



UNDERWRITING AGENCY

Public and Products Liability

Excess Liability

Policy Wording

Version Number 011005

providing first class insurance solutions ...

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Important information

This Policy wording is an important document and should be kept in a safe place. You should read this wording and any attachments we provide to you, so that you understand the insurance provided by this policy.

Your Duty of Disclosure

When we provide Insurance terms for you, whether for a new Policy, renewal of a Policy or changes to or reinstatement of your Policy, we rely on the information you provide to us. You must tell us anything that you know, or should know, that could affect

- Our decision to insure you
- the amount of the Premium we charge you or
- whether we should impose special conditions to this cover.

You do not need to tell us about anything which:

- Reduces the likelihood of a claim
- Is of common knowledge
- We know, or as an insurer should know
- We indicate that we do not want to know

If you are unsure, it is better to tell us. If you do not tell us something which you know or should know is relevant, we might reduce your claim, refuse to pay a claim, cancel your Policy or, if fraud is involved, we can treat the Policy as if it had never existed.

Goods and Services Tax

The amount payable by you for this Policy includes an amount for GST.

The Sum Insured and other limits of insurance cover shown in the Policy documentation are GST inclusive.

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

If you are

- Not registered for GST, the amount we pay is the Sum Insured or the other Policy limits being inclusive of GST
- Registered for GST, the amount we pay is the Sum Insured or the other Policy Limits less any Input Tax Credit (ITC) to which you are entitled or would be entitled if you made a relevant acquisition. This ITC may be claimable within your BAS.

You must advise us of your ABN Number and Taxable Percentage. Any GST liability arising from your incorrect advice is payable by you.

Where the settlement of a claim is less than the Sum Insured or the other Policy limits, we will only pay the GST (less your ITC credit) applicable to 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 pay the claim by reference to the GST exclusive amount of any supply made by any business of yours which is relevant to the claim.

GST, ITC, Business Activity Statement (BAS) and Acquisition have the same meaning as given to those words in a New Tax System (Goods and Services Tax) Act 1999 and related legislation and amendments.

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

If You have a dispute

If you are in dispute, with a decision we make, a claim settlement, our service, or the service of others we appoint to discuss insurance matters with you, we have an Internal Dispute resolution process to assist you. Contact our office and ask for the Internal Dispute Resolution Officer. They will advise you on the procedure for you to follow to tell us about the dispute.

They have the appropriate authority of management to discuss your concerns and provide assistance to you.

If you are not satisfied with our response, and wish to proceed with your dispute or complaint, you may contact;

Lloyd's Australia Ltd
Suite 2, Level 21
Angel Place
123 Pitt Street
Sydney NSW 2000
Telephone 02 9223 1433
Facsimile 02 9223 1466

Lloyd's Australia Ltd offer a no cost to you service and are totally independent and impartial. They will advise you on how to proceed with them in this matter. If they are unable to assist you, they will promptly advise you.

Need further Information

Your Insurance Broker has arranged this insurance for you, on your behalf. If you have any questions or need further information concerning your insurances, you should contact them to assist you with your enquiry.

Contacting Us

You are represented by an Insurance Broker who deals directly with us. You should direct all of your correspondence to us through this Broker, as he is your Agent for this insurance. When we are dealing directly with you, for example with a claim, you may contact us as shown on our claim form or on the back page of this Policy wording.

Privacy

We handle your personal information with care. We collect this information about you so that we can provide you with insurance products and a claims service. We only provide your personal information to other Insurers, an Insurance Reference service, Assessors or as required or permitted by law. Should a claim arise, we may provide information to and or collect further information about you from legal advisers or investigators. You may elect not to supply us with Personal Information, however we may then not be able to process your requests. You can access or update this Information by contacting us.

EXCESS LIABILITY POLICY

1. GENERAL OPERATIVE CLAUSE

Whereas the Primary Insurer (as noted in the schedule hereto) has issued to the Insured named in the Schedule, a policy/ies of Liability Insurance (hereinafter called Primary Insurances).

In consideration of payment of the premium those syndicates in Lloyd's of London participating in this contract of insurance (hereinafter called Lloyd's Underwriters) agree to indemnify the Insured in accordance with the applicable terms and exclusions of the Primary Insurance except where amended by this Policy, its conditions, exclusions or by endorsement hereto.

Provided that Lloyd's Underwriters shall only be liable for the Ultimate Net Loss after the exhaustion of the Limit of Liability of the applicable Primary Insurance and any other underlying excess policy Limits of Liability, if applicable and then only up to the Limits of Liability as stated in the Schedule.

