

calliden

Annual Contract Works & Construction Liability Policy



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Important Notices

The terms, conditions and provisions of the insurance offered are set out in this Policy and the Schedule. It is important that the Insured:

- reads all of the Policy before the Insured buys it to make sure that it gives them the protection they need;
- is aware of the limits on the cover provided and the amounts the Insurer will pay the Insured (including any Excess that applies);
- is aware of the definitions in the Policy. The Insured will find definitions throughout the Policy.

The Insured must comply with all provisions of this Policy, otherwise the Insurer may be entitled to refuse to pay a claim or reduce the amount the Insured is entitled to receive.

The Policy is in force for the Period of Insurance set out in the Schedule or until cancelled.

For the limits on the cover provided:

- some of these will be stated in the Policy itself (these are our standard policy limits); and
- the remainder will be stated in the Schedule.

In some circumstances the terms and conditions of this Policy may be amended by endorsement. If the Policy is endorsed the Insured will receive notification of the endorsement.

In issuing this Policy to the Insured, the Insurer has relied upon the proposal form that the Insured has already completed.

About the Insurer

Calliden Insurance Limited ABN 47 004 125 268, AFS Licence No. 234438 is the Insurer of this Policy.

Calliden specialises in manufacturing general insurance products for individuals, the SME sector and groups across metro and regional Australia. To find out more about us, visit www.calliden.com.au

Your Duty of Disclosure

This Policy is subject to the Insurance Contracts Act 1984. Under that Act the Insured has the Duty of Disclosure.

Before the Insured takes out insurance with the Insurer, the Insured has a duty to tell us of everything that the Insured knows, or could reasonably be expected to know, that is relevant to the Insurer's decision to insure the Insured and to the terms of that insurance. If you are not sure whether something is relevant the Insured should inform the Insurer anyway.

The Insured has the same duty to inform the Insurer of those matters before the Insured renews, extends, varies, or reinstates their contract of insurance.

The Insured's duty however does not require disclosure of matters that:

- reduce the risk;
- are common knowledge;
- the Insurer knows or, in the ordinary course of their business, ought to know; or
- the Insurer has indicated they do not want to know.

If the Insured does not comply with their Duty of Disclosure, the Insurer may be entitled to:

- reduce their liability for any claim;
- cancel the contract;
- refuse to pay the claim;
- avoid the contract from its beginning, if their nondisclosure was fraudulent.

Taxation Information

The amount of cover available under this Policy excludes Goods and Services Tax (GST).

If the Insured is not registered for GST, in the event of a claim the Insurer will reimburse the Insured the GST component in addition to the amount that the Insurer pays.

The amount that the Insurer is liable to pay under this Policy will be reduced by the amount of any input tax credit that the Insured is or may be entitled to claim for the supply of goods or services covered by that payment.

If the Insured is entitled to an input tax credit for the Premium the Insured must inform the Insurer of the extent of that entitlement at or before the time the Insured makes a claim under this Policy. The Insurer will not indemnify the Insured for any GST liability, fines or penalties that arise from or are attributable to the Insured's failure to notify the Insurer of their entitlement (or correct entitlement) to an input tax credit on the Premium.

If the Insured is liable to pay an Excess under this Policy, the amount payable will be calculated after deduction of any input tax credit that the Insurer is or may be entitled to claim on payment of the Excess.

If the Insured is unsure about the taxation implications of this Policy, the Insured should seek advice from their accountant or tax professional.

Dispute Resolution Process

How the Insured can Resolve a Complaint They Have with the Insurer

If the Insured would like to make a complaint, the Insurer will do everything it can to try to resolve it as quickly and fairly as possible. The following paragraphs provide details on how the Insured can lodge their complaint and how the Insured will try to resolve it.

The Insured may contact the Insurer at any time if the Insured is dissatisfied with any matter relating to their insurance, including:

- a decision on their claim;
- the handling of their claim;
- the service of the Insurer's representatives, assessors, loss adjusters or investigators; and
- the insurance Policy.

Contact the Insurer

- If you have a complaint regarding your claim, please contact your claims consultant.
- If you have a complaint regarding your insurance Policy, please contact the Insurer on 02 9551 1111 and the Insurer will try to resolve your complaint straight away.
- Write to the Insurer at:
 - Fax: 02 9551 1155
 - Address: PO Box 348, Milsons Point NSW 1565

How the Insurer Resolves Complaints

- The Insurer will address all complaints, except where specific circumstances apply, in accordance with Calliden's Complaints Handling Process. This process is compliant with the Insurance Council of Australia's Code of Practice. Both the Code of Practice and our Complaints Brochure, contain a guide to the Insurer's process and are available upon request.
- The Insurer will handle all complaints without cost to the Insured.
- A complaints consultant will be assigned to the management of the Insured's complaint and will acknowledge their complaint within two business days of receipt. If further information is required to consider the complaint, it will be requested at this time.
- The complaints consultant will aim to resolve the complaint within a further 13 business days. In certain circumstances a longer period may be required, and the Insurer will request a later response date.
- The outcome of the complaint will be advised to the Insurer in writing, stating reasons and any corrective action that will be undertaken.

If the Insured's Complaint is Still Unresolved

If the Insurer cannot resolve the Insured's complaint within 15 business days or the Insured is not happy with the response to their complaint, the Insured can seek an external review via the Insured's external dispute resolution scheme, administered by the Financial Ombudsman Service (FOS).

