

# **BROOKLYN EPS**

## **Mark IV Industrial Special Risks Insurance Policy**

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# INDUSTRIAL SPECIAL RISKS INSURANCE POLICY

## PREAMBLE

This Policy incorporates the Schedule, Sections, Definitions, Conditions, Exclusions, Endorsements, Memoranda and Warranties (if any) and any other terms herein contained which are to be read together and any word or expression to which a specific meaning has been given in any part of this Policy shall bear this meaning wherever it may appear unless such meaning is inapplicable to the context in which the word or expression appears.

WHEREAS the Insured named in the Schedule has paid or agreed to pay to the Insurer(s) specified below the Premium shown on the Schedule, now the Insurer(s) agree(s), subject to the terms, Conditions, Exclusions, Memorandum, Warranties, limitations and other provisions contained herein or endorsed hereon, to indemnify the Insured as specified herein against loss arising from any insured events which occur during the Period of Insurance stated in the Schedule or any renewal thereof.

PROVIDED THAT the total liability of the Insurer(s) at any one Situation shall not exceed the appropriate Limit or Sub limit(s) of Liability as stated in the Schedule or such amount(s) as may be substituted therefore by Endorsement or Memorandum hereon or attached hereto and that each Insurer specified below shall only be liable to contribute to any loss covered by this Policy that proportion of the loss as is specified beside its name.

## PLEASE NOTE – This notice contains important information. PLEASE READ CAREFULLY

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. 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 another insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown in the contract.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is a member otherwise responsible for any liability of any other insurer that may underwrite this contract.

The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA, England. The identity of each member 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 point 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.

## DEFINITIONS

For the purpose of this policy, the term "Accidental Damage" and "Burglary" and "Theft" mentioned under sub-limits of liability and/or deductibles shall mean :

**"Accidental Damage"** shall mean physical loss, destruction of or damage to the Property Insured (subject to the Exclusions Applicable to Sections 1 and 2) arising out of any one source or original cause other than: fire, lightning, thunderbolt, earthquake, subterranean fire and/or volcanic eruption, aircraft and/or other aerial devices and/or articles dropped or falling therefrom and/or impact by space debris, sonic boom, explosion, implosion or collapse, smoke and/or steam, spontaneous fermentation or heating, spontaneous combustion, subsidence, earth movement or collapse resulting therefrom or landslip, flood, water from or action by the sea, tsunami, tidal wave or high water, storm, tempest, wind, hail and/or rainwater, water and/or other substance discharged, overflowing and/or leaking from apparatus, appliances, pipes, sprinkler and/or any other system(s), the acts of persons taking part in riots or civil commotions or the acts of strikers or locked out workers or persons taking part in labour disturbances, the acts of malicious persons, the acts of any lawfully constituted authority in connection with any of the aforementioned events, impact by any waterborne craft, land vehicles or animals, burglary, theft, loss of money, or any other event or circumstance which is more specifically mentioned under any other Sub Limit of Liability and/or Deductible.

**"Burglary"** shall mean physical loss of or damage to the property insured by this section as the result of:

- (a) theft consequent upon actual forcible and violent entry to the premises where the property is located
- (b) theft or any attempt thereat by a person feloniously concealed on the premises

**"Theft"** shall mean physical loss of or damage to the property insured by this section as the result of:

- (i) theft not consequent upon forcible and violent entry to the premises in which the property is located.

### **"Pollution" and "Contamination"**

Where the words "pollution" or "contamination" are used as part of this policy or its endorsements or its attachments they shall have the specific meaning given below:-

Physical loss, destruction of or damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon any property, land, atmosphere or any water course or body of water (including ground water)

### **"Debris"**

Where the word "debris" is used as a part of this policy or its endorsements or its attachments, it shall have the specific meaning given below:-

- (a) the residue of damaged Insured Property; or
- (b) material deposited on the Insured premises as a result of the operation of an insured peril, excluding any material which can cause pollution or contamination and which is deposited beyond the boundaries of the Insured's premises.

# SECTION 1 - MATERIAL LOSS OR DAMAGE

## THE INDEMNITY

In the event of any physical loss, destruction or damage (hereinafter in Section 1 referred to as "damage" with "damaged" having a corresponding meaning) not otherwise excluded happening at the Situation to the Property Insured described in Section 1 the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) liability, indemnify the Insured in accordance with the applicable Basis of Settlement.

Subject to the liability of the Insurer(s) not being increased beyond the Limit(s) of Liability already stated herein, the Insurer(s) will also indemnify the Insured for:

- (a) Architects', surveyors', consulting engineers', legal and other fees and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon damage to property hereby insured but not such costs, fees and salary for preparing any claim hereunder.
- (b) Any fee, contribution or other impost payable to any Government, Local Government or other Statutory Authority; where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate any building(s) insured hereunder; provided that the Insurer(s) shall not be liable for payment of any fines and/or penalties imposed upon the Insured by any such Authorities.
- (c) Costs and expenses necessarily and reasonably incurred for the purpose of extinguishing fire at or in the vicinity of property hereby insured or threatening to involve such property or for the purpose of preventing or diminishing imminent damage to property hereby insured by any other peril insured against by this Policy, including damage to gain access and the cost of replenishment of fire fighting appliances and charges incurred for the purpose of shutting off the supply of water or other substance following accidental discharge from any fire protective equipment or otherwise escaping from intended confines.
- (d) Costs and expenses necessarily and reasonably incurred for the temporary protection and safety of property hereby insured pending repair or replacement consequent upon damage recoverable hereunder.
- (e) Costs of replacing locks and/or keys and/or combinations where if as a result of burglary, theft or any attempt thereof the keys and/or combinations are stolen or if there are reasonable grounds to believe the keys may have been duplicated also the cost of opening safes and/or strongrooms as a result of theft of keys and/or combinations.
- (f) Costs and expenses necessarily and reasonably incurred in respect of:
  - (i) The removal, storage and/or disposal of debris or the demolition, dismantling, shoring up, propping, underpinning or other temporary repairs consequent upon damage to property insured by this Policy and occasioned by a peril insured against;
  - (ii) The Insured's legal liability in respect of removal, storage and/or disposal of debris, notwithstanding Excluded Peril 8 in relation to premises, roadways, services, railway or waterways of others, consequent upon damage to the Property Insured by a peril hereby insured against, for such costs together with the cost of cleaning provided that such liability was not assumed by the Insured under an agreement entered into after the commencement of the Period of Insurance or any renewal thereof unless liability would have attached in the absence of such agreement.

Provided that the insurance under this section does not extend to any liability that the Insured may incur as a consequence of pollution of any kind.

- (iii) The demolition and removal of any property belonging to the Insured which is no longer useful for the purpose it was intended, providing such demolition and removal is necessary for the purpose of the reinstatement or replacement of Property Insured under this section and is consequent upon damage to the Property Insured by a peril hereby insured against.
- (g) Damage to clothing and tools of trade belonging to directors and employees of the Insured whilst on the Premises.

Provided that the insurance under Clauses (b) to (g) inclusive above shall not be subject to application of any Co-insurance clause or memorandum contained in this Policy.

## THE PROPERTY INSURED

All real and personal property of every kind and description (except hereinafter excluded) belonging to the Insured or for which the Insured is responsible, or has assumed responsibility to insure prior to the occurrence of any damage, including all such property in which the Insured may acquire an insurable interest during the Period of Insurance.

It is understood and agreed that the term "personal property" shall include Money (which shall mean current coin, bank notes, currency notes, cheques, credit card sales and/or discount house vouchers, postal orders, money orders, unused postage and revenue stamps and including the value of stamps contained in franking machines whilst contained in the Situation and whilst in transit to and from the Situation anywhere in Australia, including whilst contained in the night safe of any bank or financial institution where the Insured transacts business, and in the personal custody of the Insured and/or persons authorised by the Insured whilst contained in their private residences.

#### **BASIS OF SETTLEMENT**

- (a) On buildings, machinery, plant and all other property and contents (other than those specified below); the cost of reinstatement, replacement or repair in accordance with the provisions of the Reinstatement and Replacement and Extra Cost of Reinstatement Memoranda as set out herein.
- Provided that if the Insured elects to claim the indemnity value of any damaged property, the Insurer(s) will pay to the Insured the value of such property at the time of the happening of the damage or at its/their option reinstate, replace or repair such property or any part thereof. In any event the Insurer(s) will pay costs incurred by the Insured in accordance with the provisions of the Extra Cost of Reinstatement Memorandum.
- (b) On raw materials, supplies and other merchandise not manufactured by the Insured; the replacement cost at the time and the place of replacement or, if such property is not replaced, the value thereof at the time and place of the damage.
- (c) On material in process of manufacture; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon at the time and the place of the damage.
- (d) On finished goods; the replacement value of the raw materials and the value of labour and other overhead charges expended thereon before any allowance for profit or the cost of re-stocking such goods, whichever is the lesser.
- (e) On computer system records, documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description; the cost of reinstating, replacing, reproducing or restoring same, including information contained therein or thereon but excluding the value to the Insured of the said information; or, if such is not required, the replacement cost of materials as blank stationery at the time and place of the damage.
- (f) On patterns, models, moulds, dies or lasts; the cost of repair or replacement (if actually replaced) otherwise the indemnity value to the Insured of such property.
- (g) On glass; the cost of repairing or replacing the broken glass including:
- temporary shuttering and/or hiring of security service pending replacement of broken glass;
  - signwriting or ornamentation on glass;
  - replacement burglary alarm tapes on glass;
  - removing and re-fixing of window and show case frames and fittings;
  - heat reflecting material or process on glass.
- (h) On directors' and employees' clothing and tools of trade; the replacement cost at the time of replacement subject to due allowance for wear and tear, depreciation and betterment.
- (i) On empty premises awaiting demolition; the salvage value of the building materials and/or landlords fixtures and fittings.

# MEMORANDA TO SECTION 1

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

## INTERESTS OF OTHER PARTIES

The insurable interest of only those lessors, financiers, trustees, mortgagees, owners and all other parties specifically noted in the records of the Insured shall be automatically included without notification or specification; the nature and extent of such interest to be disclosed in event of damage.

Where the insurance covers the interest of more than one party, any act or neglect of an individual party will not prejudice the rights of the remaining party/parties; provided the remaining party/parties shall, immediately on becoming aware of any act or neglect whereby the risk of damage has increased, give notice in writing to the Insurer(s) and on demand pay such reasonably additional premium as the Insurer(s) may require.

