



# Leisure Insurance

**Product Disclosure Statement and Policy Wording**  
October 2015

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

**one**  
UNDERWRITING

## **PUBLIC AND PRODUCTS LIABILITY POLICY**

This Policy the Schedule the Certificate (including any Schedule issued in substitution) and any Endorsements shall be considered one document The proposal including the declaration or any information supplied by or on behalf of the Insured shall form the basis of this contract between the Insured and the Underwriters

The Certificate of Insurance confirms that in return for payment of the premium shown on the Tax Invoice certain Underwriters at Lloyd's have agreed to insure you in accordance with this policy and Certificate You or your representative can obtain further details of the syndicate numbers and the proportions of the Insurance for which each of the Underwriters at Lloyd's is liable by requesting them from the intermediary In the event of loss each underwriter (and their Executors and Administrators) is only liable for their own share of the loss

In accepting this Insurance the Underwriters have relied on the information and statements you have provided on the proposal form (or declaration) You should read the Certificate carefully and if it is not correct contact the intermediary It is an important document and you should keep it in a safe place with all other papers relating to this insurance

The subscribing Underwriters obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions The subscribing Underwriters are not responsible for the subscription of any co-subscribing Underwriter who for any reason does not satisfy all or part of its obligations

Provided always that any Section of this Policy stated to be not covered in the Schedule shall be inoperative.

## **DEFINITIONS**

Where the following words or phrases appear in this Policy or the Schedule or the Endorsements they will always have these meanings

### **1. Insured**

means

- (a) The Insured as specified in the schedule
- (b) and
  - (i) any shareholder director, partner, employee, member, coach, official or volunteer worker of the Insured in respect of liability for which the Insured would have been entitled to indemnification under this insurance if the claim had been made against the Insured
  - (ii) any office bearer committee or other member of the catering sports sponsorships social welfare health and safety and educational organisations fire first aid medical ambulance and security services operated by the Insured in their respective capacities as such
  - (iii) any officers or trustees of the Insured's superannuation scheme(s)
  - (iv) any joint venture where the Insured is engaged in a joint venture for their rateable proportion of such joint venture to the extent that no other policy contributes or otherwise agreed by the Underwriters
  - (v) any public or local authority company firm or other principal for whom the Insured is carrying out a contract or agreement for the performance of work  
or  
any owner of plant hired in by the Insured  
  
but only to the extent required by the conditions of the contract or agreement
  - (vi) any subsidiary company (including subsidiaries thereof) of the Insured and any other organisation under the control of the Insured and over which it is exercising active management;
  - (vii) any new organisations acquired by the Insured during the Policy Period, through consolidation, merger, purchase of the assets of or assumption of control and active management, provided such acquisition or assumption is reported to the Insurer within ninety (90) days after it is effected and provided further such acquisition is endorsed on this Policy.
  - (viii) Property Owner(s) (Including the Commonwealth of Australia) their servants, agents and lessee's arising out of or in connection with any of the activities of the insured carried out on land owned or occupied by the Property Owner(s) (Including the Commonwealth of Australia)
  - (ix) Any student engaged in work experience for the Insured. But only whilst acting at the direction of and within the scope of duties for the Insured.
- (c) The legal personal representatives of any party covered hereunder in accordance with paragraph (b) above

Provided that

- (i) each party covered hereunder shall observe fulfil and be subject to the terms exceptions and conditions herein or endorsed hereon this Policy the Schedule and any Endorsements insofar as they can apply
- (ii) the Underwriters aggregate liability to the Insured and any other party or parties shall not exceed any of the specified amounts detailed in the Schedule to this Policy

## **2. Business**

means the description specified in the Schedule and shall include

- (a) the ownership or occupation of premises by the Insured including incidental repair and maintenance
- (b) the provision and management by the Insured of catering sports sponsorships social welfare health and safety and educational organisations fire first aid medical ambulance and security services owned by the Insured in their respective capacities as such
- (c) private work undertaken with the consent of the Insured by any person under a contract of service or apprenticeship with the Insured for any director partner or senior official of the Insured
- (d) participation in exhibitions and/or performances
- (e) private non-income deriving equestrian activities of members