This national scheme is for consumers, free of charge and is aimed at resolving disputes between insureds and their insurance companies.

For more information call 1300 78 08 08 or visit www.fos.org.au

If the FOS is unable to address the Insured's complaint then the Insurer may be able to provide details of an alternative external dispute resolution service.

General Insurance Code of Practice

The Insurer is a signatory to the General Insurance Code of Practice (Code). The Code aims to raise standards of service between insurers and their customers. The Insurer's service standards are in accordance with the Code.

For any information about the Code, including a copy of the Code, contact us or the Financial Ombudsman Service on 1300 78 08 08 or look at www.codeofpractice.com.au

Privacy

The Insurer respects the Insured's privacy and operates at all times in accordance with its privacy policy. This privacy notification provides a summary of how the Insurer treats the Insured's privacy, and it is recommended that the Insured read the policy in conjunction with this notice.

The Insurer collects personal information to assess the Insured's request for insurance, to administer the Insured's policy, provide other insurance services as requested by the Insured, and also to notify the Insured about the Insurer's other services or promotions from time to time. At the time of collecting the Insured's information the Insurer will inform the Insured of the purpose for the collection and the consequences if the Insured chooses not to provide the information.

In order to provide its insurance services the Insurer may need to share the Insured's information with third parties including the Insured's agent or broker and the Insurer's reinsurers and claims providers (for a full list see Calliden's privacy policy).

In accordance with the Insurer's privacy policy the Insured may obtain access at any time to information that the Insurer or its service providers hold on the Insured. If the Insured would like to contact the Insurer about privacy, or would like to obtain a copy of the privacy policy the Insured may do so through one of the following means:

- obtain the privacy policy online at www.calliden.com.au
- by phone 02 9551 1111
- by email to privacy@calliden.com.au
- by letter to Privacy Officer, PO Box 348, Milsons Point NSW 1565.

Annual Contract Works & Construction Liability Policy

Subject to the payment of the Premium, the Insurer agrees to indemnify the Insured in the manner and subject to the Terms, Conditions, and Exclusions described in each Section of this Policy.

The Policy, Schedule, Proposal and Endorsements will be read as one contract and any word or expression to which a specific meaning has been attached in this Policy will bear that meaning wherever it appears.

General Definitions

The intended meaning of some of the important words used in this Policy are shown below, the General Definitions apply to both Sections 1 and 2 of this Policy:

1. **Actual Turnover** means the known value of the Contract Works actually performed during the expiring Period of Insurance, upon which the provisional premium is adjusted.
2. **Business** means the performance and administration of any Contract Works to which this Policy applies. It also includes such other business as may be specified in the Schedule, and incidental activities including the operation of any canteen or other facilities for the benefit of employees, and internal first aid services and the like.
3. **Contract** means any contract or agreement between any of the Insured, for or in connection with the Contract Works and includes any sub-contract or sub-contract agreement entered into pursuant to such contract or agreement.
4. **Contract Site** means the location/s specified in the Schedule where the Contract Works are carried out.
5. **Contract Value** means the Sum Insured stated in the Schedule for any one Contract.
6. **Contract Works** means the whole of the work to be executed in accordance with any Contract insured specified in the Schedule, and included within the Estimated Turnover stated in the Schedule.
7. **Electronic Data** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.
8. **Employee** means any person engaged under a contract of employment with any Insured.
9. **Estimated Turnover** means the estimated value of the Contract Works to be performed during the Period of Insurance, upon which a provisional premium is calculated.
10. **Excess** means the amounts stated in the Schedule for which the Insurer will have no liability in respect of each and every instance of loss or Damage, Personal Injury or Property Damage.
11. **Insured** means, subject to any other Term, Condition or Exclusion of this Policy:
 - a) the Named Insured; or
 - b) any parent and subsidiary companies of the Named Insured; or
 - c) the project manager; or
 - d) contractors and sub-contractors engaged by or on behalf of the Named Insured and, for purposes of this definition, 'contractors' and 'sub-contractors' do not include architects, consulting engineers and professional consultants; or
 - e) any Principal of the Named Insured; or
 - f) all mortgagees or other holders of financial encumbrance over Insured Project(s) or any part of them; or
 - g) any director, executive officer, employee, partner or shareholder of the Named Insured; or
 - h) architects, consulting engineers and professional consultants but only to the extent required under any Contract, and limited to their non-professional on site activities at the Contract Site.
12. **Insurer** means Calliden Insurance Limited ABN 47 004 125 268, AFS Licence No. 234438.
13. **Insured Project(s)** means each Contract Works described in the Schedule.
14. **Named Insured** means the Insured named in the Schedule.
15. **Occurrence** means an event or series of events, including continuous or repeated exposure to substantially the same general conditions, which result in Personal Injury or Property Damage neither expected nor intended by the Insured.
16. **Period of Insurance** means both of the following periods:
 - a) **Construction Period** being the period commencing on the date specified in the Schedule and expiring:
 - i. at the time of practical completion of the Contract Works, being when the Contract Works are complete except for minor omissions and minor defects which do not prevent the Contract Works from being reasonably capable of being taken over or taken into use for their intended purpose; or
 - ii. with respect to any separable portion of the Contract Works at the time it is taken over or taken into use by the Principal; or

- iii. on the expiry date specified in the Schedule (or any later date as may be agreed by the Insurer in writing);

whichever occurs first;

- b) **Maintenance / Defects Liability Period** being the period specified in the Schedule or as required under the Contract, whichever is the lesser, and commencing:
 - i. at the expiry of the Construction Period; or
 - ii. on the date each separable portion of the Contract Works is taken into use or occupation by the Principal; or
 - iii. when a certificate of practical completion has been issued;whichever occurs first.