Notwithstanding the foregoing paragraph it is understood and agreed that in the event of any of the parties referred to herein being entitled to the benefits of any "Concessions Agreement", which it may have entered into with the Insurer(s), the said "Concessions Agreement" will take precedence over the foregoing paragraph.

## BRANDED GOODS

Any salvage of branded goods and/or merchandise, the Insured's own or held by the Insured in trust or on commission, and/or goods sold but not delivered, shall not be disposed of by sale without the consent of the Insured. If such salvage is not disposed of by sale then the damage will be assessed at the value agreed between the Insured and the Insurer(s) after brands, labels or names have been removed by or on behalf of the Insured.

## DECLARED VALUES

The Schedule of Declared Values at each location (in accordance with the applicable Basis of Settlement) attaches to and forms part of this Policy for the purpose of the application of Co-Insurance.

## REINSTATEMENT OR REPLACEMENT

(Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (i) under Basis of Settlement).

The basis upon which the amount payable is to be calculated shall be the cost of reinstatement of the damaged property insured at the time of its reinstatement, subject to the following Provisions and subject also to the terms, Conditions and Limit(s) or Sub Limit(s) of Liability of this Policy.

For the purpose of the insurance under this memorandum "reinstatement" shall mean:

- (a) Where property is lost or destroyed; in the case of a building, the rebuilding thereof or in the case of property other than a building, the replacement thereof by similar property: in either case in a condition equal to, but not better or more extensive than, its condition when new.
- (b) Where property is damaged: the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new.

## Provisions

- (i) The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Insured, but subject to the liability of the Insurer(s) not being thereby increased), must be commenced and carried out with reasonable despatch, failing which the Insurer(s) shall not be liable to make any payment greater than the indemnity value of the damaged property at the time of the happening of the damage.
- (ii) When any property insured to which this memorandum applies is damaged in part only, the liability of the Insurer(s) shall not exceed the sum representing the cost which the Insurer(s) could have been called upon to pay for reinstatement if such property had been wholly destroyed.
- (iii) Property insured under this memorandum is separately subject to the following Co-Insurance clause:

in the event of damage to any property insured hereunder at any situation caused by any event hereby insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount that the Insured's declaration of value of property insured at such situation on the day of commencement of the Period of Insurance bears to the sum representing eighty-five per cent (85%) of the cost which would have been incurred in reinstatement if the whole of such property had been destroyed on that day, but not exceeding the Limit of Liability expressed in the Schedule; provided that if the sum actually incurred or expended in rebuilding or replacing the damaged property within the meaning of subparagraph (a) of the abovementioned definition of reinstatement, exceeds the amount which would have been payable under this Policy if this memorandum had not been incorporated herein, but is less than the cost of reinstatement as above defined, then the sum so actually incurred or expended shall, for all purposes of this memorandum, be deemed to be the cost of reinstatement of the property.

Provided further that the above clause shall not apply if the amount of the damage does not exceed five per cent (5%) of the amount of the Insured's declaration aforementioned.

- (iv) No payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein shall be made until a sum equal to the cost of reinstatement shall have been actually incurred; provided that where the Insured reinstates or replaces any lost or destroyed property at a cost which is less than the cost of reinstatement (as defined) but greater than the value of such property at the time of the happening of its loss or destruction, then the cost so incurred shall be deemed to be the cost of reinstatement.
- (v) All other Industrial Special Risks and/or Fire and Named Perils insurances cover the property effected by or on behalf of the Insured shall be on a similar reinstatement basis.

### **EXTRA COST OF REINSTATEMENT**

(Applicable to buildings, machinery, plant and all other property and contents; other than those specified in items (b) to (i) under Basis of Settlement.)

This Policy extends to include the extra cost of reinstatement (including demolition or dismantling) of damaged property necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation of any Municipal or other Statutory Authority; subject to the following provisions and subject also to the terms, Conditions and Limit(s) or Sub-Limits of Liability of this Policy.

### **Provisions**

- (i) The work of reinstatement (which may be carried out wholly or partially upon any other site(s), if the requirements of the aforesaid Act, Regulation or By-Law so necessitate, subject to the liability of the Insurer(s) not being thereby increased), must be commenced and carried out with reasonable despatch, failing which the Insurer(s) shall not be liable to make any payment beyond the amount which would have been payable under this Policy if this memorandum had not been incorporated herein.
- (ii) The amount recoverable shall not include the additional cost incurred in complying with any such Act, Regulation, By-Law or requirement with which the Insured had been required to comply prior to the happening of the damage.
- (iii) Co-insurance shall not be applied to the amount recoverable under this memorandum and any amount specified shall not be taken into account for co-insurance purposes in terms set out in any clause contained in this Policy.
- (iv) All other Industrial Special Risks and/or Fire and Named Perils insurances covering the property effected by or on behalf of the Insured shall be on a similar basis.
- (v) If the cost of reinstatement of damaged property insured is less than fifty percent (50%) of that which would have been the cost of reinstatement if such property had been destroyed, the amount recoverable hereunder shall be limited to:
  - (a) the extra cost necessarily incurred in reinstating only that portion damaged; or
  - (b) whilst applying to such property insured, the Sub-Limit stated herein,whichever is the greater. In the event of a Sub-Limit not being stated in this Policy the Insurer(s) liability shall be limited to the amount as described in sub-paragraph (a) of this provision.

