



# Shopping Centre Liability Insurance

**Policy Wording**  
October 2015

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

ARS0083E 0614 ARD18

**one**  
UNDERWRITING

# GENERAL AND PRODUCTS LIABILITY POLICY WORDING (SHOPPING MALLS - AUSTRALIA)

## IMPORTANT NOTICES

A copy of these notices should be given to the proposer prior to conclusion of the contract.

### 1. Non-Renewable Contract

Any insurance Policy issued will expire after 12 months without tacit renewal. If the Insured wishes the Policy to be renewed then the Insured must advise the Underwriters of all necessary information in good time.

### 2. Policy Subject to Survey

The Policy is subject to a risk survey to be carried out by or on behalf of the Underwriters. In the event that the survey results in Underwriters wishing not to accept the risk then the Underwriters may cancel the insurance by giving 30 days' notice in writing of their intention to cancel the Policy. Underwriters shall then return a pro-rata proportion of the premium for the period not insured, after deduction of an administration fee of \$5,000. Neither this condition to make a survey nor the carrying out of the same nor any report, requirement or recommendation arising from it shall constitute any undertaking on the part of the Underwriters to determine or warrant that the subject matter of such survey is safe, fit or compliant with any law, rule or regulation.

### 3. Insurance Contracts Act

The terms and conditions of this insurance shall be governed by and construed in accordance with the laws of Australia, and as such shall be subject to the Insurance Contracts Act 1984 (Cth). Nothing contained in this insurance is to be construed to reduce or waive either the Insured's or the Insurer's privileges, rights or remedies available under the Insurance Contracts Act 1984 (Cth).

### 4. Insured's Duty of Disclosure

The Insured has a duty to disclose to the Underwriters, before the contract of insurance is entered into, every matter that is known to the Insured, being a matter that:

- (a) the Insured knows to be a matter relevant to the decision of the Underwriters whether to accept the risk and, if so, on what terms; or
- (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant. This duty of disclosure also applies to any renewal, extension, variation or reinstatement of the Policy. The Underwriters are entitled to refuse to cover the additional exposure or charge a reasonable additional premium or, if the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged, to avoid the contract. If the person or entity who became the Insured under the Policy upon the contract being entered into:
  - (c) failed to comply with the duty of disclosure; or
  - (d) made a misrepresentation to the Underwriters before the contract was entered into; (but not where the Underwriters would have entered into the contract, for the same premium and on the same terms and conditions, even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into) then

- (e) if the failure was fraudulent or the misrepresentation was made fraudulently, the Underwriters may avoid the contract;
- (f) if the Underwriters are not entitled to avoid the contract or, being entitled to avoid the contract have not done so, the liability of the Underwriters in respect of a claim is reduced to the amount that would place the Underwriters in a position in which the Underwriters would have been if the failure had not occurred or the misrepresentation had not been made.

The Insured shall throughout the Period of Insurance give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the Proposal. In the event of Underwriters being at any time entitled to void the Policy by reason of the Insured failing to give notice in accordance with this Condition, the Underwriters may at their election, instead of voiding the Policy, give notice in writing to the Insured that there shall be excluded from the indemnity any claim which has arisen or may arise which is related to such facts, activities or circumstances.

#### **5. Waived Recourse Rights**

Please note that the policy excludes any claim or claims where and to the extent the Underwriters have or would have rights of recourse in respect of such claim but the Insured has granted without Underwriters' prior consent a waiver of such recourse rights to others whether by express term or by reason of an assumption of liability under contract.

#### **6. General Insurance Code of Practice**

The Insurer has adopted and proudly supports the Insurance Council of Australia's General Insurance Code of Practice and its purpose of raising the standards of practice and service in the general insurance industry. A copy of this Code is available by contacting the Insurer or from the Insurance Council of Australia's website at: [www.insurancecouncil.com.au](http://www.insurancecouncil.com.au)

#### **7. Privacy Policy**

One Underwriting's commitment to protecting your privacy

As you know, at One Underwriting we have always been committed to protecting your personal information in accordance with the Act and National Privacy Principles (which have now been replaced with the Australian Privacy Principles).

We generally collect, use and disclose personal information to offer, promote, provide, manage and administer the many financial services and products we and our group of companies are involved in. In order to do this, we may also share your information with other persons or entities who assist us in providing or promoting our services.

