



# Professional Indemnity for Insurance Brokers

Policy Wording

# Contents

## IMPORTANT INFORMATION

PART 1 - IMPORTANT INFORMATION.....	4
What You Need to Read and Understand.....	4
About Tasman Underwriting.....	4
About the Insurers.....	4
Assumed Liability and Waived Rights.....	4
Claims Made and Notified Insurance.....	5
Complaints and Dispute Resolution Process.....	5
Disclaimer.....	6
Excess.....	6
When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim.....	6
If You do not comply with or meet any Policy term.....	7
Terms allowing Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into.....	7
Terms allowing Us to refuse or reduce a claim because of pre-existing defects or imperfections existing before the Policy was entered into.....	8
Fraudulent Claims.....	8
Duty of Utmost Good Faith.....	8
Terms Apply to Extent Enforceable.....	8
Duty of Disclosure.....	8
General Insurance Code of Practice.....	9
Goods and Services Tax (GST).....	9
Our Contract with You.....	10
Privacy Statement.....	10
Sanctions.....	11
Several Liability.....	12
PART 2 – POLICY COVER SECTIONS.....	13
GENERAL DEFINITIONS.....	13
SECTION ONE – THE COVER.....	16
1. Civil Liability.....	16
2. Costs and/or Expenses.....	16
3. Consultants.....	16
4. Loss of Documents.....	16
5. Australian Financial Complaints Authority.....	16
SECTION TWO – CONDITIONS.....	18
1. Limit of Liability.....	18
2. Excess.....	18
3. Multiple Claims.....	18

4.	Rights of Other Insureds .....	18
5.	Cancellation .....	18
6.	Subrogation .....	19
7.	Governing Law .....	20
8.	Interpretation .....	20
SECTION THREE – EXCLUSIONS .....		21
1.	Claims and Circumstances Already Known.....	21
2.	Communicable Disease Exclusion.....	21
3.	Cyber and Data Protection .....	21
4.	Dishonesty .....	21
5.	Trading Debts.....	22
6.	Related Person/Entity .....	22
7.	Employers' Liability.....	22
8.	Land, Buildings, Watercraft and Vehicles .....	22
9.	Fines/Penalties and Punitive Damages.....	22
10.	Nuclear .....	22
11.	War and Terrorism.....	23
12.	Refund of Professional Fees/ Brokerage/Commission .....	23
13.	Assumed/Contractual/Additional Liability .....	23
14.	USA/Canada .....	23
15.	Intellectual Property .....	23
16.	Retroactive Date .....	23
17.	Directors'/Officers' Liability .....	23
18.	Signing Client's Proposal Forms.....	24
19.	Insurance Company Insolvency or Management .....	24
20.	E-Commerce .....	24
21.	Asbestos and Toxic Mould.....	24
SECTION FOUR – CLAIMS.....		26
	Reporting and Notice .....	26
	Claims Conditions.....	26

# PART 1 - IMPORTANT INFORMATION

## What You Need to Read and Understand

This document contains:

- this Part 1 - Important Information section which contains certain important notices, terms and other information;
- Part 2 – Policy Cover Sections which sets out the covers this insurance can provide (subject to eligibility) and the other standard terms and conditions which will apply to the covers (including any applicable limits and exclusions). It includes General Definitions which set out the special meaning We give to certain words used in the Policy. Other words may be specially defined in a Policy section, term or condition.

## About Tasman Underwriting

This insurance is arranged and administered by Tasman Underwriting ABN 65 005 754 718 (Tasman) is a trading division of IBL Limited AFS Licence number 231203

### Agent of the Insurer

Please note that in arranging the contract of insurance, **we** are acting under an authority given to **us** by the **insurer**, and **we** will be effecting the contract of insurance as agent of the **insurer**, and not as **your** agent.

Tasman's contact details are:

Level 21, 41 Exhibition Street  
Melbourne, VIC 3000  
Telephone: 1800 234 338

## About the Insurers

This insurance is underwritten by Certain Underwriters at Lloyd's (referred to as We, Our, Us and Insurer).

Lloyd's and Lloyd's Underwriters have been involved in the insurance of Australian risks for over 150 years. Lloyd's Underwriters are authorised to carry on general insurance business under the Insurance Act 1973 (Cth). You can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Lloyd's Underwriters is liable by requesting them from Us. In the event of loss, each Lloyd's Underwriter (and their Executors and Administrators) is only liable for their own share of the loss. Refer to the Several Liability notice for more information on the specified Lloyd's Underwriter's liability.

You should contact Tasman in the first instance in relation to this insurance.

Lloyd's contact details are:

Lloyd's Australia Limited  
Level 16, Suite 1603, 1 Macquarie Place  
Sydney, NSW 2000  
Telephone: 02 8298 0783

## Assumed Liability and Waived Rights

If an Insured has entered into an agreement with another party:

- where the Insured is assuming a greater liability than would apply had the Insured not entered into that agreement; or
- which prevents the Insured from taking a recovery action for indemnity or contribution from that party,

it may adversely affect the Insured's rights to cover under the Policy.

See "When We can refuse to pay or reduce the amount We pay under a claim" for further information.