17. Policy means this Annual Contract Works & Construction Liability wording and any proposal, Schedule and Endorsement(s).

18. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

19. Premium means the amount payable by the Named Insurer for the insurance provided by the Insurer under this Policy including all applicable taxes, duties and imposts, as invoiced by the Insured or on its behalf.

20. Principal means the owner of the Contract Works.

21. Schedule means the Schedule of Cover attaching to and forming part of this Policy.

22. Sum Insured means the relevant amount specified in the Schedule

23. Terrorism means any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

- i. involves violence against one or more persons; or
- ii. involves Property Damage; or
- iii. endangers life other than that of the person committing the action; or
- iv. creates a risk to health or safety of the public or a section of the public; or
- v. is designed to interfere with or to disrupt an electronic system.

Some other words have special meanings and these are explained where they occur in the Policy.

Section 1 – Material Damage

Specific Definitions

The following definitions apply to Section 1:

1. Civil Works means the construction, alteration of, and additions to, earthworks, excavation, foundations, retaining walls, revetments, piling, roads, bridges, sub-divisions, landscaping, dams, breakwaters, tunnels, shafts, drifts, declines, channels, canals, airstrips, wharves, jetties, breakwaters and the like.

2. Construction Plant means a), b) and c) as defined below:

- a) **Contractors' Major Plant and Equipment** means fixed cranes, mobile cranes, earth moving equipment, and other similar plant whether self propelled vehicles or not;
- b) **Contractors' Minor Plant and Equipment** means:
 - hoists, scaffolding, props;
 - re-usable shoring and forming equipment;
 - welding equipment, air compressors;
 - surveying equipment including laser levels;
 - concrete mixing, vibrating, and screeding equipment;

c) **Tools** means hand held powered and non-powered trade tools.

3. Damage means physical loss of, physical destruction of, or damage to the Insured Property with the word Damaged having a corresponding meaning.

4. Existing Property means property other than Contract Works.

5. Insured Property means the following:

- a) Contract Works as described under Contract Insured in the Schedule (inclusive of overheads and profit margins), temporary works, contract consumables and all other materials, including the reconstitution of contract records, core samples and the like, architects', engineers', surveyors; and other professional fees;
Provided that the Contract Works however described under the Contract insured in the Schedule are only Insured Property insofar as they comprise work under the contract of the Named Insured;
- b) Principal supplied materials and equipment;

- c) Contractors' Major Plant and Equipment, owned by or the responsibility of the Named Insured;
- d) Contractors' Minor Plant and Equipment, owned by or the responsibility of the Named Insured;
- e) Tools owned by the Named Insured or for which the Named Insured is responsible;
- f) Existing Property which the Insurer agrees to cover and which is identified in the Schedule.

6. Market Value means the value of Insured Property at a normal sale or where the value cannot be established, the value taking into account the age, wear, tear, location, useability and profit expectations.

7. Reinstatement means:

- a) where property is lost or destroyed; the cost of replacement thereof by similar property in a condition equal to, but not better or more extensive than its condition when new;
- b) where property is damaged and can be repaired, the costs incurred to restore the property to a condition substantially the same as, but not better or more extensive than its condition when new, plus the costs of dismantling and re-erection incurred for the purpose of carrying out the repairs.

In all cases the cost of Reinstatement will mean the final cost to the Insured after completion of the work of reinstatement, replacement or repair of the Contract Works excluding its own overheads and profit.

Insuring Clause

Subject to the terms, conditions, and exclusions of this Policy, the Insurer agrees to indemnify the Insured against Damage to the Contract Works as a result of an Occurrence provided such Damage is not excluded under this Policy and occurs at the Contract Site during:

- a) the Construction Period;
- b) the Maintenance / Defects Liability Period provided that such damage originates from:
 - i. an act or omission by the Insured on the Contract Site in the course of complying with the requirements of the Maintenance / Defects Liability clauses of the Contract;
 - ii. a cause arising during the Construction Period and at the Contract Site.

Limit of Liability

The liability of the Insurer under this Section of the Policy will not exceed the Sum/s Insured stated in the Schedule.

Excess

Should more than one Excess under this Section apply for any claim arising from or attributable to one

Occurrence or original cause, such Excesses will not be aggregated and only the highest applicable Excess in respect of this Section will apply.

Additional Benefits

1. Following Damage covered by the Insuring Clause noted above, the Insurer will also pay the following costs and expenses necessarily and reasonably incurred by the Named Insured as a result of such Damage in respect of:

a) Removal of Debris

- i. the costs of dismantling and/or demolishing and/or removing any part of the Contract Works no longer useful for the purpose for which it was intended;
- ii. the costs of cleaning up, removing, storing and disposing of debris and detritus from around the Contract Site;
- iii. costs incurred in restoring the Contract Site in accordance with the requirements of any public authority or government department prior to work proceeding at the Contract site.