If you require further information about the way we handle your personal information, or wish to modify your privacy preferences (which includes unsubscribing to our marketing communications), please contact the One Underwriting Privacy Officer.

#### **Privacy Officer**

Email: [oneunderwriting@oneunderwriting.com.au](mailto:oneunderwriting@oneunderwriting.com.au)

Mail: Level 50, 80 Collins Street

MELBOURNE VIC 3000

Phone: +61 3 9867 5677

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# GENERAL AND PRODUCTS LIABILITY POLICY

## WORDING

### (AUSTRALIA- SHOPPING CENTRES)

#### 1. OPERATIVE CLAUSE

Whereas the Insured stated in Item 1. of the Schedule has made to the Underwriters a Proposal, whose particulars and statements, including any ancillary information provided therewith, are hereby agreed to be the basis of this Policy.

We, the Underwriters, in consideration of payment of the Premium stated in Item 5. of the Schedule, agree, subject to all the terms and provisions of this Policy, to indemnify the Insured as is set out in each insured Coverage Section of this Policy in respect of the Insured's Business as stated in Item 3. of the Schedule but not in respect of any liability of the Insured where the action is brought in a court of law in or any judgment, award, payment, settlement or proceedings are made within territories which operate under the laws of the United States of America or where any order or proceedings are made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part unless the Insured has requested that there shall be no such limitation in respect of any or all Coverage Sections of this Policy and has accepted the terms of the United States of America Jurisdiction Extension Clause which forms part of this Policy.

#### 2. DEFINITIONS

For the purpose of determining the indemnity granted, the following terms shall be deemed to have the same meaning as defined wherever used in this Policy.

##### 2.1 Proposal

"Proposal" shall mean a written proposal or proposals made by or on behalf of the Insured to the Underwriters for the insurance evidenced by this Policy or any Coverage Section thereof, including any statements, declarations, warranties or information upon which the Underwriters have relied and, where a special form or presentation has been used for the purpose, bearing the date stated in Item 6. of the Schedule. The Proposal shall be construed as incorporated into and forming part of the Policy or relevant Coverage Section or Sections.

##### 2.2 Defence Costs

"Defence Costs" shall mean reasonable costs and expenses incurred by the Insured with Underwriters' prior consent in the investigation, defence or settlement of any claim made or which might be made against the Insured, including

1. the investigation of any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to a claim being made against the Insured or
2. representation at any inquest, inquiry or other proceedings in respect of matters which have a direct relevance to such claim, providing such claims are indemnifiable under this Policy.

##### 2.3 Injury

"Injury" shall mean death, bodily injury, illness or disease of or to any person;

##### 2.4 Damage

"Damage" shall mean loss of possession or control of or actual damage to tangible property;

##### 2.5 Pollution

"Pollution" shall mean any pollution or contamination of the atmosphere or of any water, land or other tangible property;

### **3. APPLICATION TO THE PERIOD OF INSURANCE**

This Policy shall only apply where the Claim Trigger for each Coverage Section as stated in Item 6. of the Schedule falls within the Period of Insurance stated in Item 4. of the said Schedule.

### **4. LIMIT OF LIABILITY**

4.1 The Underwriters' liability to indemnify the Insured in respect of any damages, claimants' costs, fees and expenses or other expenses for each claim under this Policy or series of such claims arising out of one originating cause or occurrence shall not exceed the amount stated in Item 6. of the Schedule as the Occurrence/Claim Limit in respect of each Coverage Section. This limit shall apply regardless of the number of Insureds, additional Insureds or entities comprising the Insured or the number of claims or claimants or any other reason whatsoever.

4.2 Where an amount has been inserted in Item 6. of the Schedule as the Aggregate Limit, this amount represents Underwriters' total liability in respect of all such claims in respect of the relevant Coverage Section.

4.3 Where a combined Occurrence/Claim Limit is stated in the Schedule to apply to certain Coverage Sections, each such Coverage Section shall be subject to its own Limit of Liability, provided always that should the same originating cause or occurrence give rise to indemnity by more than one such Coverage Section, the total amount of Underwriters' liability for all claims arising out of one originating cause or occurrence under all such Coverage Sections combined shall not exceed the single greatest Limit of Liability available under the Coverage Sections providing indemnity.