2. DEFINITIONS

- 2.1 The term "Ultimate Net Loss" shall mean the loss actually sustained by the Insured after making deductions for all recoveries, all salvages, and all claims upon other insurance, whether collected or not, and shall not include legal costs and expenses.
- 2.2 Computer Equipment includes but is not limited to data or parts of data, computer hardware, operating system, computer network, equipment, web site, server, extranet, software, applications software, computer chip including microprocessor chip and coded instructions as well as any new technology, product or service replacing existing computer equipment or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.
- 2.3 Lloyds Underwriters means those syndicates in Lloyd's of London participating in this contract of insurance.

3. CONDITIONS

- 3.1 The Insured shall pay promptly to Lloyd's Underwriters the premium, and adjustments of premium and other amounts charged for this Policy and any renewal, extension or endorsement to the Policy.
- 3.2 The Primary Insurances shall be maintained in full effect during the currency of this Policy except for any reduction of the Limits contained therein by payment of claim or claims. The failure of the Insured to comply with the foregoing shall not invalidate this Policy but in the event of such failure Lloyd's Underwriters shall only be liable to the same extent as if the Insured had complied with this condition.
- 3.3 This Policy is to be subject to the same terms, conditions and exclusions (except as regard the limit of liability, the premium, any agreement to renew or as specifically provided for herein) as are contained in the Primary Insurances. No amendment to the Primary Insurances during the period of this Policy, in respect of which the Primary Insurers require an additional premium or deductible shall be effective in extending the scope of this Policy until agreed in writing by Lloyd's Underwriters.
- 3.4 The Insured shall immediately advise Lloyd's Underwriters of any occurrence or circumstances of which the Insured becomes aware which is likely to give rise to a claim under this Policy. Lloyd's Underwriters shall not however be called upon to assume charge or the settlement or defence of any claim made, or suits brought, or proceedings instituted against the Insured, but shall have the right and be given the opportunity to associate with the Insured or the Primary Insurer in the defence or control of any such claim, suit or proceeding. In which event the Insured or the Primary Insurer and Lloyd's Underwriters shall co-operate in all things in the defence or control of such claim, suit or proceeding, but no obligation shall be incurred on behalf of Lloyd's Underwriters without its consent first being obtained. However, in the event that the amount of the excess becomes certain either through trial court judgement or agreement among the Insured, the claimant and Lloyd's Underwriters, then the Insured may pay the amount of excess loss to the claimant to effect settlement and, upon submission of due proof thereof, Lloyd's Underwriters will indemnify the Insured for such payment, or Lloyd's Underwriters will upon request of the Insured pay such amount to the claimant on behalf of the Insured.
- 3.5 In the event of any claim or claims against the Insured that appear likely to exceed the indemnity available under the Primary Insurance or any underlying excess insurances, Lloyd's Underwriters shall not be liable for

costs or expenses incurred in the defence or settlement of such claim or claims. However, in the event of Lloyd's Underwriters providing written consent to the Insured, Lloyd's Underwriters shall contribute to the costs and expenses incurred in such a claim or claims in the proportion that Lloyd's Underwriters share of the loss as finally settled bears to the total sum payable. If, however any claim or claims be settled within the indemnity available under the Primary Insurances or if applicable, any underlying excess insurances, then no costs or expenses shall be payable by Lloyd's Underwriters.

Lloyd's Underwriters shall require written notification of any such claim where the claim is likely to exceed a sum of fifty per cent of the Primary Insurance or any underlying excess insurances and shall further require that the Insured and all underlying insurers shall provide to Lloyd's Underwriters full details of the claim and shall co-operate fully with Lloyd's Underwriters as to the future conduct and settlement of the said claim.

3.6 No settlement of a loss by agreement shall be effected by the Insured for a sum in excess of the limits available under the Primary Insurances without the consent of Lloyd's Underwriters.

3.7 In the event of the exhaustion of any aggregate limit whether partial or total of the Primary Insurances or any other underlying excess insurances by reason of loss paid thereunder this policy shall:

3.7.1 in the event of partial exhaustion in excess of the reduced underlying excess limits or if applicable the reduced Primary Insurance Limit or

3.7.2 in the event of total exhaustion

continue in force as the Primary Policy subject to the terms conditions exceptions exclusions and endorsements of the Primary Insurance except where amended by this Policy, its conditions or exclusions or by endorsement hereto.

3.8 The Insured may cancel this Policy at any time by giving notice in writing to Lloyd's Underwriters.

3.8.1 Upon cancellation at the request of the Insured, a percentage refund of premium for the current Period of Insurance will be allowed on the following basis

When cancellation is effective	Return Premium
I. Within 60 days of inception of this Policy or renewal thereof.....	50% of annual premium
II. Between 61 and 120 days From inception or Renewal.....	30% of annual premium
III. Between 121 days and 180 days from inception or renewal.....	15% of annual premium
IV. After 180 days from inception or renewal.....	No return premium.