### **FLOOR SPACE RATIO INDEX (PLOT RATIO)**

Subject to the terms, Conditions and Limit(s) or Sub-Limit(s) of Liability of this Policy, in the event of any building(s) being damaged so as to constitute total loss or constructive total loss and, as a result of the exercise of Statutory powers and/or authority by any Government Departments, Local Government or any other Statutory Authorities reinstatement of such building(s) as before is prohibited and reinstatement is only permissible subject to a reduced floor space ratio index:

The Insurer(s) agree(s) to pay in addition to any amount payable on reinstatement of such building(s) the difference between:

- (a) the actual cost of reinstatement incurred in accordance with the reduced floor space ratio index; and
- (b) the cost of reinstatement which would have been incurred had a reduced floor space ratio index not been applicable.

In arriving at the amount payable under (a) and (b) above any payments made by the Insurer(s) shall include the extra cost of reinstatement, including demolition or dismantling of the insured property, necessarily incurred to comply with the requirements of any Act of Parliament or Regulation made thereunder or any By-Law or Regulation or any Municipal or other Statutory Authority.

Any payment made for the difference between (a) and (b) above shall be made as soon as the said difference is ascertained upon completion of the rebuilding works and certified by the architect acting on behalf of the Insured in the reinstatement of the building(s).

### **ACQUIRED COMPANIES**

This Policy extends to include property located in Australia belonging to companies and other organisations a controlling interest in which is acquired by the Insured during the currency of this Policy; subject to the Insured declaring details of such acquisition within a reasonable period following the date of acquisition. Provided the business of the new acquisition shall be similar to the Business as stated in the Schedule.

For the purposes of this memorandum a controlling interest shall in the case of a company, mean the acquisition of shares carrying more than fifty per cent (50%) of votes capable of being cast at a general meeting of ordinary shareholders in such company.

#### **CO-INSURANCE**

Unless otherwise stated herein to the contrary, this Policy is subject to the following Co-insurance memorandum:

In the event of damage to property insured hereunder at any situation caused by any event hereby insured against, the Insurer(s) shall be liable for no greater proportion of such damage than the amount of the Insured's declaration of value of such property on the day of the commencement of the Period of Insurance bears to the sum representing eighty-five percent (85%) of the actual value of property insured at such situation on the day of commencement of the Period of Insurance but not exceeding the Limit of Liability expressed in the Schedule.

Provided that this clause shall not apply if the amount of the damage does not exceed five percent (5%) of the amount of the Insured's declaration aforementioned.

It is expressly understood and agreed that the provisions of this Co-insurance Memorandum shall not apply in respect of that part of any claim which is made under the provisions of the Reinstatement and Replacement Memorandum.



## SECTION 2 - CONSEQUENTIAL LOSS

### THE INDEMNITY

In the event of any building or any other property or any part thereof used by the Insured at the Premises for the purpose of the Business being physically lost, destroyed or damaged by any cause or event not hereinafter excluded (loss, destruction or damage so caused being hereinafter termed "Damage") and the Business carried on by the Insured being in consequence thereof interrupted or interfered with, the Insurer(s) will, subject to the provisions of this Policy including the limitation on the Insurer(s) Liability, pay to the Insured the amount of loss resulting from such interruption or interference in accordance with the applicable Basis of Settlement.

Provided that the Insurer(s) will not be liable for any loss under this section unless the Insured's property lost, destroyed or damaged is insured against such Damage (loss arising out of destruction or damage by explosion of Boilers and/or Economisers excepted) and the insurer or insurers by which such property is insured shall have paid for, or admitted liability in respect of, such Damage unless no such payment shall have been made or liability shall not have been admitted therefore solely owing to the operation of a provision in such insurance excluding liability for loss below a specific amount.

### BASIS OF SETTLEMENT

#### Item No. 1

The Insurance under this item is limited to loss of Gross Profit due to (a) Reduction in Turnover and (b) Increase in Cost of working and the amount payable as indemnity thereunder shall be:

(a) In respect of Reduction in Turnover:

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall, in consequence of the Damage, fall short of the Standard Turnover,

(b) In respect of Increase in Cost of Working:

the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Turnover which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Damage, but not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided;

less any sum saved during the Indemnity Period in respect of such of the charges and expenses of the Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage.

Provided that if the Declared Value of Gross Profit at the commencement of each Period of Insurance be less than the sum produced by applying the Rate of Gross Profit to the Annual Turnover, (or its proportionately increased multiple thereof, where the Indemnity Period exceeds twelve (12) months) the amount payable hereunder shall be proportionately reduced.

#### Item No. 2

The insurance under this item is to cover such reasonable professional fees as may be payable by the Insured, and such other reasonable expenses necessarily incurred by the Insured and not otherwise recoverable, for preparation of claims under the Insured's Material Damage and Consequential Loss insurance policies and the Insurer(s) shall indemnify the Insured for such reasonable fees and expenses.

#### Item No. 3

The insurance under this item is limited to loss in respect of Payroll and the amount payable as indemnity thereunder shall be:

(a) In respect of Reduction of Turnover:

(i) during the portion of the Indemnity Period beginning with the occurrence of the Damage and ending not later than the number of weeks thereafter specified in the Schedule: the sum produced by applying the Rate of Payroll to the Shortage in Turnover during the said portion of the Indemnity Period less any saving during the said portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Payroll paid.