## **3. Damage**

means

- (a) physical damage to or loss or destruction of tangible property including resultant loss of use
- (b) loss of use of tangible property which has not been physically damaged or destroyed provided such loss of use is caused by an Occurrence.
- (c) Nuisance trespass or interference with any easement right of air light water or way

## **4. Employee**

means

- (a) person employed by the Insured under a contract of service or apprenticeship
- (b) person acting in the capacity of non-executive director of the Insured
- (c) labour master or labour only sub-contractor or persons supplied by them in the course of the Business
- (d) self-employed person whilst engaged in the course of the Business
- (e) person under a contract of service or apprenticeship with another employer and who is hired to or borrowed by the Insured in the course of the Business
- (f) person undertaking work or study experience training exchange or similar schemes working for the Insured in the course of the Business
- (g) prospective person who is being assessed by the Insured as to their suitability for their employment
- (h) outworker or home worker employed under a contract to personally execute any work in connection with the Business whilst they are engaged in that work

## **5. Territorial Limits**

means

- (a) anywhere within Australia
- (b) elsewhere in the world where the insured conducts temporary visits provided that such insured's are normally resident within Australia.
- (c) in respect of liability arising from Products anywhere in the world

## **6. North America**

means the United States of America or Canada or any protectorate or any territory within their jurisdiction

## **7. Underwriters**

means certain Underwriters at Lloyd's as stated in the Schedule of Subscribing Underwriters

## **8. Product**

means anything (including their containers packaging or labels) manufactured sold supplied hired out repaired serviced altered installed erected processed tested treated grown constructed distributed stored or transported by or on behalf of the Insured after they have ceased to be in the care custody or control of the Insured including any advice instruction or design relating to such Products

## **9. Financial Loss**

means financial loss unaccompanied by either

- (a) Bodily Injury or
- (b) Damage

## **10. Costs and Expenses**

means

- (a) all reasonable costs fees and expenses incurred with the written consent of the Underwriters in the defence or settlement of any claim
- (b) all reasonable costs fees and expenses recoverable from the Insured by any claimant
- (c) all reasonable costs fees and expenses incurred with the written consent of the Underwriters for representation of the Insured at proceedings in any court arising from any alleged breach of statutory duty or at any coroners inquest or fatal accident enquiry relating to a claim which may be the subject of indemnity under the Policy

Even if the allegations of a Suit are groundless false or fraudulent the Insurer has the right and duty to defend any suit against the Insured for compensation to which indemnity under this policy applies or would apply if the claim was sustained and the Insurer shall make such investigations and settlement of any claim as the Insurer deems expedient.

## **11. Policy**

means the Policy and Schedule and any endorsements attached or issued

## **12. Proposal**

means the signed Proposal and declaration and any additional information supplied to the Underwriters by or on behalf of the Insured

## **13. Incidental Contracts**

means

- (a) any written rental agreement or lease of real property not requiring an obligation to insure such property

- (b) any written contract with any public authority for the supply of water, gas, electricity or telephone and telex services except those contracts in connection with work done for such authorities
- (c) any written contract with any railway authority for the loading, unloading and/or transport of Products, including contracts relating to the operation of railway sidings.

#### **14. Bodily Injury**

For the purpose of this Policy Bodily Injury shall mean

1. Physical injury, death, illness, disease, disability, shock, fright, mental injury, mental anguish or loss of consortium resulting from any of them.
2. The effects of
  - (a) false arrest, false imprisonment, wrongful eviction, wrongful detention, humiliation,
  - (b) libel, slander, defamation of character, invasion of right of privacy and
  - (c) assault and battery not committed by or at the direction of any of the Persons Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

#### **15. Occurrence**

Means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Bodily Injury or Damage neither expected nor intended by any of the Insured.

#### **16. Bloodstock**

Means a Thoroughbred horse which is bred and kept for the purposes of racing or breeding for racing and entered or eligible for entry in the Australian Stud Book.