Lloyd's Underwriters may cancel this Policy at any time where:

3.8.2 it is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto.

3.8.3 the Insured has failed to notify Lloyd's Underwriters of any specific act or omission where such notification is required under the terms or conditions of this Policy.

3.8.4 the Insured has acted in contravention of or omitted to act in compliance with any term or condition contained in this Policy which empowers Lloyd's Underwriters to refuse to pay a claim in the event of such contravention or omission.

3.8.5 When the premium is subject to adjustment, cancellation will not effect the obligation of the Insured to supply Lloyd's Underwriters such information as is necessary to permit the premium adjustment to be calculated and to pay the amount of the adjustment applicable up to the date of cancellation.

Upon cancellation by Underwriters a pro rata refund of premium for the unexpired Period of Insurance will be allowed.

Any notice of cancellation given by Lloyd's Underwriters shall take effect either at the time when another contract of insurance between the Insured and Lloyd's Underwriters or some other insurer (being a contract that is intended by the Insured to replace this Policy) is entered into or at 4.00 p.m. on the third business day after the date on which notice was given to the Insured by Lloyd's Underwriters (whichever is the earlier).

Where the Insured comprises more than one person or company, it is agreed that the named Insured referred to in the Schedule shall be the agent of each of the other Insured persons or companies for the purposes of receiving any notice of cancellation pursuant to this clause, or any other notice, statement, document or information relating to this insurance Policy. Where the Insured has an insurance broker, nothing in this paragraph shall restrict Lloyd's Underwriters right to notify the broker as agent of the Insured.

- 3.9 Nothing contained in this policy shall be construed to reduce or waive either the Insured's privileges, rights or remedies available under the Insurance Contracts Act 1984 as amended.
- 3.10 Any dispute concerning the interpretation of the terms Conditions, Definitions, limitations or Exclusions contained herein is understood and agreed by the Insured and all Insurers of the Primary Insurance or any underlying excess insurance together with Lloyd's Underwriters to be subject to Australian law. Each party agrees to submit to the jurisdiction of any court of competent jurisdiction within Australia and to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court
- 3.11 All salvages, recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to the aforesaid settlement and all necessary adjustments shall be made by the parties hereto. Provided always that nothing in this clause shall be construed to mean that losses under this Policy are not recoverable until the Insured's Ultimate Net Loss has been ascertained.

4. EXCLUSIONS

Notwithstanding anything contained to the contrary in any Primary Insurance, or any underlying excess insurances, this Policy does not apply to:

- 4.1 Punitive or exemplary damages
 - 4.2 Fines, penalties or liquidated damages.
 - 4.3 Injury or Damage (including loss of use of property) directly or indirectly caused by, contributed to or arising from exposure to asbestos.
 - 4.4 The rendering or failure to render;
 - 4.4.1 professional service or advice by the Insured or any error or omission connected therewith.
 - 4.4.2 advice, design, formula or specification given for a fee.
- Provided that this exclusion does not apply to the rendering of first aid on the Insureds' premises by a legally qualified registered nurse or first aid attendant employed by the Insured.
- 4.5 Claims made and actions;
 - 4.5.1 instituted within the United States of America, the Dominion of Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada
 - 4.5.2 to which the laws of the United States of America, the Dominion of Canada and their respective territories and protectorates apply or to any order made anywhere in the world to enforce any judgement, award, payment or settlement either in whole or in part.

- 4.6 total or partial destruction, distortion, erasure, corruption, alteration, misuse, misinterpretation, misappropriation or other use of Computer Equipment or
 - 4.6.1 error in creating, amending, entering, directing, deleting or using Computer Equipment
 - 4.6.2 total or partial inability or failure to receive, send, access or use Computer Equipment for any time or at all.
- 4.7 Injury, Damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
 - 4.7.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power;
 - 4.7.2 any act of terrorism;
 - 4.7.3 any action taken in controlling, preventing, suppressing or in any way relating to 4.7.1 or 4.7.2

For the purposes of exclusion 4.7.2 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 organization(s) or governments(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.

If Lloyd's Underwriters allege that by reason of this exclusion 4.7 any Injury, Damage, loss, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

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

- 4.8 Where this Policy provides any indemnity to the Insured which is prohibited by Law, this Policy shall be varied by operation of this clause so that this Policy does not respond to the extent that the indemnity is prohibited by law.