that relief had that party been the only party covered by this **Policy**.

### 23.10 Discovery of Product Defects

In the event that an **Insured** becomes aware of a **Product Defect**, the **Insured** shall make all reasonable efforts to locate and recall all defective **Products**, regardless of whether or not **Injury** or **Property Damage** has already occurred.

### 23.11 First Named Insured

The **Named Insured** is primarily responsible for payment of all **Premiums** and other amounts payable to the **Insurer** under this **Policy**.

The **Named Insured** will act on behalf of all other **Insureds** for the giving and receiving of notices and the receiving of any return **Premiums** that become payable under this **Policy**.

### 23.12 Goods and Services Tax (GST)

23.12.1 The **Insured's** GST status shall affect the amount of any indemnity payable by the **Insurer** under the **Policy**.

23.12.2 The **Insured** shall inform the **Insurer** of the **Insured's**:

23.12.2.1 Australian Business Number (ABN);  
and

23.12.2.2 Taxable Percentage, being the **Insured's** entitlement to an Input Tax Credit on the **Premium** as a percentage of the total GST on that **Premium**.

23.12.2.3 If the **Insured**:

23.12.2.3.1 is not registered for GST, the **Sum Insured** and any limit of indemnity shall be inclusive of GST.

23.12.2.3.2 is registered for GST, the **Sum Insured** and any limit of indemnity shall be exclusive of GST and the **Insurer** shall also pay any GST that the **Insured** is liable to pay in respect of any acquisition included in the indemnity;

But the **Insurer** shall not pay any GST to the extent that the **Insured** is entitled, or would if making the relevant acquisition be entitled, to an Input Tax Credit.

23.12.2.3.3 The **Insured** shall refund to the **Insurer** or pay any amount of GST payable as a result of the **Insured's** incorrect advice.

23.12.2.3.4 The **Insurer** shall pay only the amount of GST (less the **Insured's** entitlement to an Input Tax Credit) based on the amount that the **Insurer** pays under the **Policy** and any relevant acquisition included in the indemnity.

23.12.2.4 For the purpose of Clause 23.12 and whenever used elsewhere in the **Policy**, the expressions 'GST', 'Input Tax Credit' and 'acquisition' shall have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

### 23.13 Legal Jurisdiction

The terms and conditions of this insurance shall be governed by and construed in accordance with the laws

of New South Wales. The **Insurer** and the **Insured** hereby submit to the jurisdiction of Australian Courts in relation to all matters arising under this **Policy**.

### 23.14 Right of Inspection

23.14.1 The **Insurer** shall have the right to inspect or examine any **Machine** at any time during the **Period of Insurance**, subject to two business days' notice to the **Insured**.

23.14.2 The **Insured** shall assist in inspections or examinations of the **Machines**.

### 23.15 Notification of Changes Materially Affecting the Insurance

23.15.1 The **Insured** shall notify the **Insurer** in writing as soon as reasonably practicable of any change materially varying any facts or circumstances existing at the commencement of the **Period of Insurance**, including but not limited to, changes in the information contained in the proposal.

23.15.2 The **Insurer** shall not indemnify the **Insured** against the risks arising from the material changes unless, before **Damage, Breakdown Damage, Property Damage** or **Injury** in connection with those risks occurs, the **Insurer** has agreed in writing to extend the **Policy**.

23.15.3 Following the **Insured's** notification to the **Insurer** of such material changes, the **Insurer** shall have the right to vary the **Sums Insured, Excess, Premiums** or the terms of the **Policy**.

### 23.16 Transfer of Rights & Duties

The **Insured's** rights and duties under this **Policy** may not be transferred without the **Insurer's** written consent.

### 23.17 Waiver of Subrogation

The **Insurer** agrees to waive any rights and remedies or relief to which it or they may become entitled by subrogation against each party comprising the **Insured**.

### 23.18 Placement of Machines on a Watercraft

The **Policy** shall not cover **Damage** to or **Machinery Breakdown** in a **Machine** while the **Machine** is placed on a **Watercraft** unless, prior to such placement, the **Insurer** has agreed in writing to extend the **Policy** to cover such placement. The **Insurer's** consent shall not be unreasonably withheld.

### 23.19 Tandem/Dual Lifting

The **Insured** agrees that whenever any raising or lowering operations are carried out in which a single load is shared between any crane and another crane or lifting device, the **Insured** shall ensure:

- 23.19.1 the operation is carefully planned and supervised throughout;
- 23.19.2 the cranes involved in the operation have identical lifting and slewing speeds;
- 23.19.3 the load is shared equally between the cranes;
- 23.19.4 the load isn't in contravention of the maximum capacity requirements as set out in the relevant Australian Standard current at the time of lifting.

#### 23.20 Payment of Excess

- 23.20.1 The **Insurer** will deduct the amount of the **Excess** from the indemnity payable under Sections 1 to 4.
- 23.20.2 The **Insurer** shall not be liable to indemnify an **Insured** under Sections 5 and/or 6 if the **Insured** does not pay the **Excess** within a reasonable period after being requested to do so.
- 23.20.3 The **Insured** will not be required to pay the **Excess** if:
  - 23.20.3.1 The **Insured** can prove on the balance of probabilities that the claim involves a collision with another vehicle and the collision which gave rise to the claim was the fault of the driver of that other vehicle; and
  - 23.20.3.2 The **Insured** can identify or provide the **Insurer** with sufficient information for the **Insurer** to identify the other driver, and
  - 23.20.3.3 the amount of the claim exceeds the applicable **Excesses** under this **Policy**; and

Where the driver of the other vehicle disputes who was at fault, then the **Insured** must pay the **Excess** which applies however, the **Insurer** will refund it if successful in establishing later that the other driver was wholly at fault.

### Condition Applicable to Sections 2 and 3 Only

For the purposes of Section 2 (Increased Costs of Working) and Section 3 (Loss of **Income**), the **Insured** shall take all reasonable steps to minimise or reduce loss of **Income** as a consequence of **Damage** to a **Machine**, including using or hiring substitutes or alternatives for the **Machine**.

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