## Claims Made and Notified Insurance

The Professional Indemnity Policy is issued on a claims made and notified basis. This means that the Policy responds:

- a) to claims first made against an Insured during the Period of Insurance and notified to Us during that Period of Insurance, providing that the Insured was not aware at any time prior to the Policy inception of circumstances which would have put a reasonable person in their position on notice that a claim might be made against them; and
- b) pursuant to section 40 sub-section 3 of the Insurance Contracts Act 1984 (Cth), which states: *"where the insured gave notice in writing to the insurer of facts that might give rise to a claim against the insured as soon as was reasonably practicable after the insured became aware of those facts but before the insurance provided by the contract expired, the insurer is not relieved of liability under the contract in respect of the claim, when made, by reason only that it was made after the expiration of the Period of Insurance provided by the contract"*.

When the Policy expires, no new notification can be made on the expired Policy even though the event giving rise to the claim against an Insured may have occurred during the Period of Insurance. An Insured will not be entitled to indemnity under Your new policy in respect of any claim arising out of circumstances of which as Insured was aware at any time prior to the Policy inception that would have put a reasonable person in their position on notice that a claim might be made against them.

## Complaints and Dispute Resolution Process

If You have any concerns or wish to make a complaint in relation to the Policy, Our services or Your insurance claim, please let Us know and We will attempt to resolve Your concerns in accordance with Our Internal Dispute Resolution procedure. Please contact Tasman Underwriting in the first instance. If this does not resolve the matter or you are not satisfied with the way a complaint has been dealt with, you should contact:

Lloyd's Underwriters' General Representative in Australia

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

Telephone: (02) 8298 0783

Post: Suite 1603, Level 16, 1 Macquarie Place  
Sydney, NSW 2000

Who will refer your dispute to the Complaints Team at Lloyd's.

Complaints that cannot be resolved by the Complaints Team may be referred to the Financial Ombudsman Service (UK). Further details will be provided at the appropriate stage of the complaints process.

A final decision will be provided to You within 30 calendar days of the date on which You first made the complaint unless certain exceptions apply.

You may refer Your complaint to the Australian Financial Complaints Authority (AFCA), if Your complaint is not resolved to Your satisfaction within 30 calendar days of the date on which You first made the complaint or at any time. AFCA can be contacted as follows:

**Australian Financial Complaints Authority**

Post: GPO Box 3, Melbourne VIC 3001

Telephone: 1800 931 678

Email: [info@afca.org.au](mailto:info@afca.org.au)

Website: [www.afca.org.au](http://www.afca.org.au)

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If Your complaint is not eligible for consideration by AFCA, You may be referred to the Financial Ombudsman Service (UK) or You can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to You.

The Insurers accepting this insurance agree that:

- a) if a dispute arises under the Policy, the Policy will be subject to Australian law and practice and the Insurers will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- b) any summons notice or process to be served upon the Insurers may be served upon:

**Lloyd's Underwriters' General Representative in Australia**

Suite 1603, Level 16, 1 Macquarie Place

Sydney NSW 2000

who has authority to accept service on the Insurers' behalf;

- c) if a suit is instituted against any of the Insurers, all Insurers participating in the Policy will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under the Policy immediate notice should be given to Tasman Underwriting.

## Disclaimer

When You enter into the Policy You confirm and warrant that You have read the Policy documents provided to You.

## Excess

If an Insured makes a claim under the Policy, they may be required to pay one or more Excesses. The descriptions of these Excesses and the circumstances in which they are applied are explained in this document, the Schedule and other documents forming the Policy.

## When We Can Refuse to Pay or Reduce the Amount We Pay Under a Claim

We may refuse to pay or reduce the amount We pay under a claim to the extent permitted by law.

The situations in which We may refuse to pay or reduce the amount We pay under a claim under the Policy include (but are not limited to):

- a) when You apply for cover (this includes new business, variations and renewals) and You do not comply with Your obligations regarding pre contractual disclosures and representations to Us under the Insurance Contracts Act 1984 (Cth) (including where applicable the Duty of Disclosure – see Your Duty of Disclosure below); or
- b) if You do not comply with or meet a term or condition (including where an exclusion applies or other limitation) of the Policy (All referred to as “terms” when used below) – See “If You do not comply with or meet any Policy term” below for more detail;
- c) if You make a fraudulent claim – See “Fraudulent Claims” below;
- d) where You have not or are not acting in accordance with Your duty of utmost good faith under the Insurance Contracts Act 1984 (Cth) – See “Duty of Utmost Good Faith” below.

The amount of any claim entitlement can also be affected and/or reduced by any limits (including any time limits) or Excess(es) that apply and recoveries You, an Insured or We might make relevant to a loss.

### **If You do not comply with or meet any Policy term**

We will only rely on any rights We have regarding the operation of or breach of a term of the Policy to the extent permitted by law (including Our right to refuse or reduce a claim noted above). We provide some key examples below. You need to seek Your own advice regarding all relevant legal rights You may have.