4.4 Where a combined Aggregate Limit is stated in the Schedule to apply to certain Coverage Sections, each such Coverage Section shall be subject to its own Aggregate Limit provided always that Underwriters' total liability for all claims under all such Coverage Sections combined shall not exceed the single greatest Aggregate Limit available under the Coverage Sections providing indemnity.

### **5. DEFENCE COSTS**

5.1 Defence Costs will be paid by the Underwriters as stated in Item 6. of the Schedule in respect of each Coverage Section.

5.2 Where Defence Costs are stated as being payable in addition to the Limit of Liability, the Underwriters will pay associated Defence Costs in addition to the Limit of Liability provided that if the total amount required to dispose of any claim or series of claims arising out of one event exceeds the Limit of Liability then the Underwriters will at the maximum pay such proportion of the total associated Defence Costs as the amount of the indemnity available under this Policy bears to the total amount required to dispose of the claim.

5.3 Where Defence Costs are stated as being inclusive within the Limit of Liability, the Underwriters will pay associated Defence Costs provided always that their total liability under this Policy, including Defence Costs, shall not exceed the Limit of Liability applicable to any claim or series of claims arising out of one originating cause or occurrence.

## **6. GENERAL EXCLUSIONS APPLICABLE TO ALL SECTIONS OF THE POLICY**

This Policy does not cover

### **6.1 Fines, Penalties and Punitive Damages**

liability for awards or damages of a punitive or exemplary nature whether in the form of fines, penalties, multiplication of compensation awards or damages or aggravated damages or in any other form whatsoever;

### **6.2 War and Civil War Exclusion Clause**

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

In all other aspects the policy remains unaltered.

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**NMA464**

### **6.3 RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE – PHYSICAL DAMAGE - DIRECT (U.S.A.)**

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 nuclear 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 that 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 "NEVERTHELESS" to the end of the clause do not apply and should be disregarded.

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**NMA1191**

### **6.4 Contractual Liability**

liability assumed by the Insured under any liquidated damage, penalty or forfeiture clause, express warranty, contract, agreement or guarantee other than to the extent that such liability would have attached to the Insured in the absence of such clause, warranty, contract, agreement or guarantee;

### **6.5 Other Insurance**

any loss, damage, liability or expense covered under or indemnified by any other policy of insurance, however, this exclusion shall not apply to any expense or liability in excess of the limit of indemnity in such other policy of insurance; however, this Exclusion shall not apply to circumstances where the Insurance Contracts Act 1984 prohibits contribution to operate.

### **6.6 Recourse Rights**

any claim or claims where and to the extent the Underwriters have or would have rights of recourse in respect of such claim but the Insured has granted without Underwriters' prior consent a waiver of such recourse rights to others whether by express term or by reason of an assumption of liability under contract.

## **7. GENERAL CONDITIONS**

Conditions 7.2, 7.3, and 7.4 are precedent to Underwriters' liability to provide indemnity under this Policy. If any breach of such conditions should occur, there shall be excluded from the indemnity hereunder any claim which has arisen or may arise in connection with such breach.

### **7.1 Self-Insured Excess**

Underwriters shall only be liable for that part of each claim or series of such claims arising out of any one originating cause under this Policy which exceeds the amount of the Self-Insured Excess stated in Item 6. of the Schedule. The Insured shall retain the Self-Insured Excess for its own account and shall not insure it elsewhere.

The amount of the Self-Insured Excess shall include Defence Costs unless otherwise specifically stated in the said Schedule.

### **7.2 Claims Notification**

The Insured shall give to Underwriters immediate notice in writing during the Period of Insurance of

7.2.1 any claim made against any Insured which may fall within the scope of this Policy,

7.2.2 the receipt of notice, whether written or oral, from any person or entity of their intention to make such a claim against the Insured,

7.2.3 any circumstances of which the Insured shall become aware which might reasonably be expected to give rise to such a claim being made against the Insured, giving reasons for the anticipation of such claim,

7.2.4 any other circumstances which might give rise to a claim under this Policy.

### **7.3 Claims Handling**

No admission, offer, promise or payment shall be made or given by or on behalf of the Insured nor shall any costs be incurred by the Insured without the written consent of the Underwriters; and the Underwriters shall be entitled to take over and conduct, in the name of the Insured, the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings in the defence or settlement of any claim.