Provided that the amount payable in respect of any one Occurrence for this expense will be limited to the amount stated in the Schedule, or 10% of the Contract Value, whichever is the lesser.

b) Expediting Expenses

The costs of:

- i. express delivery within Australia, including airfreight by commercial airlines operating scheduled services;
- ii. overtime or penalty rates of labour;
- iii. the hire of additional labour and equipment;
- iv. accommodation and boarding costs, including meals and other associated costs;

Provided that the amount payable in respect of any one Occurrence for this expense will be limited to the amount stated in the Schedule, or 5% of the Contract Value, whichever is the lesser.

c) Consultants' Fees

Architects', surveyors', engineers', project managers', legal, and other consultants' fees necessarily incurred for the purpose of repairing, reinstating, or replacing Insured Property, but exclusive of any fees incurred for the preparation of a claim or estimation of a loss.

Consultants' fees will not exceed those authorised under the scale of the related consultant's professional bodies regulating such fees and charges prevailing at the time of the Damage covered under this Policy.

Provided that the amount payable in respect of any one loss will be limited to the amount stated in the Schedule, or 10% of the Contract Value, whichever is the lesser.

d) Mitigation Expenses

Costs and expenses necessarily and reasonably incurred by the Insured to contain, mitigate, suppress, save, protect, or prevent further imminent Damage insured under this Policy, to the Insured Property.

Provided that the amount payable in respect of any one Occurrence for this expense will be limited to the amount stated in the Schedule, or 5% of the Contract Value, whichever is the lesser.

e) Principal Supplied Materials

The cost of replacing Damaged materials supplied by the Principal, whilst at the Contract Site.

Provided that the amount payable in respect of any one loss will be limited to the amount stated in the Schedule, or 10% of the Contract Value, whichever is the lesser.

2. Materials in Transit

The cost of replacing Damaged materials, components and equipment locally procured and belonging to or in the care, custody or control of the Insured which are intended for use in the Contract Works, only whilst in transit within Australia.

Provided that the Damage occurs after completion of loading in an undamaged condition and prior to completion of the unloading at the Contract Site.

Provided further that the amount payable in respect of any one loss will be limited to \$25,000 any one conveyance.

3. Materials Stored Offsite

The cost of replacing Damaged materials, components and equipment intended to be incorporated into the Contract Works whilst stored offsite pending delivery to the Contract Site, but only if the materials are owned by or the responsibility of the Named Insured.

Provided that the amount payable in respect of any one loss will be limited to \$25,000 any one occurrence.

Basis of Settlement

In the event of Damage insured under Section 1 of this Policy, the amount payable will be:

1. Contract Works

In respect of Damage to the Contract Works, the Insurer will pay the cost of Reinstatement of the property, at the time of Reinstatement.

2. Construction Plant (Plant & Equipment and Tools)

In respect of Damage to Construction Plant, where cover has been attached by Endorsement, the Insurer will pay:

- i. Repairable damage
in cases where Damage can be repaired, the costs necessarily incurred to restore the Damaged item(s) to their condition immediately prior to the loss or Damage occurring, including the costs

of dismantling and re-erection incurred for the purposes of carrying out the repairs in addition to ordinary freight to and from repair premises;

- ii. Total loss

in cases where the cost of repairs equals or exceeds the Market Value of the Damaged item(s) immediately prior to the loss or Damage having occurred, the Insurer will at its option either:

- i. supply an equivalent replacement item similar in type, capacity and condition to the Damaged item immediately prior to the loss or Damage having occurred;
- ii. pay the Market Value of the Damaged item immediately prior to the loss or Damage having occurred.

3. Escalation

If at any time during the Construction Period there is an escalation in the cost of the Contract Works which exceeds the Contract Value specified in the Schedule, then the Sum Insured in respect of the Contract Works will be increased by the same proportion, provided that the amount of such increase will not exceed 15% of the Sum Insured for Contract Works in the Schedule, unless agreed in writing by the Insurer. Items a), b), c), d) and e) under Section 1 – Additional Benefits will also be proportionately increased when such agreement is given by the Insurer in writing.

4. Automatic Reinstatement

Following any claim being paid under this Policy the Insurer will reinstate the Sum Insured, provided that the Insured pays any additional premium that may be required by the Insurer.

5. 72 Hour Clause

All Damage which occurs during any period of seventy-two (72) hours and which is caused by flood, storm, tempest, water damage, subsidence, collapse or earthquake will be considered for the purpose of the application of any Excess as resulting from the one event. This Clause will apply to any of these causes whether continuous or sporadic in their sweep or scope and whether the Damage was due to the same climatic or seismological conditions. Each event will be deemed to have commenced on the first occurrence of any such Damage, provided that no two such events will overlap.

6. Progress Payments

Where the Insurer has agreed to pay a claim under this Policy, and where the total liability of the Insurer in respect of such claim is estimated to exceed \$50,000 after application of the Excess, the Insurer will pay at the request of the Insured progress payments on account of such claim for such amounts and at such intervals as may be agreed. Provided that the Insured demonstrates to the reasonable satisfaction of the Insurer that the amount of the progress payment requested has actually been expended.

Provided further that the intervals between such progress payments will be no less than thirty (30) days. Such progress payments will be deducted from the amount payable by the Insurer for the claim as determined in accordance with the terms and conditions of this Policy.

Average

If it is found that the Sum Insured for any Contract Works insured under this Policy is less than 85% of the Reinstatement cost in the event of total loss of such Contract Works then any amount payable under Section 1 of this Policy in respect of Damage to such Contract Works will be reduced in the same proportion as such Sum Insured bears to such Reinstatement cost.

Exclusions

This Policy does not cover:

1. Abandonment

Loss or damage consequent upon abandonment of the Contract Works.