- (ii) during the remaining portion of the Indemnity Period: the sum produced by applying the Rate of Payroll to the Shortage in Turnover during the said remaining portion of the Indemnity Period less any saving during the said remaining portion of the Indemnity Period, through reduction in consequence of the Damage, in the amount of Payroll paid; but not exceeding the sum produced by applying the percentage of the Rate of Payroll specified in the Schedule to the Shortage in Turnover during the said remaining portion of the Indemnity Period, increased by such amount as is deducted for savings under the terms of Clause (a)(i).

**Note**

At the option of the Insured the number of weeks referred to in clause (a)(i) above may be increased to the number of weeks specified in the Schedule under the heading "Consolidated Period"; provided that the amount arrived at under the provisions of clause (a)(ii) shall not exceed such amount as is deducted under clause (a)(i) for savings effected during the said increased number of weeks.

- (b) In respect of Increase In Cost of Working

So much of the additional expenditure described in clause (b) of Item 1 as exceeds the amount payable thereunder, but not more than the additional amount which would have been payable in respect of Reduction in Turnover under the provisions of clauses (a)(i) and (ii) of this item had such expenditure not been incurred.

Provided that if the Declared Value of Insured Payroll at the commencement of each Period of Insurance be less than the sum produced by applying the Payroll Limits to the sum produced by applying the Rate of Payroll to the Annual Turnover (or its proportionately increased multiple thereof, where the Indemnity Period exceeds twelve (12) months) the amount payable shall be proportionately reduced.

**Item No. 4**

The insurance under this item is limited to increase in cost of working (not otherwise recoverable hereunder) necessarily and reasonably incurred during the Indemnity Period in consequence of the Damage for the purpose of avoiding or diminishing reduction in Turnover and/or resuming and/or maintaining normal business operations and/or services.

**DEFINITIONS**

**Gross Profit**

The amount by which:

- (a) the sum of the Turnover and the amount of the Closing Stock and Work in Progress shall exceed
- (b) the sum of the amount of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses as set out in the Schedule.

**Note**

The amounts of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with the Insured's normal accountancy methods, due provision being made for depreciation.

**Turnover**

The money (less discounts, if any allowed) paid or payable to the Insured for goods sold and delivered and for services rendered in course of the Business at the Premises.

**Indemnity Period**

The period beginning with the occurrence of the Damage and ending not later than the number of months specified in the Schedule thereafter during which the results of the Business shall be affected in consequence of the Damage.

**Payroll**

The remuneration (including but not limited to payroll tax, bonuses, holiday pay, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) of all employees.

**Shortage in Turnover**

The amount by which the Turnover during a period shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period.

<b>Rate of Gross Profit:</b> The rate of Gross Profit earned on Turnover during the financial year immediately before the date of the damage	)	To which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other
	)	circumstances affecting the Business either before or after the damage or which would have affected the Business had the damage not occurred, so that
<b>Annual Turnover:</b> The Turnover during the 12 months immediately before the date of the damage.	)	the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which
	)	but for the damage would have been obtained during the relative period after the damage.
<b>Rate of Payroll:</b> The rate of Payroll to Turnover during the financial year immediately before the date of the damage.	)	

## MEMORANDA TO SECTION 2

Except to the extent this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

### TURNOVER ELSEWHERE AFTER DAMAGE

If during the Indemnity Period goods shall be sold or services shall be rendered elsewhere than at the Premises for the benefit of the Business either by the Insured or by the others on the Insured's behalf, the money paid or payable in respect of such sales or services shall be brought into account in arriving at the Turnover during the Indemnity Period.

### DEPARTMENTAL CLAUSE

If the Business be conducted in departments the independent trading results of which are ascertainable the provisions of clauses (a) and (b) of Item Nos. 1 and 3 shall apply separately to each department affected by the Damage.

### NEW BUSINESS

In the event of Damage occurring at the Premises before the completion of the first year's trading of the Business the terms "Rate of Gross Profit", "Annual Turnover", "Standard Turnover" and "Rate of Payroll" shall bear the following meanings and not as within stated:

<b>Rate of Gross Profit:</b> The rate of Gross Profit earned on Turnover during the period between the date of the commencement of the Business and the date of the damage.	)	To which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the damage or which would have affected the Business had the damage not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the damage would have been obtained during the relative period after the damage.
<b>Annual Turnover:</b> The proportional equivalent for a period of 12 months of the Turnover realised during the period between the commencement of the Business and the date of the damage.	)	
<b>Standard Turnover:</b> The proportional equivalent, for a period equal to the Indemnity Period, for the Turnover realised during the period between the commencement of the Business and the date of the damage.	)	

**Rate of Payroll:** The rate of Payroll to Turnover during the period between the date of the commencement of the Business and the date of the damage.

### ACCUMULATED STOCKS

In adjusting any loss, account shall be taken and equitable allowance made if any Shortage in Turnover due to the Damage is postponed by reason of the Turnover being temporarily maintained from accumulated stocks of finished goods.

### BOOKS OF ACCOUNT

Any particulars or details contained in the Insured's books of account or other business books or documents which may be required by the Insurer(s) for the purpose of investigating or verifying any claim hereunder may be produced and certified by the Insured's auditors and their certificate shall be prima facie evidence of the particulars and details to which such certificate relates.