### **Terms allowing Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into**

Subject to Our rights in relation to Fraudulent Claims explained below, by reason of section 54 of the Insurance Contracts Act 1984 (Cth), where the effect of the Policy (this includes all terms or conditions, including any exclusion or other limitation) is to allow Us to refuse to pay or reduce a claim (in whole or part) by reason of an act by You or some other person that occurred after the Policy was entered into, We will exercise Our rights under the Policy as explained below (Refer to the Insurance Contracts Act 1984 (Cth) for full details).

Under section 54, an “act” by You or some other person includes an omission and inaction and an act or omission that has the effect of altering the state or condition of the subject-matter of the Policy or of allowing the state or condition of that subject-matter to alter.

#### **How We exercise Our rights where section 54 applies (unless there is a Fraudulent Claim)**

- Where:
  - the act was necessary to protect the safety of a person or to preserve property;
  - it was not reasonably possible for You or the other person not to do the act; or
  - You prove no part of the loss that gave rise to the claim was caused by the act,
 We will not refuse to pay or reduce the claim by reason only of that act.
- Where the act:
  - could not reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy; or
  - could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy but You prove that some part of the loss that gave rise to the claim was not caused by the act, We may not refuse to pay the claim, so far as it concerns that part of the loss but,

We can reduce Our liability in respect of the claim by an amount that fairly represents the extent to which Our interests were prejudiced as a result of that act.

- Otherwise, where the act could reasonably be regarded as being capable of causing or contributing to a loss in respect of which insurance cover is provided by the Policy, We may refuse to pay the claim.

### **Terms allowing Us to refuse or reduce a claim because of pre-existing defects or imperfections existing before the Policy was entered into**

Only where section 46 of the Insurance Contracts Act 1984 (Cth) is applicable to the Policy:

- where a claim is made in respect of a loss that occurred as a result, in whole or in part, of a defect or imperfection in a thing; and
- at the time when the contract was entered into You were not aware of, and a reasonable person in the circumstances could not be expected to have been aware of, the defect or imperfection,

We may not rely on any provision included in the Policy that has the effect of limiting or excluding Our liability under the contract by reference to the condition, at a time before the Policy was entered into, of the thing. This does not apply if the Policy is in an excluded class to which section 46 does not apply. (Refer to the Insurance Contracts Act 1984 (Cth) for full details).

## **Fraudulent Claims**

In all cases, where a claim is made fraudulently under:

- the Policy; or
- the Insurance Contracts Act against Us by a person who is not You,

We may refuse payment of the claim to the extent permitted by law. Under section 56(2) of the Insurance Contracts Act 1984 (Cth) a court may, if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair, order Us to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances. (Refer to the Insurance Contracts Act 1984 (Cth) for full details).

## **Duty of Utmost Good Faith**

- Section 13 of the Insurance Contracts Act 1984 (Cth) requires each party to the Policy to act towards the other party, in respect of any matter arising under or in relation to it, with the utmost good faith.
- Section 14 of the Insurance Contracts Act 1984 (Cth) provides that if reliance by a party to the Policy on a provision of the Policy would be to fail to act with the utmost good faith, the party may not rely on the provision.

(Refer to the Insurance Contracts Act 1984 (Cth) for full details).

## **Terms Apply to Extent Enforceable**

A term (or part of a term) of the Policy will be applied to the extent is not unenforceable under relevant law.

## **Duty of Disclosure**

Before You enter into an insurance contract, You have a duty to tell Us of anything that You know, or could reasonably be expected to know, may affect Our decision to insure You and on what terms. You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary, or reinstate an insurance contract.



You do not need to tell Us anything that:

- reduces the risk We insure You for;
- is of common knowledge;
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

### **If You do not tell Us something**

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a claim, or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

## **General Insurance Code of Practice**

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code for use by all insurers. The Code aims to raise the standards of practice and service in the general insurance industry.

Lloyd's Australia Limited has adopted the Code on terms agreed with the Insurance Council of Australia.

For further information on the Code, please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au)

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to <https://insurancecode.org.au>

## **Goods and Services Tax (GST)**

The amount payable by You for the Policy includes an amount for GST.

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

The amount that We are liable to pay under the Policy will be reduced by the amount of any Input Tax Credit (ITC) that you are or may be entitled to claim for the supply of goods or services indemnified by that payment.

You must advise Us of Your correct Australian Business Number (ABN) and Taxable Percentage. Taxable Percentage is Your entitlement to an ITC on Your Premium as a percentage of the total GST on that Premium. Any GST liability arising from Your incorrect advice is payable by You.

Where the settlement of a claim is less than the applicable Limit of Liability or the other limits applicable to the Policy, We will only pay the GST (less your ITC) applicable to the settlement. This means that if these amounts are not sufficient to indemnify the whole claim, We will only pay the GST relating to Our share of the settlement for the whole 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 and ITC have the same meaning as given to those words or expressions in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related or similar legislation, including any amendments to, delegated legislation thereof, or successor legislation (as applicable).

## Our Contract with You

Where We agree to enter into a Policy with You it is a contract of insurance between Us and You.

If We issue You with a Policy, You will be given a Schedule. The Schedule sets out certain additional terms applicable to the Policy and other matters specific to the Policy such as the cover issued and the Limit(s) of Liability.

The Schedule must be read together with this document and any other documents We agree with You will form part of the Policy that We issue. Any new or replacement Schedule We may send You detailing changes to the Policy or the Period of Insurance, will become the current Schedule, which You should carefully read and retain.