2. Breakdown

Loss or damage to:

- a) any used or second hand machinery incorporated into the Contract Works;
- b) any contractor's plant or equipment caused by its own electrical or mechanical failure or derangement including the costs of repair or rectification of the electrical or mechanical components subject to the failure or derangement.

3. Cash and Securities

Loss of or damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes, securities, negotiable instruments and the like.

4. Cessation of Work

Loss or damage consequent upon cessation of work for any reason, except for loss or damage sustained during the first forty-five (45) days of any such cessation.

5. Civil Works

Loss or damage to Civil Works, except where Civil Works form part of a building Contract and do not exceed 30% of the estimated value of any Contract.

6. Consequential Loss, Fines and Penalties

Consequential loss, fines, penalties or damages incurred by the Named Insured under contract for delay, non-completion or non-compliance with contract conditions.

7. Design, Materials, Workmanship

Loss of or damage to and the cost necessary to replace, repair or rectify:

- i. Contract Works which are in a defective condition due to a defect in design, plan, specification,

materials or workmanship of such Insured Property or any part thereof;

- ii. Contract Works lost or damaged to enable the replacement repair or rectification of Contract Works excluded by i. above.

Exclusion i. above will not apply to other Insured Property which is free of the defective condition but is damaged in consequence of the defect in design, plan, specification, materials or workmanship.

The Contract Works will not be regarded as lost or Damaged solely by virtue of the existence of any defect in design plan specification materials or workmanship in the Contract Works or any part thereof.

8. Dewatering

All costs and expenses of dewatering even if the quantities of water expected are exceeded, or expenses incurred for the installation of additional protections and facilities for the discharge or run-off of underground water.

9. Existing Property

Loss, destruction of or damage to floor and wall finishes and/or coverings, and to contents of any description, in respect of Existing Property.

10. Inventory Shortage

Loss or damage which is discovered only at the time an inventory is taken, unless such loss or damage can be attributed to a specific Event at a specific point in time.

11. Misappropriation

Loss or damage due to embezzlement or fraudulent misappropriation by any of the Insured(s) or their employee(s).

12. Ocean Marine Transit

Loss, destruction of or damage to materials or equipment whilst such items are in the course of ocean marine transit.

13. Pollution and Contamination

Loss or damage caused directly or indirectly out of or in connection with gradual pollution or gradual contamination.

14. Piling

Loss or damage to any:

- a) individual pile or groups of piles or any pile casings due to:
 - i. an error in positioning, misplacement or misalignment; or
 - ii. jamming or obstruction; or
 - iii. extraction, retrieval or removal;
- b) individual pile or groups of piles that fail to pass any load bearing tests or any other required design or performance criteria;

- c) individual pile or groups of piles that cannot be driven to or fail to found at their specified depth or fail to meet the specified rejection parameters.

In addition, the Insurer will not pay costs incurred for the rectification of disconnected or declutched sheet piles or the abandonment of any individual pile or groups of piles.

15. Vegetation

Loss, destruction of or damage to any vegetation forming part of the Contract Works caused by or arising from disease, lack of water, excess water or replanting operations.

16. Vermin

Loss or damage to the Contract Works caused by the action of vermin, termites, moths or other insects.

17. Wear and Tear

Loss or Damage caused by wasting or wearing away, abrasion, corrosion, erosion, gradual deterioration or atmospheric conditions, or the cost of normal upkeep or making good.

Section 2 – Legal Liability

Specific Definitions

The following definitions apply to Section 2:

1. **Foreign Proceedings** means claims brought against or liability incurred by the Insured in or in connection with proceedings in a court of law, arbitration, tribunal or other body entitled to impose enforceable orders against the Insured outside Australia.

2. **Personal Injury** means bodily injury, death, illness, disease, disability, shock, fright, mental anguish or mental injury.

3. **Property Damage** means physical damage to or destruction of tangible property including the loss of use of tangible property at any time resulting from physical loss damage or destruction.

4. **Property in Care Custody and Control** means tangible property in the care custody and control of the Insured or tangible property for which the Insured is responsible, but not including:

- a) Personal possessions of visitors to the Contract Site;
- b) Premises and contents of premises situated away from the Contract Site.

5. **Territorial Limits** will be limited to the Commonwealth of Australia, this Section 2 of this Policy provides cover only for:

- a) legal liability in Australia incurred by any of the Insured/s as defined in connection with the Contract Works; and
- b) claims for legal compensation made in Australia.

6. **Worker to Worker liability or claim(s)** means:

- i. legal liability of the Insured in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law; or
- ii. a claim made by an injured worker (as defined by the relevant workers' compensation legislation) against any Insured other than the worker's direct employer;

solely in respect of workers undertaking construction work on a Contract Site.

Insuring Clause

The Insurer will indemnify the Insured for all sums which the Insured will become legally liable to pay in respect of:

- i. Personal Injury; and
- ii. Damage to Property;

first occurring during the Period of Insurance as a result of an Occurrence arising out of the Contract Works within the Territorial Limits specified in the Schedule.

Limit of Liability

The liability of the Insurer under this Section of the Policy will not exceed the Limit of Liability stated in the Schedule in respect of Personal Injury or Property Damage any one claim or number of claims arising out of the one Occurrence, less the amount of the Excess.

Excess

Should more than one Excess under this Section of the Policy apply for any claim arising from or attributable to once Occurrence, such Excesss will not be aggregated and only the highest applicable Excess under this Section will apply.