The words and expressions used herein shall have the meanings usually attached to them in the books and accounts of the Insured unless otherwise defined in this Policy.

### PUBLIC UTILITIES EXTENSION

Any loss resulting from interruption of or interference with the Business in consequence of damage to property, caused by a peril damage as a result of which is insured hereunder, at any electricity station or sub-station, gas works or water works of a public supply undertaking which is situated on or immediately adjacent to the Premises shall be deemed to be loss resulting from Damage to Property used by the Insured at the Premises.

## **TURNOVER/OUTPUT ALTERNATIVE**

At the option of the Insured the term "Output" may be substituted for the term "Turnover" and, for the purpose of this Policy, "Output" shall mean the sale and/or invoice value of goods manufactured and/or processed by the Insured in course of the Business at the Premises. Provided that only one such meaning shall be operative in connection with any one event involving Damage.

If the meaning set out above be used, the memorandum "Turnover Elsewhere After Damage" shall be altered to read as follows:

"if during the Indemnity Period goods shall be manufactured and/or processed other than at the Premises for the benefit of the Business either by the Insured or by others on the Insured's behalf the sale and/or invoice value of the goods so manufactured and/or processed shall be brought into account in arriving at the Output during the Indemnity Period".

## **COMPUTER**

This Policy extends to include loss (not otherwise recoverable) resulting from interruption of or interference with the Business occasioned by Damage to computer installations, including ancillary equipment and data processing media utilised by the Insured anywhere in Australia.

## **SALVAGE SALE**

If, following Damage giving rise to a claim under this Policy, the Insured shall hold a salvage sale during the Indemnity Period:

(i) Clause (a) of Item 1 of this Section shall, for the purpose of such claim, read as follows:

(a) In respect of Reduction in Turnover

the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period (less the Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the Standard Turnover, from which shall be deducted the Gross Profit actually earned during the period of the salvage sale.

(ii) The definition of Shortage in Turnover shall, for the purpose of such claim, read as follows:

Shortage in Turnover shall mean:

the amount by which the Turnover during a period (less than Turnover for the period of the salvage sale) shall, in consequence of the Damage, fall short of the part of the Standard Turnover which relates to that period, from which shall be deducted the Payroll paid during the period of the salvage sale.

## **PREMISES IN THE VICINITY (PREVENTION OF ACCESS)**

Loss as Insured by the Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of the Premises caused by a peril, damage as a result of which is insured hereunder, which shall prevent or hinder the use thereof or access thereto, whether the Premises or property of the Insured therein shall be damaged or not, shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

Loss as insured by this Policy resulting from interruption of or interference with the Business in consequence of damage to property in the vicinity of and forming part of or contained in the complex of which the Premises forms part caused by a peril, damage as a result of which is insured hereunder, which results in a cessation or diminution of trade due to temporary falling away of potential custom whether the Premises or property of the Insured therein shall be damaged or not shall be deemed to be loss resulting from Damage to property used by the Insured at the Premises.

## **REGISTERED VEHICLES AND/OR TRAILERS**

Notwithstanding the provisions of Property Exclusion 5, this Policy extends to include loss resulting from interruption of or interference with the Business occasioned by Damage to registered vehicles and/or trailers whilst such vehicles or trailers are at the Premises owned or occupied by the Insured; provided always that this Policy does not cover loss resulting from physical loss, destruction of or damage to such vehicles &/or trailers whilst they are being used on any public highway or thoroughfare.

## EXCLUSIONS TO ALL SECTIONS

### PROPERTY EXCLUSIONS

This Policy does not cover physical loss, destruction of or damage to the following property or loss under Section 2 resulting therefrom:

1. Property (except Money) whilst in transit other than during the incidental movement of such property within situations occupied by the Insured. This exclusion shall not apply during temporary removal of property (other than stock and/or merchandise) and unregistered motor vehicles to any situation in the Commonwealth of Australia but, whilst such property is in transit, cover is limited to physical loss, destruction or damage caused by fire, lightning, explosion, earthquake, aircraft, riot, strikes, malicious damage and storm and/or tempest.
2. Money:
  - (a) whilst being carried by professional money carriers, professional carriers or common carriers which is more specifically insured excepting the excess amount over and above such more specific insurance which excess is held to be covered hereunder,

Provided that where in the ordinary course of business the Insured enters into an agreement which such carriers and such agreement provides that the Insured shall indemnify and/or hold harmless and/or release from liability such carriers in respect of loss, destruction or damage which may occur as a result of any event hereby insured against, this insurance shall operate as if this Property Exclusion 2(a) had been deleted;