Where We agree, documents other than this document and the Schedule will form part of the Policy (often called endorsements), any such documents will be dated and will include a statement identifying them as part of the Policy.

Together they form Your Policy/contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

The Policy also extends cover to certain persons or entities who are not contracting parties but are entitled to access cover by reason of section 48 of the Insurance Contracts Act 1984 (Cth) as third party beneficiaries.

They are persons other than the "You" set out in the definition of "Insured" in the General Definitions Section.

No insurance is provided in relation to the interest of any persons not specified as being entitled to benefit under the Policy under the definition of "Insured".

## Privacy Statement

In this Privacy Statement the use of "We", "Our" or "Us" means IBL Ltd trading as Tasman Underwriting and the Insurers unless specified otherwise.

In this Privacy Statement the use of "personal information" includes sensitive information.

We are committed to protecting the privacy of the personal information You provide to Us.

The Privacy Act 1988 contains the Australian Privacy Principles which require Us to tell You that We collect, handle, store and disclose Your personal and sensitive information for the specific purpose of:

- deciding whether to issue a policy,
- determining the terms and conditions of Your Policy,
- compiling data to help develop and identify other products and services that may interest clients, and
- handling claims.

Personal information is information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) whether the information or opinion is true or not;
- b) whether the information or opinion is recorded in a material form or not.

Sensitive information includes, amongst other things, information about an individual's racial or ethnic origin, political opinions, membership of a political organisation, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual orientation or practices, criminal record, health information about an individual, genetic information, biometric information or templates.

You have given Us Your consent to collect, use and disclose Your personal and sensitive information in order to provide You with the relevant services and/or products.

When You give Us personal information about other individuals, We rely on You to have made or make the individual aware that You will or may provide their personal information to Us and the types of other parties and service providers We may provide it to, the relevant purposes We and the other parties and service providers will use it for, and how they can access it. If You have not done or will not do either of these things, You must tell Us before You provide the relevant personal information to Us.

We will protect Your information using physical, technical, and administrative security measures to reduce the risks of loss, misuse, unauthorised access, disclosure and alteration. Some of the safeguards that We use are firewalls and data encryption, physical access controls to Our data centres, and information access authorisation controls.

We disclose personal information to other parties and service providers whom We believe are necessary to assist Us and them in providing the relevant services and/or products. For example, in handling claims, We may have to disclose Your personal and other information to other parties and service providers such as Our claim management partner, other insurers, reinsurers, loss adjusters, external claims data collectors, investigators and agents, facilitators, assessors or other parties as required by law. We limit the use and disclosure of any personal information provided by Us to them to the specific purpose for which We supplied it.

We may disclose Your personal information to Our insurers, reinsurers, related entities and service providers overseas where it is reasonably necessary for, or directly related to, the functions, services or activities We provide to you. When We transfer Your information to other countries, including countries which may not have data protection laws that provide the same level of protection that exists in Australia, We will protect the information as described in this Privacy Policy.

If You do not provide the personal information requested and/or do not provide Us with Your consent to the use and disclosure of Your personal information as set out in this Privacy Statement, Your insurance application may not be accepted, or We may not be able to administer Your Policy, or You may be in breach of Your duty of disclosure, the consequences of which are set out under the heading Duty of Disclosure in this document.

We will notify you as soon as possible if Your personal information is involved in a data breach that is likely to result in serious harm to You.

If You would like a copy of Our Privacy Policies, would like to seek access to or correct Your personal information, opt out of receiving materials We send, complain about a breach of Our privacy or You have any query on how Your personal information is collected or used, or any other query relating to Our Privacy Policies, please contact Us.

## Sanctions

We shall not provide cover and We shall not be liable to pay any claim or provide any benefit under the Policy to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us, Our parent company or Our ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or

the trade or economic sanctions, laws or regulations of the European Union, the Commonwealth of Australia, United Kingdom or the United States of America.

## Several Liability

The Liability of an Insurer under this contract is several and not joint with other Insurers party to the Policy. An Insurer is liable only for the proportion of liability it has underwritten.

An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite the Policy.

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

In the case of a Lloyd's syndicate, each Lloyd's Underwriter of the syndicate (rather than the syndicate itself) is an Insurer.

Each Lloyd's Underwriter has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the Lloyd's Underwriters of the syndicate taken together). The liability of each Lloyd's Underwriter of the syndicate is several and not joint with any other Lloyd's Underwriter.

A Lloyd's Underwriter is liable only for that Lloyd's Underwriter's proportion.

A Lloyd's Underwriter is not jointly liable for any other Lloyd's Underwriter proportion. Nor is any Lloyd's Underwriter otherwise responsible for any liability of any other Insurer that may underwrite this contract. The business address of each Lloyd's Underwriter is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each Lloyd's Underwriter of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

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

The Insurers bind themselves each and for their own part and not one for another. Each Insurer's liability under the Policy shall not exceed that percentage or amount of the risk shown against that Insurer's name.