Additional Payments

In addition to the cover provided under the insuring clause above, subject to the Limit of Liability, the Insurer will pay:

- a) all costs and expenses incurred with the Insurer's prior written consent;
- b) all legal costs for representation of the Insured at any coronial inquest or in any court of summary jurisdiction; and
- c) all claimant's charges, expenses and legal costs taxed or assessed against the Insured;

to the extent that these costs and expenses are incurred in Australia in connection with a claim for compensation which is indemnifiable under this Section of the Policy.

Provided that the maximum liability of the Insurer for all Additional Benefits in respect of any claim or number of claims arising out of any one Occurrence will not exceed \$5,000,000.

Cross Liability

For the purpose of Section 2 of this Policy the term Insured will be considered to apply to each entity comprising the Insured/s set out in the Schedule in the same manner as if a separate policy had been issued to each entity, and the Insurer waives all right of subrogation or action it may have or acquire against any of the Insured/s. Provided that nothing contained in this clause will operate to increase the Limit of Liability stated in the Schedule.

Exclusions

The following exclusions apply to section 2 of this Policy. The Insurer will not be liable for:

1. Contract Works

Claims for loss of property or Property Damage where:

- i. such property comprises or forms part of the Contract Works;
- ii. such property was previously Contract Works carried out by the Named Insured and no longer in the custody or control of the Named Insured, and is now deemed to be Completed Operations;
- iii. such property is Existing Property covered under Section 1 of this Policy.

2. Defective Works

The cost of rectifying, repairing, replacing, restoring, correcting or improving any part or parts of the Contract Works covered under Section 1 of this Policy.

3. Workers' Compensation

To indemnify the Insured for any liability imposed by the provision of any Workers' Compensation legislation or any industrial award or agreement or determination.

4. Injury to Employees

Any claim in respect of Personal Injury to any employee arising out of or in the course of his/her employment.

5. Fines and Damages

Any amount by way of aggravated exemplary or punitive damages, or in respect of fines or liquidated damages, or incurred under any penalty clause.

6. Foreign Proceedings

Any claims brought against or liability incurred by the Insured in or in connection with proceedings in a court of law, arbitration, tribunal or other body entitled to impose enforceable orders against the Insured outside Australia.

7. Vehicles

To indemnify the Insured for any liability caused by or arising out of the ownership, possession or use by the Insured of any motor vehicle:

- a) where such liability at the time and place of the Occurrence giving rise to a claim under this Policy is insured or required to be insured by virtue of any legislation governing the use of motor vehicles;
- b) to the extent insured under a non-statutory motor vehicle insurance arranged by the Insured.

This exclusion 7 will not apply to liability in respect of:

- i. a vehicle whilst being used as a tool of trade when situated or being used on or adjacent to any site or the premises of the Insured;
- ii. where caused by or arising out of the loading or unloading of, or the delivery or collection of any goods to or from any vehicle.

8. Watercraft and Aircraft

To indemnify the Insured for any liability arising from or in connection with the ownership, possession or use by any Insured of any vessel or craft made or intended to be water borne or air borne other than a watercraft or water vessel not exceeding eight metres in length.

9. Professional Liability

To indemnify the Insured for any liability arising out of the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith, but this exclusion 9 does not apply to claims for the rendering of, or failure to render, first aid, medical or ambulance services.

10. Asbestos

Any claim or claims for any liability for:

- injury arising, directly or indirectly, out of inhalation of, or fears of the consequences of exposure to or inhalation of, asbestos, asbestos fibres or any derivatives of asbestos;
- that part of any loss, cost or expense for the cost of cleaning up, or removal of, or damage to, or loss of use of, property arising out of any asbestos, asbestos fibres or any derivatives of asbestos.

11. Pollution

- Personal Injury or Property Damage or financial loss or loss of, damage to, or loss of use of property, directly or indirectly arising out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration, emission or escape of Pollutants; or
- the cost of testing, monitoring, containing, removing, nullifying or cleaning up Pollutants; except liability otherwise excluded that:
 - i. arises from a sudden identifiable, unintended and unexpected happening, which takes place in its entirety at a specific time and place; and
 - ii. is indemnified in not more than one annual Period of Insurance.

12. Infectious Diseases

Any claim arising directly or indirectly as a result of infectious disease, where the infectious disease is defined as Highly Pathogenic Avian Influenza or any diseases declared to be quarantinable diseases under the Quarantine Act (1908) or any subsequent amendments to, or versions of this Act.

13. Internet Operations

Any claim directly or indirectly caused by or arising from your Internet operations.

Internet operations means:

- a) use of electronic mail systems by the Insured and employees of the Insured, including part time and temporary staff and contract personnel;
- b) access through the Insured's network to the World Wide Web by the Insured and employees of the Named Insured, including part time and temporary staff and contract personnel;
- c) access to the Insured's intranet, which is made available through the World Wide Web for customers and other third parties;
- d) the operation and maintenance of the Insured's web site.

14. Contractual Liability

To indemnify the Insured for any liability assumed solely under any contract or agreement (other than the Contract pursuant to which the Contract Works are being carried out, or any contract of hire of construction plant machinery or equipment) unless such liability would have attached regardless of the existence of such contract or agreement or is specifically agreed to in writing by the Insurer.

15. Waiver of Rights

To indemnify the Insured for liability incurred or affected by reason of an Insured having entered into a deed or agreement which excludes, limits or delays the Named Insured's rights of subrogation recovery or recourse against any party, (other than any one of the Insured), existing prior to or after an Occurrence to which such waiver applies.