## **PUBLIC AND PRODUCTS LIABILITY**

### **1. The Cover**

The Underwriters will pay to or on behalf of the Insured subject to the Limit of Indemnity specified in the Schedule all sums which the Insured shall become legally liable to pay as damages (including claimants Costs and Expenses) for and arising out of

- (a) Bodily Injury
- (b) Damage

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

In respect of Bodily Injury arising from continuous or repeated inhalation ingestion or application of any substance and where the Insured and the Underwriters cannot agree when the Bodily Injury occurred then the Bodily Injury shall be deemed to have occurred when the claimant first consulted a qualified medical practitioner and any question whether such Bodily Injury occurred during the Period of Insurance shall be determined accordingly.

### **2. Limit of Indemnity**

The liability of the Underwriters for all damages (including Costs and Expenses)

- (a) for any one occurrence or series of occurrences arising out of any event shall not exceed the Limit of Indemnity specified in the Schedule but in respect of claims arising from Sudden and Accidental Pollution shall not in the aggregate exceed the Limit of Indemnity specified in the Schedule
- (b) in respect of all claims arising from Products shall not in the aggregate exceed the Limit of Indemnity specified in the Schedule

**STANDARD CLAUSES**  
**Applying to – Public and Products Liability**

**1. Prosecution defence costs**

The Underwriters will indemnify the Insured against

- (a) costs and expenses incurred with the written consent of the Underwriters
- (b) costs and expenses awarded against either the Insured or any director or Employee of the Insured

in connection with a prosecution including an appeal against conviction resulting from a prosecution as a result of an alleged offence notice of which is received by the Insured during the Period of Insurance under any legislation in the Commonwealth of Australia giving rise to duties in relation to the Business where the circumstances of the alleged offence may be the subject of indemnity under any Section of this Policy

Provided always that the Underwriters shall not be liable

- (a) for the payment of any fines or any penalty
- (b) where the prosecution results from any deliberate management decision act or error by the Insured's management

**2. Compensation for Court Attendance**

In the event of any under mentioned persons attending court as a witness at the Underwriters request in connection with any claim in respect of which the Insured is entitled to indemnity under this Policy the Underwriters will provide compensation to the Insured at the following rates for each day on which attendance is required

- (a) any director or partner of the Insured \$250 per day
- (b) any Employee \$100 per day

**3. Contingent Motor Liability**

Notwithstanding Exclusion 2 (b) of this Policy the Underwriters will indemnify the Insured and no other person in respect of liability caused by or in connection with any vehicle owned by an Employee that is being used in the course of the Business

This extension does not cover

- (a) liability arising when such vehicle is being driven
  - (i) by the Insured
  - (ii) with the general consent of the Insured by any person who to the knowledge of the Insured does not hold a licence to drive such vehicle unless such person has held and is not disqualified for holding such a licence
- (b) Damage to any such vehicle
- (c) any occurrence arising outside the Commonwealth of Australia

**4. Cross Liabilities**

If there is more than one named Insured in the Schedule to this Policy (which term in the case of a partnership includes each individual partner) The Underwriters will indemnify each in the same manner and in the same and to the same extent as if a separate Policy had been issued to each party provided that the total liability of the Underwriters in respect of all parties shall not exceed the Limit of Indemnity as specified in the Schedule to this Policy



## **5. Damage to Hired or Rented Premises**

Exclusion 1 (a) shall not apply to liability for accidental Damage to premises (and/or fixtures and fittings of such premises) hired or rented by the Insured for the purposes of the Business

This extension does not cover

- (a) liability assumed under a tenancy or other agreement which would not have attached in the absence of such agreement
- (b) Property Damage to any such premises which is insured under any property or fire insurance policy arranged by the insured or under which the insured is entitled to indemnity in respect of such property damage.