## PART 2 – POLICY COVER SECTIONS

### GENERAL DEFINITIONS

Some key words and terms used in the Policy have a special meaning that appear below when the word starts with a capital letter in this document. Other words may be specially defined to have a meaning when used in relation to a Policy section, term or condition.

**Act of Terrorism** means an act which may include, but is not limited to, an act involving the use of force or violence and/or 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), which from its nature or context is done for, or in connection with, political, religious, ideological, or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**Communicable Disease** means any disease which can be transmitted by means of any substance, medium or agent from any organism to another organism where:

- i) the substance, medium or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- ii) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property.

**Claim** means

- a) the receipt by the Insured of any written notice of demand for compensation made by a third party against the Insured; or
  - b) any writ, statement of claim, summons or other application issued against or served upon the Insured,
- in connection with the Professional Practice.

**Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, Data storage device, networking equipment or back up facility owned or operated by You or any other party.

**Costs and/or Expenses** means the costs, charges and/or expenses incurred by or on behalf of an Insured or Us in the investigation, defence or settlement of a Claim and shall include legal costs and disbursements.

**Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

**Cyber Incident** means:

- a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
- b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

**Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

**Data Protection Law** means all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data and any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (or as amended, updated or re-enacted from time to time).

**Documents** means deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature whatsoever, whether written, printed or reproduced by any method including computer records and electronic Data material but shall not include bearer bonds or coupons, stamps, bank or currency notes, cheques or any other negotiable instruments.

**Employee** means any person employed under a contract of service or apprenticeship with the Insured at any time during or prior to commencement of the Period of Insurance provided that in the case of an incorporated body a director shall in no case be deemed to be an employee of such incorporated body.

**Excess** means the amount of excess specified in the Schedule. The Excess(es) will be advised to You before You enter into a Policy with Us.

**Insured** means

- a) You, including Your predecessors in business; and
- b) any person who is, becomes, was or ceases to be a principal, partner, director or Employee of You or Your predecessors in the business solely in respect of work carried out for or on behalf of You or Your predecessors in the business; and
- c) the estate, heirs, legal representatives or assigns of any insured person(s) in the event of the death or incapacity of such insured person(s).

**Limit of Liability** means the limit of liability specified in the Schedule.

**Lloyd's** means the society of that name incorporated by the Act of the United Kingdom known as Lloyd's Act 1871.

**Lloyd's Underwriter** means an underwriting member of Lloyd's.

**Period of Insurance** means the period of insurance specified in the Schedule, unless the Policy ends earlier in accordance with its terms or law, in which case the period of insurance ends at that earlier time.

**Policy** means this document (except to the extent part of it is expressly excluded), the Policy Schedule and any other documents We agree with You will form part of Your Policy that We issue. Together they form Your contract with Us. These are all important documents and should be carefully read together and kept in a safe place for future reference.

**Premium** means the premium specified in the Schedule or in any endorsement(s) attaching to and forming part of the Policy. The Premium will be advised to You before You enter into a Policy with Us.

**Professional Practice** means the carrying out of those functions by or on behalf of the Insured associated with the conduct of the profession specified in the Schedule.

**Schedule** means the schedule of insurance, or any endorsement schedule We give You which forms part of the Policy.

**Senior Counsel** shall mean a barrister in active practice who is entitled to use the post nominals Queens Counsel (Q.C.) or Senior Counsel (S.C.) in any one or more superior court in Australia or New Zealand.

**Systems Failure** means an actual, alleged or suspected:

- a) failure of an infrastructure or utility supplier including without limitation a supplier of gas, water, electricity, telecommunications or internet services which impacts a Computer System; or
- b) unplanned or unintended failure of, or inability to access, use or operate a Computer System.

**We, Us, Our** means certain Lloyd's Underwriters acting through their agent Tasman.

**You, Your, Yours** means the person or entity named as "the Insured" in the Schedule. They are the contracting insured.

# SECTION ONE – THE COVER

## 1. Civil Liability

We agree to cover the Insured against legal liability for any Claim first made against the Insured during the Period of Insurance and which is notified in writing to Us as soon as reasonably practicable during the Period of Insurance, in respect of any civil liability incurred or alleged in the conduct of the Professional Practice.

## 2. Costs and/or Expenses

We will pay, in addition to the Limit of Liability, the Costs and/or Expenses incurred with Our written consent in the investigation, defence or settlement of any Claim covered by the Policy. If a payment in excess of the amount of cover available under the Policy is made to dispose of a Claim, Our liability for such Costs and/or Expenses incurred with Our consent shall be such proportion as the amount of cover available under the Policy bears to the amount paid to dispose of the Claim.

## 3. Consultants

We agree to cover the Insured against legal liability for any Claim first made against the Insured during the Period of Insurance and which is notified in writing to Us as soon as reasonably practicable during the Period of Insurance, in respect of any civil liability incurred or alleged in connection with the Professional Practice of the Insured which arises from any act, error or omission of any consultant, sub-contractor or agent for whose professional activities the Insured is legally liable.

Coverage shall not extend to cover any such consultant, sub-contractor or agent.