The Insured shall at all times give Underwriters such information and co-operation as Underwriters may reasonably require.

### **7.4 Subrogation**

Underwriters shall become subrogated to all rights of recourse and remedies of the Insured, before as well as after any payment by Underwriters to the extent of such payment and the Insured shall take all reasonable steps to preserve such rights and remedies.

Notwithstanding the above, if any payment is made or may be made under this Policy and Underwriters are thereupon subrogated to the Insured's rights of recovery in relation thereto, Underwriters agree not to exercise any such rights against any director or employee of the Insured unless the claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director or employee.

The Insured shall give all such assistance in the exercise of rights of recovery as Underwriters may reasonably require.

### **7.5 Material Information**

The Insured has a duty to disclose to the Underwriters, before this contract of insurance is entered into, every matter that is known to the Insured, being a matter that:

- (a) the Insured knows to be a matter relevant to the decision of the Underwriters whether to accept the risk and, if so, on what terms; or
- (b) a reasonable person in the circumstances could be expected to know to be a matter so relevant.



This duty of disclosure also applies to any renewal, extension, variation or reinstatement of this Policy.

The Underwriters are entitled to refuse to cover the additional exposure or charge a reasonable additional premium or, if the nature of the change in circumstances entails a substantially different risk, whether in type or degree, from that previously envisaged, to avoid the contract.

If the person or entity who became the Insured under this Policy upon the contract being entered into:

(c) failed to comply with the duty of disclosure; or

(d) made a misrepresentation to the Underwriters before the contract was entered into;

(but not where the Underwriters would have entered into the contract, for the same premium and on the same terms and conditions, even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into) then

(e) if the failure was fraudulent or the misrepresentation was made fraudulently, the Underwriters may avoid the contract.

(f) if the Underwriters are not entitled to avoid the contract or, being entitled to avoid the contract have not done so, the liability of the Underwriters in respect of a claim is reduced to the amount that would place the Underwriters in a position in which the Underwriters would have been if the failure had not occurred or the misrepresentation had not been made.

The Insured shall throughout the Period of Insurance give notice as soon as reasonably practicable of any material change in any fact, activity or circumstance as described in the Proposal. In the event of Underwriters being at any time entitled to void this Policy by reason of the Insured failing to give notice in accordance with this Condition, the Underwriters may at their election, instead of voiding this Policy, give notice in writing to the Insured that there shall be excluded from the indemnity afforded hereunder any claim which has arisen or may arise which is related to such facts, activities or circumstances.

#### **7.6 Adjustment of Premiums**

If the Premium for this Policy has been calculated on any estimates furnished by the Insured, the Insured shall keep an accurate record containing all relevant particulars and shall at all times allow Underwriters or their duly appointed representative to inspect such records. The Insured shall within one month from expiry of the Period of Insurance furnish such particulars and information as Underwriters may require. The premium for such period shall then be adjusted and the difference paid by or returned to the Insured, provided that the premium for any Period of Insurance shall not be less than any Minimum Premium stated in the Schedule or pro rata thereof if the Policy is cancelled before its normal expiry date.

#### **7.7 Relinquishment**

The Underwriters may at any time pay to the Insured in connection with any claim or series of claims under this Policy the amount of the Limit of Liability remaining under this Policy or any lesser amount for which such claim or claims can be settled less any sums already paid and, where Defence Costs are inclusive within the Limit of Liability, less any associated Defence Costs already paid. Upon such payment being made, the Underwriters shall relinquish the conduct and control of and be under no further liability in connection with such claims or associated Defence Costs incurred after the date of such relinquishment.

However if Underwriters exercise the above option and the total amount required to dispose of any claim or series of claims exceeds the Limit of Liability and Defence Costs are payable in addition to the Limit of Liability under this Policy then the Underwriters will pay their proportion of Defence Costs incurred up to the date of relinquishment in such proportion as the amount of the indemnity available under this Policy bears to the total amount which in the opinion of the Underwriters at the time of relinquishment will be necessary to dispose of the claim.