## **6. Radioactive Contamination**

The Underwriters shall not be liable under this Policy for any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

- (a) ionising radiations or contaminations by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

## **7. Sudden and Accidental Pollution**

The Underwriters will indemnify the Insured in respect of

- (a) pollution or contamination of buildings or other structures or of water or land or the atmosphere
- (b) loss of or damage or injury directly or indirectly caused by such pollution or contamination

caused by a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance

Such pollution or contamination which arises out of one incident shall be deemed to be one occurrence and to have occurred at the time such incident takes place

## **EXCLUSIONS**

The indemnity provided by this Policy does not apply to

### **1. Care Custody or Control**

liability in respect of the cost of making good loss of or damage to property

- (a) owned or occupied by the Insured or in the care custody or control of the Insured or any Employee of the Insured other than
  - (i) buildings temporarily occupied for the purpose of carrying out work thereon or therein
  - (ii) personal property belonging to visitors' directors' partners' or Employees of the Insured
  - (iii) property belonging to third parties, other than buildings. Insurer's liability shall not exceed \$100,000 any one event.
- (b) that part of any Property on which the Insured or any Employee or agent of the Insured is or has been working

### **2. Aircraft watercraft and motor vehicles**

liability arising from or caused by or through or in connection with the ownership possession or use by or on behalf of the Insured of

- (a) any airborne waterborne craft or vessel . This exclusion does not apply to watercraft less than 8 metres in length propelled manually or by sail only.
- (b) any vehicle for which compulsory insurance under any legislation governing the use of motor vehicles is required but this exclusion shall not apply
  - (i) while such vehicle is being used as a tool of trade
  - (iii) in respect of the loading or unloading of such vehicle or the delivery or collection of goods to or from such vehicle beyond the carriageway unless such liability is the subject of indemnity in whole or in part under any other insurance
- (c) any passenger lift or steam pressure vessel

### **3. Contractual Liability**

liability which has been assumed under a contract or agreement and would not have attached in the absence of such contract or agreement .This exclusion clause does not apply to

- (a) liabilities which would have been implied by Law.
- (b) contracts designated in the Schedule
- (c) any liability assumed by the Insured within the meaning of Special Clause 1 herein
- (d) liabilities assumed under Incidental Contracts as defined.

### **4 Advice**

liability caused by or arising from advice, design or specification given for a fee, but this Exclusion does not apply

- (a) where cover is otherwise covered by any endorsements attaching to and forming part of this Policy or
- (b) to the first \$1,000,000 of each Occurrence and in the aggregate which results in Bodily Injury or Damage or
- (c) where given in the form of tuition, instruction, coaching, teaching or similar means

## **5. Product Recall**

liability arising from Damage to the Product or part thereof or any costs or expenses or consequential loss incurred in

- (a) repairing inspecting altering correcting replacing reapplying removing servicing or making any refund in respect of the Product or part thereof
- (b) the withdrawal or recall of Products supplied by the Insured

## **6. Pollution**

liability in respect of

- (a) pollution or contamination of buildings or other structures or of water or land or the atmosphere
- (b) loss of or damage or injury directly or indirectly caused by such pollution or contamination

other than liability for which an indemnity is provided by Standard Clause 7 – Sudden and Accidental Pollution

## **7. Aircraft Products**

liability in respect of Products relating to aircraft including missiles or spacecraft and any ground support or control equipment used therewith and any Product supplied by the Insured and which to their knowledge is installed in aircraft or used in connection with aircraft or for spare parts for aircraft or tooling used for the manufacture thereof including ground handling tools and equipment training aids instruction manuals blue prints engineering or other data engineering or other advice or services and labour relating to such aircraft or Product

## **8. Libel and Slander**

liability arising from the libel or slander of an Employee by another Employee arising out of and in the course of his employment or of any partner or member of a partnership or joint venture by any other partner or member thereof.

## **9. Deliberate Acts**

Liability in respect of any injury loss or damage which results from a deliberate act or omission of the Insured having regard to the nature and circumstances of such act or omission

## **10. Computer Data**

Liability in respect of

- (a) loss of information or failure to provide information or the provision of wrong information in or from computer programmes tapes or data recording equipment unless as a direct consequence of physical loss of or damage to tangible property
- (b) the failure of any computer or other equipment or system for processing storing or retrieving data whether the property of the Insured or not and whether occurring before during or after the year 2000 to
  - (i) correctly recognise any date as its true calendar date
  - (ii) capture save or retain and/or correctly to manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date

- (iii) capture save retain or correctly to process any data as a result of the operation of any command which has been programmed into any computer software being a command which causes the loss of data or the inability to capture save retain or correctly to process such data on or after any date

#### **11. Employers Liability**

liability for which the Insured is entitled to seek indemnity under

- (a) any Policy of Insurance required to be taken out pursuant to any legislation relating to Workers' Compensation, whether or not the Insured is a party to such contract of insurance,
- (b) any scheme created by legislation to provide compensation to persons who sustain injuries arising out of or in the course of their employment.

and this Public and Products Liability Policy shall not be drawn into contribution with such insurance or scheme.

but this exclusion does not apply with respect to liability of others by the insured under written contract.