## 4. Loss of Documents

We agree to cover the Insured in respect of costs, charges and expenses incurred by the Insured in replacing or restoring any Documents (including but not limited to Documents which are the property of the Insured) which have been or may be destroyed, damaged, lost or mislaid and, after diligent search, cannot be found. Provided always that:

- a) the discovery of such loss of or damage to Documents occurs during the Period of Insurance and is notified in writing to Us as soon as reasonably practicable during the Period of Insurance;
- b) any claim for such costs, charges and expenses shall be supported by bills and/or accounts which shall be subject to approval by a competent person nominated by Us with the approval of the Insured;
- c) such coverage shall be limited to the loss of or damage to Documents which are or were in the physical custody or control of the Insured.

Our total liability for all claims covered under The Cover 4. - Loss of Documents is limited to \$50,000 any one claim and in the aggregate during the Period of Insurance. This benefit is payable in addition to the Limit of Liability.

## 5. Australian Financial Complaints Authority

We agree to cover the Insured for an award made against them by the Australian Financial Complaints Authority provided that:



- a) the award relates to a Claim covered by the Policy; and
- b) Our total liability for any such award, is limited to the Australian Financial Complaints Authority's applicable monetary limit(s) on such award, subject always to the Limit of Liability.

## SECTION TWO – CONDITIONS

### 1. Limit of Liability

Our total liability under the Policy for any one Claim shall not exceed the Limit of Liability specified in the Schedule or the applicable sub limit otherwise specified in the Policy, whichever is the lesser amount and Our total liability in the aggregate in respect of all Claims in any one Period of Insurance shall not exceed two (2) times the Limit of Liability specified in the Schedule, except that We will pay, in addition to the Limit of Liability, the Costs and/or Expenses incurred in the investigation, defence or settlement of any Claim(s) and costs and expenses covered under The Cover 4. Loss of Documents.

### 2. Excess

We are only liable for that part of each and every Claim which exceeds the amount of the Excess specified in the Schedule.

Where the Schedule specifies that the Excess is “Inclusive of Costs and/or Expenses”, the Excess applies any Costs and/or Expenses covered under The Cover – 2 Costs and Expenses and subsequently to amounts which are covered under any of the other Covers.

If this Insured has not paid or borne the Excess We will reduce any amount We are obliged to pay under the Policy by the amount of the Excess.

If We incur any expenditure, which by virtue of this Condition is the responsibility of the Insured, then the Insured shall reimburse Us immediately.

### 3. Multiple Claims

- a) All causally connected or interrelated acts, errors or omissions shall jointly constitute a single act, error or omission under the Policy.
- b) Where a single act, error or omission gives rise to more than one Claim, all such Claim(s) shall jointly constitute one Claim under the Policy, and only one Limit of Liability and one Excess shall be applicable in respect of such Claim(s).

### 4. Rights of Other Insureds

In the event that an Insured (where applicable):

- a) failed to comply with the duty of disclosure in terms of the Insurance Contracts Act 1984 (Cth); or
- b) made a misrepresentation to Us before the Policy inception; or
- c) failed to comply with any terms or conditions of the Policy.

We agree that such failure or misrepresentation will not prejudice the right of any other Insured(s) to cover under the Policy. It is a condition that such other Insured(s):

- i) are entirely innocent of and have had no prior knowledge of such failure or misrepresentation; and
- ii) advise Us in writing as soon as reasonably practicable upon becoming aware of such failure or misrepresentation.

### 5. Cancellation

#### Cancellation by You

You may cancel the Policy at any time by notifying Us in writing. The cancellation will take effect from 4:00pm on the day We receive Your written notice of cancellation or such time as may be otherwise agreed between Us and You.

### **Cancellation by Us**

We may cancel the Policy pursuant to any right at law and as set out in the Insurance Contracts Act 1984 (Cth) by giving You written notice to that effect. This includes where:

- i) You failed to comply with the duty of the utmost good faith;
- ii) You failed to comply with the duty of disclosure at the time the Policy was entered into;
- iii) You made a misrepresentation to Us during the negotiations for the contract but before it was entered into;
- iv) You failed to comply with a provision of the contract, including a provision with respect to payment of the Premium;
- v) You have made a fraudulent claim under the Policy or under some other contract of insurance (whether with Us or with some other insurer) that provides insurance cover during any part of the period during which the Policy provides insurance cover;
- vi) You failed to notify Us of any specific act or omission or failure that has occurred after the Policy is entered into where notification is required under the terms of the Policy; or
- vii) the effect of the Policy is to authorise Us to refuse to pay a claim, either in whole or in part, by reason of an act or omission or failure of You or of some other person and, after the Policy was entered into, such an act or omission or failure has occurred.

When We cancel the policy, it will have effect from whichever of the following times is the earliest (unless We tell You otherwise):

- the time when another policy of insurance replacing the Policy is entered into; or
- 4pm of the third (3rd) business day after the day on which notice was given to You unless the Policy is in force because of section 58 of the Insurance Contracts Act 1984 (Cth), in which case the cancellation will have effect from 4 pm on the fourteenth (14th) business day after the day on which notice was given to You.

### **Effect of cancellation**

Your Policy with Us ends from the time of cancellation. You will not have cover for claims occurring after that time.

However, cancellation of this insurance by Us or You does not affect the treatment of any claim that was notified to Us before cancellation.