16. Excavation and Underpinning

To indemnify the insured for liability for Property Damage directly or indirectly caused or arising out of or consequent upon any excavation or underpinning activity;

provided that this Exclusion will not apply where:

- i. the excavation or underpinning work does not exceed five metres in depth;
- ii. the excavation or underpinning work is carried out strictly in accordance with plans and specifications and under the supervision of a design engineer; and
- iii. a detailed dilapidation report is prepared prior to the commencement of any excavation or underpinning activity in respect of any structure/s that could be affected by such activity.

17. Hot Work

To indemnify the Insured for any liability for Property Damage directly or indirectly caused by or arising out of or consequent upon arc or flame cutting, flame heating, brazing, soldering, arc or gas welding or similar operations involving the use of welding equipment, unless such activity is carried out in strict compliance with Australian Standard – Safety in welding and allied processes, Part 1: Fire precautions (AS1674.1-1997) as amended.

18. Vibration, Removal of Support

To indemnify the Insured for any liability for Property Damage caused by or arising from vibration or removal or weakening of supports to any property for a Limit of Liability greater than \$50,000 unless specified in the Schedule.

19. Abandonment of Works

To indemnify the Insured for any liability immediately following the abandonment of any works.

20. Cessation of Work

To indemnify the Insured for any liability following on from any cessation of work exceeding 45 days.

21. Care, Custody, Control

Any claim in respect of any tangible property owned by or belonging to the Insured other than cover provided by Endorsement.

22. Underground Services

Any claim arising from the presence of underground services, cables or pipes of any kind unless prior to the commencement of works the Named Insured:

- a) has made a written request to the relevant public authorities, or utilities, or the owners of such pre-existing underground services; and

- b) has obtained from the relevant public authorities or "Dial before you dig" national information service or the owners of such underground services written confirmation of the exact position of such services; and
- c) has subsequently verified the location of such underground services and indicated the location in situ.

23. Demolition

To indemnify the Insured for any liability arising out of, or caused by or in connection with, the demolition of structures exceeding 10 metres in height.

General Exclusions

The following exclusions apply to both Sections 1 and 2 of the Policy. The Insurer will not be liable for:

1. Electronic Data

- i. total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data;
- ii. error in creating, amending, entering or using Electronic Data; or
- iii. total or partial inability or failure to receive, send, access or use Electronic Data for any time at all;

from any cause whatsoever, regardless of any other contributing cause or event whenever it may occur.

However, this exclusion does not apply in the event that a peril listed below (being a peril insured by this Policy but for this exclusion) is caused by any of the matters described in paragraphs i. to iii. above, in which case this Policy, subject to all its provisions, will provide indemnity against physical loss of or damage or destruction to Contract Works directly caused by such listed peril.

Further, this exclusion does not apply in the event that a peril listed below (being a peril insured by this Policy but for this exclusion) causes any of the matters described in i. to iii. above:

- fire;
- explosion;

- lightning;
- windstorm;
- hail;
- tornado;
- cyclone;
- hurricane;
- earthquake;
- volcano;
- flood;
- freezing;
- weight of snow;
- impact by aircraft or other aerial objects dropped therefrom;
- impact by any road vehicle or animal;
- bursting overflowing discharging or leaking of water tanks apparatus or pipes;
- theft of Electronic Data solely where such theft of the computer hardware, firmware, medium, microchip, integrated circuit or similar device containing such Electronic Data.

Any Terrorism exclusion in this Policy prevails over this Exclusion.

2. War

Any consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or 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.

3. Terrorism

Death, injury, illness, loss, damage, cost, expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any act of Terrorism, as defined herein, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This Policy further excludes loss, damage, cost, or expense directly or indirectly caused by, contributed to by, resulting from, or arising out of or in connection with any action in controlling, preventing, suppressing, retaliating against, or responding to any act of Terrorism.

4. Radioactivity

Loss, damage liability or expense arising directly or indirectly caused by or contributed to by or arising from:

- a) ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor, or other nuclear assembly or nuclear component thereof;
- c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.

General Conditions

The following General Conditions apply to the Policy.

1. Basis of Policy (Run-Off)

This Policy will provide cover for all Contract Works undertaken during the Construction Period stated in the Schedule, provided that:

If this Policy is not renewed at the expiry of the Period of Insurance, the Insurer will at its option continue Section 1 of this Policy in full force and effect for all Contract Works in progress at expiry of the period of Insurance until practical completion or taking over of the projects whichever occurs first and such continuation will extend to include any relevant Maintenance/Defects Liability Periods.

Provided that any continuation of cover will be subject to the maximum Construction Period and the maximum Maintenance/Defects Liability Period(s) stated in the Schedule, and provided further that this continuation of cover will not attach in circumstances where the Insurer has declined to renew the Policy or has imposed special terms and conditions.

2. Reasonable Precautions

The Insured will at their own expense take all reasonable care and precautions to comply with all

statutory obligations and regulations imposed by any authority, and to prevent loss or Damage, Personal Injury, or Property Damage at all times.

3. Alteration of Risk

The Named Insured must immediately notify the Insurer as soon as the alteration or omission becomes known to them, and the Insurer will be entitled to make reasonable variations to the terms and Conditions of the Policy.

4. Adjustment of Premium

The Premium for this Policy is provisional and has been calculated on the Estimated Turnover of the Contract Works which has been furnished by the Named Insured, and the Named Insured will advise the Insurer of the Actual Turnover of the Contract Works as soon as this has been determined.