- (b) Stolen from an unlocked and unattended vehicle;
  - (c) Stolen from a safe or strongroom opened by a key or by use of details of a combination, either or which has been left at the Situation outside business hours, unless such key or combination details have been properly secured;
  - (d) Where the loss is not discovered within fifteen (15) working days of the event;
  - (e) Where the loss arises out of:
    - (i) kidnapping,
    - (ii) bomb threat,
    - (iii) hoax,
    - (iv) extortion,or any attempt thereat.
3. Jewellery, furs, bullion, precious metals or precious stones other than as stock and/or merchandise of the Business.
4.
  - (a) any locomotive or rolling stock or watercraft other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder whilst any watercraft is on water;
  - (b) any aircraft (including its accessories and/or spare parts) other than as stock or merchandise of the Business; provided always that no cover shall apply hereunder during taxiing, take-off, flight or landing.
5. Vehicles or trailers registered or licensed to travel on a public road, provided that this exclusion shall not apply to mobile plant and equipment (excluding cars, sedans, panel vans and trucks) not otherwise insured whilst on any premises occupied or used by the Insured.
6. Livestock, animals, birds or fish.
7. Standing timber, growing crops and pastures.
8. Land, provided that this exclusion shall not apply to structural improvements on or in the land if such structural improvements are not otherwise excluded in this Policy.
9. Bridges, canals, roadways and tunnels, railway tracks (other than on the premises occupied or used by the Insured), dams and reservoirs (other than tanks) and their contents.
10. Docks, wharves and piers not forming part of any building.
11. Mining property located beneath the surface of the ground unless otherwise expressly stated in this Policy.
12. Property during the course of, and as a result of, its processing.
13.
  - (a) gates, fences, retaining walls, textile awnings and blinds;
  - (b) property in the open air unless such property comprises or forms part of a permanent structure designed to function without the protection of the walls or roof;caused by wind, rainwater or hail.
14.
  - (a) property undergoing construction, erection, alteration or addition when the value of work exceeds 10% of the Limit of Liability of \$500,000 whichever is the lesser;

(b) empty premises undergoing demolition.

15. Oil and gas drilling and/or production rigs whilst offshore.

16. All Machinery (as defined in this exclusion), electronic data processing equipment or electronic control equipment occasioned by or happening through any mechanical, electrical, electro-mechanical, electronic or hydraulic malfunction, failure, derangement, breakdown or non-operation of whatsoever kind.

Provided that Property Exclusion 16 shall not apply to any subsequent loss, destruction of or damage to such Machinery, electronic data processing equipment or electronic control equipment occasioned by or happening through any cause or event not otherwise excluded herein which results from any of the events referred to in this exclusion.

For the purpose of Property Exclusion 16, Machinery means:

Any apparatus whether or not functioning independently or as any component part of a collection of apparatus which generates, contains, controls, transmits, receives, transforms or utilises any form or source of energy or power.

17. Any boiler (other than a boiler used for domestic purposes) economiser or other pressure vessel, including pipes, valves and other apparatus thereof in respect of which a certificate is required to be issued under the terms of any statute or regulation occasioned by or arising from explosion, rupture, collapse, bursting, cracking or overheating thereof provided that this exclusion shall be limited to the aforementioned items immediately affected and shall not extend to other property as a result of such loss or destruction or damage.

This exclusion shall not apply to Section 2 as specifically stated therein.

## PERILS EXCLUSIONS

The Insurer(s) shall not be liable under Sections 1 and/or 2 in respect of:

1. physical loss, destruction of or damage to the Property Insured

- (a) directly or indirectly occasioned by or happening through or connected with war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;
- (b) resulting from confiscation, nationalisation, requisition or damage to property by or under the order of any Government or Public or Local Authority.

Notwithstanding the provisions of Perils Exclusion 1(b) the Insurer(s) shall be liable for loss, destruction of or damage to, or the cost of removal of, sound property at the Premises for the purpose of preventing or diminishing imminent damage by, or inhibiting the spread of, fire or any other peril insured against under this Policy.

2. (a) physical loss, destruction of or damage to the Property Insured;

(b) any legal liability of whatsoever nature,

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

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

For the purpose of this exclusion only, "combustion" shall include any self-sustaining process of nuclear fission.

- (ii) nuclear weapons materials.

3. Physical loss, destruction or damage occasioned by or happening through:

(a) flood, which shall mean the inundation of normally dry land by water escaping or released from the normal confines of any natural watercourse or lake whether or not altered or modified or of any reservoir, canal or dam;

(b) water from or action by the sea, tidal wave or high water.

Provided that Perils Exclusions 3(a) and 3(b) shall not apply if loss, destruction or damage is caused by or arises out of an earthquake or seismological disturbance.

4. Physical loss, destruction or damage occasioned by or happening through:
- (a) moths, termites or other insects, vermin, rust or oxidation, mildew, mould, wet or dry rot, corrosion, change of colour, dampness of atmosphere or other variations in temperature, evaporation, disease, inherent vice or latent defect, loss of weight, change in flavour texture or finish, smut or smoke from industrial operations (other than sudden and unforeseen damage resulting therefrom);
  - (b) wear and tear, fading, scratching or marring, gradual deterioration or developing flaws, normal upkeep or making good;
  - (c) error or omission in design, plan or specification or failure of design;
  - (d) normal settling, seepage, shrinkage or expansion in buildings or foundations, walls, pavements, roads and other structural improvements, creeping, heaving and vibration;
  - (e) faulty materials or faulty workmanship.

Provided that this Exclusion 4(a) to (e) shall not apply to subsequent loss, destruction of or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

5. Physical loss, destruction or damage occasioned by or happening through:
- (a) incorrect siting of buildings consequent upon:
    - (i) error in architectural design or specification,
    - (ii) faulty workmanship,
    - (iii) non-compliance by the Insured (or anyone acting on behalf of the Insured) with the necessary permits issued by Government, Public or Local Authorities;
  - (b) demolitions ordered by Government or Public or Local Authorities due to failure on the part of the Insured or their agents to obtain the necessary permits required.
6. Physical loss, destruction or damage occasioned by or happening through:
- (a) theft of property (other than Money in transit) in the open air;
  - (b) unexplained or inventory shortage, disappearance resulting from clerical or accounting errors, shortage in the supply or delivery of materials to or from the Insured;
  - (c) (i) spontaneous combustion,
  - (ii) spontaneous fermentation or heating or any process involving the direct application of heat.