### **Premium refund**

If You or We cancel the Policy We may deduct:

- a pro rata proportion of the premium for any time for which You have been covered. For example, if Your Period of Insurance is 12 months and You have been covered for six (6) months, the deduction for the time You have been covered will be half the annual premium; and
- any government taxes or duties paid by Us in relation to Your Policy We cannot recover.

However, in the event that an Insured has made a claim under the Policy and We have agreed to the claim no return of premium will be made.

## **6. Subrogation**

If We provide cover under the Policy, You must allow Us to take legal action in Your name against another party to recover any payment We have made on a claim, whether or not We have paid that claim in whole or in part.

You must give Us all information and assistance We may reasonably require and:

1. provide all documents required; and
2. do everything reasonably necessary to secure and preserve such rights,

to enable Us to effectively bring suit in Your name to settle or defend claims or to recover from other parties any amount We have paid for a claim.

You must not enter into any arrangement or compromise which may prevent Us from defending any claim or making any recovery from any other party.

## **7. Governing Law**

The Policy will be governed in accordance with the laws of the Commonwealth of Australia. Any disputes arising out of the Policy will be subject to determination by an Australian Court within the State or Territory in which the Policy was issued and according to the laws applicable to that jurisdiction.

## **8. Interpretation**

In the Policy:

- a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- b) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
  - c) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - d) "includes" in any form is not a word of limitations; and
  - e) a reference to "\$" or "dollar" is to Australian currency.

## SECTION THREE – EXCLUSIONS

We shall not cover an Insured for any claim:

### 1. Claims and Circumstances Already Known

- a) made, threatened or made known to or against the Insured prior to the Period of Insurance;
- b) arising out of any fact(s) that might give rise to a Claim against the Insured which the Insured was aware of, or ought reasonably to have been aware of, prior to the inception of the Policy, whether notified under any other insurance or not;
- c) arising out of any fact(s) that might give rise to a Claim against the Insured referred to in Your proposal form, declaration or underwriting information provided to Us for the Policy.

### 2. Communicable Disease Exclusion

as a result of, or in any way connected, directly or indirectly with:

- a) a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease regardless of any other cause or event contributing concurrently or in any other sequence thereto;
- b) any action taken to control, prevent, isolate, quarantine, suppress, mitigate or in any way relating to any actual or suspected outbreak of any Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease; or
- c) instructions, orders, requests, restrictions or limitations given by any national or local government, regulatory or statutory body, health authority or organisation relating to any Communicable Disease.

### 3. Cyber and Data Protection

for any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs, or any other amount arising out of:

- a) a Cyber Incident;
- b) a Cyber Act;
- c) a breach of Data Protection Law by You, or parties acting for You, involving access to, processing of, use of or operation of any Computer System or Data;
- d) You, or parties acting for You, notifying individuals following the actual or suspected access to or acquisition of personally identifiable information as a result of a Cyber Act or Cyber Incident. This also excludes, but is not limited to, the cost of crisis consultancy, legal advice and services, print and mailing, contact centre services, the provision of any identity/credit protection product or service;
- e) the restoration, recovery or replacement of any Computer Systems or Data that have been damaged, destroyed, deleted or corrupted as a result of a Cyber Act or Cyber Incident. This clause also excludes any ransom payment;
- f) defending any party against any claim made against them resulting from, arising out of or in connection with any exclusions above.

### 4. Dishonesty

directly or indirectly based upon, attributable to, or in consequence of any actual or alleged dishonest, fraudulent, criminal, or malicious act or omission of any Insured or their consultants, sub-contractors or agents. This exclusion shall apply to any Insured not committing or condoning any such act or omission, except with respect to loss of money, negotiable instruments, bearer bonds or coupons, stamps, cheques, bank or currency notes.

## **5. Trading Debts**

directly or indirectly based upon, attributable to, or in consequence of any trading debt incurred by the Insured or any guarantee given by the Insured for any debt.

## **6. Related Person/Entity**

brought or maintained by or on behalf of:

- a) any person or entity named as an Insured in the Policy; or
- b) any firm, corporation, partnership, trust or other entity in which the Insured or any director or partner of the Insured has a Financial Interest.

For the purposes of this Exclusion 4 b), Financial Interest means any financial interest greater than 10% of the issued capital of a corporation or of the value of any other enterprise.

## **7. Employers' Liability**

directly or indirectly based upon, attributable to, or in consequence of bodily injury, mental injury, sickness, disease or death sustained by any person arising out of and in the course of their employment with the Insured under any contract of service or apprenticeship, or for any breach of any obligation owed by the Insured as an employer to any Employee.

## **8. Land, Buildings, Watercraft and Vehicles**

directly or indirectly based upon, attributable to, or in consequence of the ownership, possession or use by or on behalf of the Insured of any land, buildings, aircraft, watercraft, vessel, mechanically propelled vehicle or any other property.

## **9. Fines/Penalties and Punitive Damages**

in respect of any fines, penalties, punitive, aggravated, multiple or exemplary damages, however, this Exclusion shall not apply to compensatory civil penalties provided that the insurer will not pay or indemnify the insured for any amount:

- i. that the insurer is prohibited from insuring or indemnifying by any law of Australia;
- ii. for which the insured is prohibited from obtaining insurance or receiving the benefit of insurance by any law of Australia.