Provided that if the Insured:

Is required by law to insure or otherwise fund, whether through self-insurance, statutory fund or other statutory scheme, all or any Common Law Liability (whether limited or not) for such injury;  
or

Is not required to so insure or otherwise fund such liability by reason only that the injury is to a person who is not a "worker" or "employee" within the meaning of the relevant Workers' Compensation Law or the injury is not an injury which is subject to such law;

Then this policy will cover liability for injury to the extent that the insured's liability would not be covered under any such fund, scheme, policy of insurance or self-insurance arrangement had the insured complied with its obligations pursuant to such law.

#### **12. Liquidated Damages/ Penalties**

liability in the nature of or in respect of or arising out of fines penalties performance guarantees waiver of subrogation rights or punitive or exemplary damages or by way of liquidated or specified damages payable under or pursuant to any agreement

#### **13. Financial Loss**

liability for Financial Loss

#### **14. War**

liability in respect of any loss destruction damage or liability directly or indirectly occasioned by or through or in consequence of war invasion act of foreign enemy hostilities or warlike operations (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power

#### **15. Deductible**

liability in respect of the amounts specified in any Schedule to this Policy as a Deductible for the first part of any damages, costs and expenses in respect of each and every occurrence or series of occurrences consequent on or attributable to one source or original cause giving rise to indemnity under this Policy

## **16. Terrorism**

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes liability for loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, injury, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

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

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

## **17. Members Liability**

Notwithstanding cover as afforded to members under definition 1(b)(i) it is hereby agreed and declared that in the event the member is entitled to indemnity pursuant to a separate policy of insurance more specifically providing liability cover in respect of the event subject of such claim the insurer shall not be liable for claims under this policy except to the extent that the member's liability on any claim exceeds the amount of cover payable under such other policy.

## **18. Asbestos Exclusion**

It is agreed that this Policy shall not apply to liability for any claim arising in connection with

1. handling removal stripping out demolition storage transportation of disposal of asbestos and/or any other substance or compound that incorporates asbestos
2. surveying under the Control of Asbestos at Work Regulations 2002

It is further agreed that this Policy shall not apply to

- a) liability directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by or arising from the inhalation and/or ingestion of or the existence of or exposure to asbestos and/or any other substance or compound that incorporates asbestos
- b) liability which is a result of the removal from any building and/or structure of asbestos and/or any other substance or compound that incorporates asbestos as a consequence of an actual or alleged health hazard situation
- c) any obligation to defend any claim or suit against the Assured alleging liability resulting from a) or b) above nor to Underwriters' liabilities for Defence Costs arising there from

Subject otherwise to the Terms Conditions Limitations and Exclusions of the Policy.

## **19. Mechanical Bulls/Horses**

Any liability arising out of the use of Mechanical Bulls and/or Mechanical Horses.

## **GENERAL CONDITIONS APPLICABLE TO ALL SECTIONS OF THE POLICY**

### **1. Due Observance**

The due observance of terms conditions exceptions amendments and endorsements of this Policy by the Insured insofar as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers and information supplied by the Insured shall be a condition precedent to any liability of the Company to make any payment under this Policy

### **2. Misrepresentation and Non-Disclosure**

If the Insured:-

- (i) failed to disclose any matter which the Insured was under a duty to disclose to the Insurer(s);
- or
- (ii) made a misrepresentation to the Insurer(s) before the policy was entered into

and if the Insurer(s) would not have entered into this policy for the same premium and on the same terms and conditions expressed in this policy but for the failure to disclose or the misrepresentation,

then:-

- (a) the liability of the Insurer(s) in respect of any claim will be reduced to an amount to place the Insurer(s) in the same position in which the Insurer(s) would have been placed if such non-disclosure had not occurred or such misrepresentation had not been made; or
- (b) if the non-disclosure or misrepresentation was fraudulent, the Insurer(s) may avoid this policy.