#### **7.8 Dispute**

This Policy shall be governed by Australian Law unless stated to the contrary. If any dispute arises in connection with the formulation, validity or interpretation of this Policy, then such dispute shall be submitted to the jurisdiction of any court of competent jurisdiction within Australia. Both parties agree to comply with all requirements necessary to give such court jurisdiction.

### **7.9 Cancellation**

This Policy or any Coverage Section thereof may be cancelled by or on behalf of Underwriters by thirty days' notice given in writing to the Insured. The Premium shall then be adjusted in accordance with Condition 7.6, if applicable, and calculated on the basis of Underwriters receiving or retaining pro rata premium.

Notice shall be deemed to be duly received if sent by pre-paid letter post properly addressed to the Insured's or the Insured's broker's last known address.

### **7.10 Fraud**

If any claim under this Policy or any Coverage Section thereof is in any respect fraudulent, the Underwriters shall be under no liability in respect of such claim.

### **7.11 GST Basis of Settlement**

The amount of premium payable by you for this policy includes an amount on account of the GST on the premium.

When we pay a claim, your GST status will determine the amount we pay.

When you are:

a) not registered for GST, the amount we pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.

b) registered for GST, we will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a Damaged item insured under the Policy), we will pay for the GST amount.

We will reduce the GST amount we pay for by the amount of any input tax credits to which you are or would be entitled if you made a relevant acquisition. In these circumstances, the Input Tax Credit may be claimable through your Business Activity Statement (BAS).

You must advise us of your correct Australian Business Number & Taxable Percentage.

Any GST liability arising from your incorrect advice is payable to you.

Where the settlement of your claim is less than the sum insured/limit of indemnity or the other limits of insurance cover, we will only pay an amount for GST (less your entitlement for Input Tax Credit) applicable to the settlement. This means that if these amounts are not sufficient to cover your loss, we will only pay the GST relating to our settlement of the claim.

We will (where relevant) pay you on your claim by reference to the GST exclusive amount of any supply made by a business of yours, which is relevant to your claim.

GST, Input Tax Credit (ITC), Business Activity Statement (BAS) and Acquisition have the same meaning as given to those expressions in A New Tax System (Goods and Services Tax) Act 1999 and related legislation as amended from time to time.

Taxable Percentage is your entitlement to an Input Tax Credit on your premium as a percentage of the total GST on that premium.

## UNITED STATES OF AMERICA JURISDICTION EXTENSION CLAUSE

**Applicable only to Coverage Sections, if any, where stated to be granted in Item 6. of the Schedule under the heading USA Jurisdiction.**

Whereas the Insured has requested an extension to the Operative Clause for indemnity to be granted where the action is brought in a court of law in or any judgment, award, payment, settlement or proceedings are made within territories which operate under the laws of the United States of America or where any order or proceedings are made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part, such extension is hereby granted as stated in Item 6. of the Schedule to the Policy.

In consideration of the granting of such indemnity, the Insured agrees to the following terms, conditions and exclusions in respect of any such judgment, award, payment, settlement or proceedings:-

(a) The indemnity does not apply to any judgment, award, payment, settlement or proceedings arising directly or indirectly out of Pollution;

(b) The indemnity does not apply to any judgment, award, payment, settlement or proceedings arising directly or indirectly out of operations at or out of premises situated in the United States of America or any territories which come within the jurisdiction of the United States of America;

(c) Underwriters shall not be liable for the amount shown as the Applicable Self Insured Excess in Item n of the Schedule, being the first amount of each and every claim. For the purpose of this sub-clause (c) "claim" shall be deemed to include damages, including claimants' costs, fees and expenses and associated Defence Costs;

(d) Underwriters' liability under this Extension Clause shall be as per Clause 4., Limit of Liability, except that the amounts stated in Item 6. of the Schedule under Limit of Liability shall be inclusive of all Defence Costs;

**(e) Where any Coverage Section to which this Extension applies is stated in Item 6. of the Schedule to be on a claims made basis, Underwriters will not be liable to indemnify the Insured as a result of any claim or claims arising directly or indirectly out of any act, error, omission, circumstances or event occurring before the Retroactive Date stated in Item 6. of the Schedule under the heading of USA Jurisdiction and if no date is inserted then the Retroactive Date shall be deemed to be the inception date of this Policy stated in Item 4. of the Schedule.**

Subject in all other respects to the terms and conditions of the Policy, which shall not be deemed in any way whatsoever to override, modify or alter any of the specific terms and conditions applicable to this Extension Clause.