The Actual Turnover will be applied to the agreed Premium rate, and the provisional Premium will be adjusted by either a further payment to or a refund by the Insurer, as the case may be, subject to retention by the Insurer of any applicable minimum Premium and provided further that the maximum refund in favour of the Insured shall be 25% of the provisional Premium.

5. Inspection

The Insurer will be permitted but not obliged to inspect the Contract Works at any time. Neither our right to make inspection(s) nor the making of such inspection(s) or any report will be deemed to be tantamount to confirming that Contract Works are safe or are in compliance with any law, rule or regulation.

6. Jurisdiction

This Policy is governed by the laws of Australia. In the event of a dispute arising under this Policy, at the request of the Insured, the Insurer will submit to the jurisdiction of any competent court in the Commonwealth of Australia.

7. Cancellation

- a) The Insurer may cancel this Policy in accordance with Section 60 of the Insurance Contracts Act 1984 by serving on the Named Insured fourteen (14) days notice in accordance with Section 59 of that Act, in which case the Named Insured will be entitled to a pro-rata refund of the Premium for the unexpired portion of the Premium.
- b) The Named Insured (on behalf of itself and all other Insureds unless otherwise specified) may cancel this Policy at any time by giving notice in writing to the Insurer. After cancellation by the Named Insured, the Insurer will be entitled to retain the Premium for the period the Policy was in force, plus 20% of the Premium for the unexpired Period of Insurance.

8. Assignment

The Named Insured must obtain the prior written consent before it can assign or transfer its interest in this Policy to any other entity.

9. GST

Where the Insurer makes a payment under the Policy for the acquisition of goods, services or other supply, the Insurer will reduce the amount of the payment by the amount of any input tax credit that the Insured is, or will be, or would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 in relation to that acquisition, whether or not that acquisition is actually made. Where the Insurer makes a payment under the Policy as compensation instead of payment for the acquisition of goods, services or other supply, the Insurer will reduce the amount of payment by the amount of any input tax credit that the Insured would have been entitled to under A New Tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

10. Payment of Premium

It is a condition of this Policy that the Premium is paid by the Named Insured. This insurance contract will not be in force until payment is received by the Insured and the Insurer will not be liable for any loss or damage prior to the Payment of the Premium.

11. Multiple Insureds Clause

- a) If the Insured comprises more than one entity or person then, subject to any other term of this Policy, the cover provided by this Policy will apply in the same manner and to the same extent as if individual policies had been issued to each of the Insured.

Provided however that the total liability of the Insurer to all of the Insured collectively will not exceed the Sum(s) Insured and Limit(s) of Liability, including any sub-limits, stated in the Schedule or in any Endorsement(s) to this Policy.

- b) The Insurer hereby agrees to waive all rights of subrogation it may have or acquire against any Insured except where such rights of subrogation arise from a liability of such Insured for which such Insured would not be entitled to indemnity under Section 2 of this Policy.

Claims Conditions

The following Claims Conditions apply to the Policy.

1. Notification

In the event of any loss or Damage occurs to any Property Insured under Section 1, or if Personal Injury or Property Damage occurs which may give rise to a claim under Section 2 of the Policy, the Insured will:

- a) as soon as reasonably practicable:
 - i. notify the Insurer of such Loss or Occurrence;
 - ii. provide full details and substantiating documentation of the Loss or Occurrence to the Insurer;
 - iii. take all reasonable steps to prevent any further Damage, and to minimise the extent of Personal Injury or Property Damage;
 - iv. advise the Police in the case of theft, burglary or malicious damage;
 - v. retain and preserve any item which may prove necessary or useful by way of evidence in connection with any claim;
- b) immediately forward to the Insurer upon receipt every letter, demand, writ, summons and process;
- c) provide all assistance which the Insurer may reasonably require.

2. Admission of Liability

None of the Insured may:

- a) make any admission of liability;
- b) take any action which may be considered to be an admission of liability;
- c) make any offer of payment in connection with any claim, without the prior written approval of the Insurer.

3. Conduct of Claim

- a) The Insurer will have full discretion in the conduct, defence or settlement of any claim. This includes the right to instruct lawyers to provide advice as to liability of the Insured.
- b) Subject to the provisions of the Insurance Contracts Act (1984) the Insurer has the right to recover or obtain contribution from any person against whom the Insured may be able to claim and the right to take action in their name.

The Insured or any other entity entitled to benefit under this Policy must not hinder these rights and must give all such information and co-operation as may be required by the Insurer.

4. Payment of Limit of Indemnity

In relation to any claim under Policy the Insurer may at any time pay at its discretion to the Insured claiming to be indemnified the specified Limit of Liability (after deduction of any sum or sums already paid) or any lesser amount for which such claim or claims may be settled.

Upon making such payment the Insurer will relinquish the conduct and control of and will be under no further liability in connection with such claim or claims except for costs and expenses incurred prior to the date of such payment.

5. Other Insurance

In the event of any claim being made under this Policy, the Insured must furnish to the Insurer details of other insurances which may also provide cover for the same loss or Damage or Personal Injury or Property Damage.

6. Subrogation

The Insured must at the request and at the expense of the Insurer do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the Insurer for the purpose of the Insured enforcing any rights and remedies or of obtaining relief or indemnity from other parties for any amount paid or incurred by the Insurer under this Policy.



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