### **3. Fraud**

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this policy, the Insurer(s), without prejudice to any other right(s) the Insurer(s) might have under this policy, shall be entitled to refuse to pay such claim.

In addition the Insurer(s) may cancel this policy by giving the Insured three (3) business day's written notice to that effect.

### **4. Alteration**

The Insured shall give notice to the Underwriters as soon as reasonably practicable of any fact or event affecting the risks insured by this Policy which is or might be material to the Underwriters

### **5. Reasonable Care**

The Insured shall take all reasonable care precautions to prevent losses or liability arising in connection with the insured risks

### **6. Claims (Duties owed by the Insured)**

- (a) if circumstances should exist and/or on the happening of any event which may give rise to a claim under this Policy the Insured shall as soon as possible give notice thereof to the Underwriters in writing
- (b) every letter claim writ summons process impending prosecution notice of an inquest or fatal accident inquiry in connection with any such circumstance or event aforesaid shall be immediately forwarded to the Underwriters

- (c) within thirty days of any event aforesaid or such further time as the Underwriters may in writing allow the Insured shall give full particulars of the claim to the Underwriters. The Insured shall also give to the Underwriters all such proofs documents and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim or defence of a claim and of any matters relating thereto
- (d) the Insured shall attend all proceedings and assist the Underwriters in the giving of evidence and the attendance of witnesses
- (e) 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 Underwriters

#### **7. Claims (Underwriters Rights)**

- (a) the Underwriters may at its discretion take over and control the legal representation of the Insured at any inquest inquiry or other proceedings in any Court concerning any matters that has or may give rise to a claim hereunder and/or the defence and settlement of any claim. The Underwriters shall conduct such representation and defence and settlement of claims as it sees fit so to do in the name of the Insured
- (b) the Underwriters may at any time pay to the Insured the amount of the Limit of Indemnity (less any sum already paid) or any lesser amount for which any claim or claims can be settled and shall then cease to have the conduct and control of the negotiations actions or proceedings and be under no further liability in respect of such claim or claims except for costs and expenses incurred prior to the date of such payment for which the Underwriters are liable hereunder. The Underwriters shall not be responsible for any loss which the Insured may claim to have sustained by reason of the Underwriters having acted in such conduct or control

#### **8. Subrogation**

The Underwriters shall be subrogated to all the Insured(s) rights of recovery against any person or organization before or after any payments under this insurance. The Insured shall execute and deliver instruments and papers and do what ever else is necessary to secure such rights. The Insured shall do nothing to prejudice such rights.

#### **9. Contribution**

If at the time any claim arises under this Policy there be any other insurance effected by or on behalf of the Insured covering the same liability the Underwriters shall not be liable to pay or contribute more than its rateable proportion of any such claim and costs and expenses in connection therewith, subject to Section 76 of the Insurance Contracts Act 1984.

#### **10. Arbitration**

If any difference shall arise between the Underwriters and the Insured as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the Statutory provisions in that behalf for the time being in force. Where any difference is by this Condition to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the Underwriters, subject to Section 43 of the Insurance Contracts Act 1984.

#### **11. Jurisdiction**

Any indemnity provided by this Policy in respect of legal liability to pay damages (including claimants costs and expenses) shall operate in accordance with the law of any country but not in respect of any judgement award payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgement award payment or settlement either in whole or in part.)

Any dispute concerning the interpretation of the terms conditions limitations and/or exclusions contained herein is understood and agreed to be that such dispute determined in accordance with the law and practice of Australia..

## **12. Adjustment**

Where in the Schedule this Policy is shown to be subject to a premium adjustment the Insured shall within one month of the expiry of the Period of Insurance forward to the Underwriters such information as the Underwriters may require. The Underwriters shall thereupon adjust such premium subject to any Minimum Premium shown in the Schedule.