**COVERAGE SECTION A - PUBLIC LIABILITY  
(OCCURRENCE BASIS: INJURY AND/OR DAMAGE OCCURRING DURING THE PERIOD OF INSURANCE.)**

**8. COVERAGE SECTION A - INDEMNITY**

The Insured is indemnified by this Coverage Section in accordance with the Operative Clause against the Insured's liability to pay damages, including claimants' costs, fees and expenses, in accordance with the law of any country for and/or arising out of Injury and/or Damage but not against liability arising directly or indirectly out of

8.1 Pollution or

8.2 in connection with any Product.

**(See also provisions applicable to Coverage Sections A, B and C further on.)**

**COVERAGE SECTION B - POLLUTION LIABILITY  
(OCCURRENCE BASIS: INJURY AND/OR DAMAGE OCCURRING DURING THE PERIOD OF INSURANCE.)**

**9. COVERAGE SECTION B - INDEMNITY**

The Insured is indemnified by this Coverage Section in accordance with the Operative Clause against the Insured's liability to pay damages, including claimants' costs, fees and expenses, in accordance with the law of any country for and/or arising out of Injury and/or Damage occurring in its entirety during the Period of Insurance and arising out of Pollution, but only to the extent that the Insured can demonstrate that

9.1 such Pollution was the direct result of a sudden, specific and identifiable event occurring during the Period of Insurance;

9.2 the Insured had taken all reasonable precautions to prevent loss by Pollution.

**10. COVERAGE SECTION B - EXCLUSIONS**

This Coverage Section does not cover

**10.1 Damage to Products**

liability for Damage to any Product or part thereof;

**10.2 Product Guarantee**

liability for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement;

**10.3 Recall**

liability arising directly or indirectly out of the recall of any Product or part thereof;

**10.4 Aviation Products**

liability arising directly or indirectly out of any Product or part thereof which the Insured knows or ought to know is intended to be incorporated into the structure, machinery, electrics, electronics or controls of any aircraft or spacecraft;

**10.5 Premises Owned**

liability for Damage to premises presently or at any time previously owned or tenanted by the Insured;

**10.6 Land Occupied**

liability for Damage to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by the Insured or otherwise in the Insured's care, custody or control.

**(See also provisions applicable to Coverage Sections A, B and C further on.)**

## **COVERAGE SECTION C - PRODUCTS LIABILITY**

**(OCCURRENCE BASIS: INJURY AND/OR DAMAGE OCCURRING DURING THE PERIOD OF INSURANCE.)**

### **11. COVERAGE SECTION C - INDEMNITY**

The Insured is indemnified by this Coverage Section in accordance with the Operative Clause against the Insured's liability to pay damages, including claimants' costs, fees and expenses, in accordance with the law of any country for and/or arising out of Injury and/or Damage but only against liability arising out of or in connection with any Product and not against liability arising directly or indirectly out of Pollution.

### **12. COVERAGE SECTION C - EXCLUSIONS**

This Coverage Section does not cover

#### **12.1 Damage to Products**

liability for Damage to any Product or part thereof;

#### **12.2 Product Guarantee**

liability for costs incurred in the repair, reconditioning, modification or replacement of any Product or part thereof and/or any economic loss consequent upon the necessity for such repair, reconditioning, modification or replacement;

#### **12.3 Recall**

liability arising directly or indirectly out of the recall of any Product or part thereof;

#### **12.4 Aviation Products**

liability arising directly or indirectly out of any Product or part thereof which the Insured knows or ought to know is intended to be incorporated into the structure, machinery electrics, electronics or controls of any aircraft or spacecraft;

**(See also provisions applicable to Coverage Sections A, B and C further on.)**

### **13. DEFINITIONS APPLICABLE TO COVERAGE SECTIONS A, B AND C**

For the purpose of determining the indemnity granted, the following terms shall be deemed to have the same meaning as defined wherever used in reference to these Coverage Sections.

#### **13.1 Product**

"Product" shall mean any physical property after it has left the custody or control of the Insured which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the Insured, but shall not include food or drink supplied by or on behalf of the Insured primarily to the Insured's employees as a staff benefit.