## **10. Nuclear**

directly or indirectly caused by or contributed to by or arising from:

- a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,
- b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## **11. War and Terrorism**

or loss, liability, Costs and/or Expenses 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 or Claim:

- a) 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; or
- b) 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; or
- c) any Act of Terrorism.

This Exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 9 a), b) or c) above.

## **12. Refund of Professional Fees/ Brokerage/Commission**

directly or indirectly based upon, attributable to, or in consequence of any action for a refund of the Insured's professional fees, brokerage or commission.

## **13. Assumed/Contractual/Additional Liability**

directly or indirectly based upon, attributable to, or in consequence of any liability assumed by the Insured under any contract, warranty, guarantee or agreement unless such liability would have attached to the Insured in the absence of such contract, warranty, guarantee or agreement.

## **14. USA/Canada**

- a) brought in a court of law of the United States of America or Canada, or their territories, protectorates, dependencies, colonies or states; or
- b) in respect of the enforcement of any judgement, order or award obtained within, or determined pursuant to, the laws of the United States of America or Canada, or their territories, protectorates, dependencies, colonies or states.

## **15. Intellectual Property**

directly or indirectly based upon, attributable to, or in consequence of any plagiarism, breach of confidentiality or infringement of any copyright, trademark, design or patent.

## **16. Retroactive Date**

arising from any act, error or omission occurring or committed, or allegedly committed or occurring, prior to the "Retroactive Date" specified in the Schedule.

## **17. Directors'/Officers' Liability**

arising from any act, error or omission whilst acting in the capacity as a director, secretary or officer of any corporation.

## 18. Signing Client's Proposal Forms

arising from the Insured signing any proposal form on behalf of any client.

## 19. Insurance Company Insolvency or Management

arising from:

- a) the insolvency of any insurer or reinsurer; or
- b) any actual or alleged breach of the Insured's duty to advise on the suitability) of any insurer or reinsurer; or
- c) the Insured acting as manager of any insurer or reinsurer.

## 20. E-Commerce

for liability arising from any design, consultation or advice given or related to any form of internet or electronic trading product or system or any liability including consequential losses arising directly or indirectly from any act, error or omission of the Insured.

This insurance also excludes all liability including any consequential losses arising from any third party using the Insured's Internet, Intranet or Extranet systems whether permission was given by the Insured to do so or not.

However, where the Insured would have had a liability in the absence of the business being conducted and/or transacted via the Internet, Intranet, Extranet, and/or via the Insured's own website, Internet site, web-address and/or via the transmission of electronic mail or documents by electronic means, this Exclusion shall not apply. The onus of proof rests with the Insured and not with Us, in this regard.

For the purposes of this Exclusion the following definitions apply:

**Internet** shall mean the worldwide group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

**Intranet** shall mean one or more inter-connected networks with restricted access to the Insured via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

**Extranet** shall mean a restricted-access group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

## 21. Asbestos and Toxic Mould

for any liability arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:

- a) asbestos, or any materials containing asbestos in whatever form or quantity; or
- b) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- c) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection



- of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
- d) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.

## SECTION FOUR – CLAIMS

### Reporting and Notice

An Insured shall give Us written notice as soon as reasonably practicable of any Claim made against You. Such written notice is to be given to Us during the Period of Insurance.

Notice of any Claim shall be given in writing to Us, and delivered to:  
Tasman Underwriting  
Level 21, 41 Exhibition Street Melbourne 3000  
Email: [cm@tasmanuw.com.au](mailto:cm@tasmanuw.com.au)

### Claims Conditions

- a) The Insured shall not admit liability for or settle any Claim or incur any Costs and/or Expenses in connection with any Claim without Our written consent, such consent not to be unreasonably withheld. We shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any Claim.
- b) The Insured shall not be required to contest any Claim unless a Senior Counsel (to be mutually agreed upon by the Insured and Us) shall advise that such Claim should be contested. The costs of such Senior Counsel's advice shall be borne equally by the Insured and Us.
- c) The Insured shall be entitled to contest any Claim which in Senior Counsel's opinion should be compromised or settled. However, We shall not be liable for any amount beyond that which We would have been liable to pay to settle the Claim had the Insured not refused to compromise or settle such Claim.
- d) The Insured shall give Us such information and co-operation as We may reasonably require.
- e) The Insured shall use due diligence and do anything reasonably practicable to avoid or diminish any liability.

## Tasman Underwriting

You can contact us at [enquiries@tasmanuw.com.au](mailto:enquiries@tasmanuw.com.au) or on 1800 234 338 or at; Level 21, 41 Exhibition Street Melbourne 3000.

IBL Ltd Trading as Tasman Underwriting (ABN65 005 754 718) acts as an agent for Certain Underwriters at Lloyd's and is authorised to arrange, enter into/ bind and administer this insurance on their behalf.

Tasman Underwriting is a trading division of IBL Ltd ABN 65 005 754 718 AFSL231203

Thank you for receiving this document electronically. Tasman Underwriting supports positive initiatives for our environment

IBPI2023.12.01