## **13. Cancellation**

This policy may be cancelled

- (a) by the Insured giving notice to the insurer at any time. Notice shall be effective when received by the insurer. The premium shall be adjusted on a pro rata basis and the company may retain or be entitled to the premium for the period during which the policy was force plus 10% of the premium for the unexpired period insurance.
- (b) By the insurer in accordance with the provisions of the Insurance Contracts Act 1984. The premium will be adjusted on a pro rata basis and the Insured shall be entitled to a refund in respect of the unexpired period of insurance.

In either event the Insured shall provide all information requested by the insurer to enable the calculation and adjustment of the premium,



## **ENQUIRY OR COMPLAINTS PROCEDURE**

**Any enquiry or complaint should be addressed in the first instance to your insurance intermediary for reference to the Underwriters.**

It will greatly assist us if you quote your Policy number in any communication.

If you are not satisfied with the way a complaint or enquiry has been dealt with you may contact the Lloyds Policyholder and Market Assistance Department.

Lloyd's Underwriters' General Representative in Australia  
Suite 2, Level 21  
Angel Place  
123 Pitt Street  
Sydney  
NSW 2000  
Australia  
Telephone Number (02) 9223 1433  
Facsimile Number (02) 9223 1466

If your enquiry or complaint remains unresolved you may be referred to the Financial Ombudsman Service Limited under the terms of the General Insurance Code of Practice. For other disputes you will be referred to other proceedings for resolution. Details are available from Lloyd's Underwriters' General Representative in Australia

## FINANCIAL LOSS EXTENSION CLAUSE

Notwithstanding Exclusion 13 – Financial Loss this Policy is extended to indemnify the Insured up to the Limit of Indemnity specified in the Schedule to this Policy in respect of all sums which the Insured shall become legally liable to pay as damages (inclusive of claimants Costs and Expenses) consequent upon any claim or claims for Financial Loss to third parties within the Territorial Limits first made against the Insured and notified to the Company during the Period of Insurance in connection with the Business.

Provided that

- a) such liability arises from or is caused by
  - (i) accidental escape or discharge of any substance or gas from any premises owned or occupied by the Insured stoppage or interference with pedestrian rail air vehicular or waterborne traffic obstruction loss of amenities trespass nuisance or similar cause
  - (ii) the defective or harmful condition of the Products or the Product failure to perform the function for which they were supplied
  - (iii) such other occurrence that is not a deliberate or intentional act by or omission of any party entitled to indemnity by this Policy the effect of which will knowingly result in financial loss
  
- b) this extension shall not apply in respect of
  - (i) legal liability attaching solely because of a contract or agreement that would not have attached in the absence of such contract or agreement
  - (ii) the cost of removal repair recovery alteration replacement demolition dismantling delivery rebuilding supply installation or recall of the Products or commodity article or thing in which the Products are incorporated
  - (iii) Bodily Injury or Damage to property as defined within this Policy
  - (iv) Financial Loss in excess of \$1,000,000 in the aggregate as a result of advice design specification or formula given by the Insured
    - (1) not in connection with the Products
    - or
    - (2) for a fee
  - (v) fines liquidated damages or specified damages under any agreement or penalty clause or awards or damages of a punitive or exemplary nature.
  - (vi) Financial Loss consequent upon any deliberate act or omission by or on behalf of the Insured and which result could have reasonably been expected by the Insured having regard to the nature and circumstances of such act or omission.
  - (vii) any act of fraud or dishonesty
  - (viii) any of the torts of passing off or infringement of patent copyright trademark or trade name or deceit or injurious falsehood or conspiracy or inducing breach of contract or intimidation or unlawful interference or other like economic torts
  - (ix) Financial Loss caused by any watercraft or aerial device or by the Products installed in any of the foregoing or caused by any motor vehicle
  - (x) (10)% of each and every claim made against the Insured subject to a minimum of \$2,500 which amount shall be retained by the Insured as their own liability and uninsured
  - (xi) Financial Loss where the event giving rise to Financial Loss occurred or is alleged to have occurred prior to the date set forth in the Schedule
  - (xii) Financial Loss consequent upon Libel or Slander
  - (xiii) Claims brought in the United States of America arising out of any breach or alleged breach of antitrust laws
  - (xiv) Claims in respect of Farriers and/or Dentists arising from the treatment of bloodstock as defined in the policy in excess of \$100,000

It is further understood and agreed that the liability of the Insurers under this Extension for all claims for damages and claimant's costs and expenses occurring in any one Period of Insurance shall not in the aggregate exceed the Limit of Indemnity set forth in the Schedule.