#### **14. INDEMNITY TO OTHERS - APPLICABLE TO COVERAGE SECTIONS A, B AND C**

The indemnity granted extends to:

14.1 at the request of the Insured, any party who enters into an agreement with the Insured for any purpose of the Business, but only to the extent required by such agreement to grant indemnity and subject always to Clauses 16.3 and 6.4;

14.2 officials of the Insured in their business capacity for their liability arising out of the performance of the Business and/or in their private capacity arising out of their temporary engagement of the Insured's employees;

14.3 at the request of the Insured, any person or firm for their liability arising out of the performance of a contract to provide labour only services to the Insured;

14.4 the officers, committee and members of the Insured's canteen, social, sports, medical, fire fighting and welfare organisations in their respective capacity as such;

14.5 the personal representatives of the estate of any person indemnified by reason of this Clause 14. in respect of liability incurred by such person;

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

#### **15. CROSS LIABILITIES - APPLICABLE TO COVERAGE SECTIONS A, B AND C**

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

#### **16. EXCLUSIONS - APPLICABLE TO COVERAGE SECTIONS A, B AND C**

This Policy does not cover

##### **16.1 Motor Vehicles**

liability arising directly or indirectly out of the ownership, possession or use of any motor vehicle or trailer by or on behalf of the Insured, other than liability

16.1.1 caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;

16.1.2 arising beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;

16.1.3 for Damage to any bridge, weighbridge, road or anything beneath caused by the weight of any motor vehicle or trailer or the load thereon;

16.1.4 arising out of any motor vehicle or trailer temporarily in the Insured's custody or control for the purpose of parking;

provided always that no indemnity is granted against liability compulsorily insurable by legislation or for which the government or other authority has accepted responsibility;

##### **16.2 Aircraft & Watercraft**

liability arising directly or indirectly out of the ownership, possession or use by or on behalf of the Insured of any aircraft, spacecraft, watercraft or hovercraft (other than watercraft not exceeding five metres in length and then only whilst on inland waterways);

### **16.3 Care, Custody & Control**

liability for Damage to property owned, leased or hired by or under hire purchase or on loan to the Insured or otherwise in the Insured's care, custody or control other than

16.3.1 premises or the contents thereof temporarily occupied by the Insured for work therein or thereon but no indemnity is granted for Damage to that part of the property on which the Insured is working and which arises out of such work;

16.3.2 clothing and personal effects belonging to employees and visitors of the Insured;

16.3.3 premises tenanted by the Insured to the extent that the Insured would be held liable in the absence of any specific agreement;

Property which is not the subject of any of the above sub-clauses up to a maximum of AUS\$25,000 any one Occurrence provided always that

16.3.4 the Insured shall have in force at the time of any Damage a general property damage policy or policies or have other similar arrangements to cover the risk of property damage, which includes property in the Insured's care, custody and/or control AND

16.3.5 this Policy shall not apply to any loss which is within any deductible, excess or self-insurance or similar provision of such policy AND

16.3.6 this Policy shall not apply to any property covered by such other policy or by any other policy in force covering the Insured or any other entity having an interest in the damaged property even if such other policy (other than a policy covering an interest other than the Insured's interest) fails to respond to the particular loss for any reason AND

16.3.7 this Policy shall not apply to Damage to any motor vehicle.

### **16.4 Deliberate Acts**

liability arising directly or indirectly out of the deliberate, conscious or intentional disregard by the Insured's technical or administrative management of the need to take all reasonable precautions to prevent Injury or Damage;

### **16.5 Employers' Liability**

liability for Injury to any person under a contract of employment, service or apprenticeship with or for the provision of labour only services to the Insured where such Injury arises out of the execution of such contract.

### **16.6 ASBESTOS EXCLUSION**

It is hereby understood and agreed that this Policy shall not indemnify the Insured for any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to Asbestos or materials or products containing Asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

In all other aspects the policy remains unaltered.

### **MFM Asbestos Excl (1.2003)**

## **16.7 MOULD EXCLUSION**

It is hereby understood and agreed that this Policy shall not indemnify the Insured for any loss, injury, damage, claim or Defence Costs arising out of, alleging or attributable to the existence of mould, fungus/fungi, spore(s), mildew(s), mushroom(s), yeast(s), or biocontaminant(s) or any by-product therefrom.