## **ERRORS AND OMISSIONS EXTENSION CLAUSE**

### **OPERATIVE CLAUSE**

This Policy is extended to indemnify the Insured against all sums which the Insured shall become legally liable to pay as damages and claimants' costs and expenses as a result of any claim first made against the Insured during the period of insurance arising out of any act, error or omission of a professional nature of the Insured or persons acting on their behalf in the conduct of the Insured's business.

Furthermore Insurers shall only be liable for that part of each claim by each claimant including all defence costs which exceeds the amount of the deductible.

### **ADDITIONAL EXCLUSIONS APPLICABLE TO THIS EXTENSION**

Insurers shall not be liable to indemnify the Insured against any claim

- (a) arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission of the Insured;
- (b) alleging infringement of copyright, intellectual property rights, patents or registered designs or breach of confidentiality
- (c) covered by the Liability section of this policy
- (d) in respect of taxes, fines, penalties, or punitive, exemplary or other non compensatory damages of any kind;
- (e) arising directly or indirectly from the insolvency or bankruptcy of the Insured

### **DEFINITIONS**

#### **Advice**

Liability caused by or arising from advice design or specification given for a fee shall be subject to a limit of \$1,000,000.

#### **Deductible**

An amount of \$5,000 of each and every claim made against the Insured, inclusive of costs, shall be retained by the Insured as their own liability and uninsured

#### **Claims Made**

This extension is arranged on a "claims made and notified" basis. Under a "claims made and notified" policy, any circumstance or potential claim that you are aware of or which could be made against you, must be notified to the Insurer during the period of insurance when you are first aware of the circumstance or potential claim.

## **SPECIAL CLAUSES**

### **1. Hold Harmless and Indemnity Agreements**

Notwithstanding anything contained in the policy to the contrary, it is understood and agreed that where the named Insured is required:

- (a) as a condition of permission being granted to hold an event to enter into a "hold harmless" agreement, whereby the Insured is required to indemnify and keep indemnified a third party (requiring the hold harmless agreement) from and against actions, suits, claims and demands whatsoever nature and all costs, charges and expenses in respect of any personal injury or property damage which may arise out of the granting of permission to organise and hold the covered event or arise out of or in the course of the event notwithstanding that the conditions of the permission shall in all respects have been observed by the Insured or that any such personal injury or property damage shall arise from any act or thing which they may be licensed or compelled to do there under;
- (b) as a condition of any contract/agreement entered into in the course of its business agree to indemnify and/or hold harmless the principal under such contract/agreement (including in respect of the principal's own negligence) from and against all claims, suits, demands, and actions of whatever nature and all cost charges and expenses in respect of any personal injury or property damage arising out of or in connection with the Insured's performance of the said contract/agreement;

this policy will indemnify the Insured in respect of such contractual liabilities subject otherwise to the terms, conditions and exclusions of this policy.

### **2. Proviso**

Provided that nothing in special clause 1 shall be deemed to increase the limit of the company's liability in respect of any one occurrence, series of occurrences or period of insurance.

### **3. Waiver of Subrogation**

It is hereby understood and agreed that the Insurer, waive all their rights of subrogation, under this special clause of the policy, against any corporation or corporations, the majority of whose capital stock is owned or controlled by the Insured or against any corporation, firm or individual who owns or controls the majority of the capital stock of the Insured, or any corporation, firm or individual, to which or to whom protection is afforded under this policy except, if such corporation, firm or individual is protected from such loss by any other policy of indemnity or insurance, the right of subrogation is not waived to the extent, and up to the amount of such other policy.

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