In all other aspects the policy remains unaltered.

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## **17. CONDITIONS - APPLICABLE TO COVERAGE SECTIONS A, B AND C**

### **17.1 Timing of Injury and Damage**

Where it is not otherwise possible to ascertain the timing of Injury or Damage, then for the purpose of determining the indemnity granted by this Policy

17.1.1 Injury will be deemed to have occurred when the claimant first consulted a qualified medical practitioner regarding such Injury, whether or not it was correctly diagnosed at that time. If no such consultation took place, then the Injury will be deemed to have occurred when the Insured first received written notice of the Injury;

17.1.2 Damage will be deemed to have occurred when the claimant first became aware of such Damage, even if the cause was unknown.



## ENDORSEMENTS

### 18. EXTENDED DEFENCE COSTS

The definition of Defence Costs is extended to include

#### 18.1 Statutory Legal Defence Costs

Costs of representation at and/or defence of any proceedings in a Court of Summary Jurisdiction in respect of breach or alleged breach of any statute relating to health and safety at work by the Insured or any director, officer or employee which may otherwise form the subject of indemnity by this Policy. Provided always that the Underwriters will not pay the costs of any Appeal unless Senior Counsel to be appointed by the Underwriters shall advise that in their opinion, such Appeal is likely to succeed.

#### 18.2 Trade Practices Act(s) (applicable only to Professional Indemnity Section)

Costs of representation at and/or defence of any proceedings in a Court of Summary Jurisdiction in respect of breach or alleged breach of the Trade Practices Act 1974 or similar statute in Australia which may otherwise form the subject of indemnity by this Policy. Provided always that the Underwriters will not pay the costs of any Appeal unless Senior Counsel to be appointed by the Underwriters shall advise that in their opinion, such Appeal is likely to succeed.

#### 18.3 Emergency Medical Expenses

Reasonable expenses of immediate emergency medical assistance to third parties in respect of Injury for which the Insured is or may become liable and which could result in a claim under this Policy.

### 19. EXTENDED BUSINESS DESCRIPTION

#### 19.1 Incidental Medical Malpractice (applicable only to Professional Indemnity Section)

The definition of Business is extended to include the provision of medical services which are incidental to the Insured's Business stated in the Schedule.

### 20. EXTENSIONS TO INJURY AND DAMAGE DEFINITIONS

#### 20.1 Wide Injury Definition

The definition of Injury is amended to read as follows:

**20.1.1** bodily injury, sickness, disease, disability, shock, loss of amenities, discomfort, disfigurement, malformation, fright, mental anguish, mental injury or death of or to any person;

**20.1.2** false arrest, false imprisonment, wrongful eviction, wrongful detention or malicious prosecution;

**20.1.3** libel, slander, humiliation or violation of personal rights none of which arise out of advertising activities;

**20.1.4** assault and battery committed for the purpose of protecting persons and/or property.

#### 20.2 Wrongful Dismissal

The definition of Injury is amended to include:

**20.2.1** wrongful dismissal but only where the action involves 5 or fewer persons.

### 21. SEXUAL HARASSMENT EXCLUSION

This Policy does not cover any liability of the Insured directly or indirectly arising out of sexual assault, sexual harassment, sexual molestation, rape or the consequences thereof.

## **22. SHOPPING MALLS**

It shall be a condition precedent to liability under this Policy that all contractors and sub-contractors (including mall managers, cleaners, security firms and tenants and the like) have and maintain general liability insurance for at least AUD 5,000,000 throughout the period of this Policy.

## **23. TERRORISM EXCLUSION ENDORSEMENT (AMENDED)**

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

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## **24. RADIOACTIVE CONTAMINATION AND EXPLOSIVE NUCLEAR ASSEMBLIES**

### **EXCLUSION CLAUSE**

This policy does not cover

- i. loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss
- ii. any legal liability of whatsoever nature directly or indirectly caused by or contributed

to by or arising from

(i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel

(ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

In all other aspects the policy remains unaltered.

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## **25. AUSTRALIA TERRORISM INSURANCE ACT 2003 NOTICE ENDORSEMENT**

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

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

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

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

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

In all other aspects the policy remains unaltered.

**NMA 2984**  
**27/01/2004**

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