Provided that Perils Exclusions 6(c)(i) and 6(c)(ii) shall be limited to the items immediately affected and shall not extend to other property damaged as a result of such spontaneous combustion, fermentation or heating or process involving the direct application of heat.

7. Physical loss, destruction or damage occasioned by or happening through:
- (a) (i) fraudulent or dishonest acts, fraudulent misappropriation, embezzlement, forgery, counterfeiting data corruption, unauthorised amendment of data and erasure by electronic or non-electronic means involving the Property Insured by the Insured or any employee(s) of the Insured acting alone or in collusion with any other person(s);
  - (ii) access by any person(s) other than the Insured or the Insured's employee(s) to the Insured's computer system via data communication media that terminate in the Insured's computer system.

Provided that this exclusion shall not apply to theft consequent upon forcible and violent entry upon premises or felonious concealment upon premises committed by an employee of the Insured or theft of money whilst in transit;

- (b) (i) the cessation of work whether total or partial,
- (ii) the cessation, interruption or retarding of any process or operation,

as a result of strikes, labour disturbances or locked out workers,

Provided that Perils Exclusions 7(b)(i) and 7(b)(ii) shall not apply in respect of physical loss, destruction or damage directly caused by strikes, locked out workers or similar persons;

- (c) erosion, subsidence, earth movement or collapse resulting therefrom;
- (d) kidnapping, bomb threat, threat of contamination, hoax, extortion or any attempt thereat.

Provided that this Exclusion 7(a) to (d) shall not apply to subsequent loss, destruction or damage to the Property Insured occasioned by a peril (not otherwise excluded) resulting from any event or peril referred to in this exclusion.

8. Any legal liability of whatsoever nature other than as herein provided.
9. Consequential loss of any kind including consequential loss due to delay, lack of performance, loss of contract or depreciation in the value of land or stock, except as herein provided in Section 2.



10. Notwithstanding anything to the contrary contained herein, this policy does not cover loss or destruction or damage resulting from pollution or contamination except (unless otherwise excluded) loss or destruction of or damage to property or any part thereof used by the Insured at the premises for the purpose of the business caused by:-

Pollution or contamination at the premises which itself results from fire, lightning, explosion, aircraft or other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked out workers, persons taking part in labour disturbances, malicious persons, earthquake, storm, flood, bursting overflowing discharging or leaking of water tanks, apparatus or pipes, sprinkler leakage or impact by any road vehicle or animal.

Any of the perils listed in (a) above which itself results from pollution or contamination.

# MEMORANDA APPLICABLE TO ALL SECTIONS

Except to the extent that this Policy is hereby modified under the following Memoranda the terms, Conditions and limitations of this Policy shall apply.

## AMOUNT OF POLICY NOT REDUCED BY LOSS

The insurance under each section and/or item of this Policy and the Indemnity Period shall be automatically reinstated in the event of any loss in consideration of the payment by the Insured of a pro-rata additional premium calculated on the amount of the loss settlement at the rate(s) agreed for the Period of Insurance.

## EVENT

Only for the purpose of the application of any deductible: all loss destruction or damage resulting from earthquake occurring during each period of 72 consecutive hours shall be considered as one event whether such earthquake is continuous or sporadic in its sweep and/or scope and the loss, destruction or damage was due to the same seismological conditions. Each event shall be deemed to have commenced on the first happening of any such loss, destruction or damage not within the period of any previous event.

## SUBROGATION WAIVER

The Insurer(s) agree(s) to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:

- (a) any corporation or organisation (including its directors, officers, employees or servants) owned or controlled by any Insured named herein or subsidiary to any Insured named herein or any co-owner of the property insured hereunder;
- (b) any Insured named or described by this Policy (including its directors, officers, employees or servants).

## ADJUSTMENT OF PREMIUM

- (a) The Premium shown is provisional and is calculated on the Declared Values of:
  - (i) Property Insured,
  - (ii) Gross Profit and Insured Payroll,on the day of commencement of each Period of Insurance.
- (b) The Insured undertakes to declare to the Insurer(s) within a reasonable time after the day of expiry of the Period of Insurance:
  - (i) the value of Property Insured on the day of expiry of the Period of Insurance. For the purpose of this declaration, stock-in-trade and/or merchandise shall be taken at its average value during the Period of Insurance;
  - (ii) the amount of the Gross Profit earned and Payroll paid, in accordance with the cover afforded in the respective items of Section 2, in the course of the Business during the accounting period of 12 months most nearly concurrent with the Period of Insurance.
- (c) The provisional premium shall be adjusted by payment to the Insurer(s) of an additional premium or by allowance to the Insured of a return premium, as the case may be, calculated at the agreed rate on:
  - (i) fifty per cent (50%) of the difference between property declared in accordance with clauses (a)(i) and (b)(i);
  - (ii) the full agreed rate hereunder on the difference between the amounts declared under clauses (a)(ii) and (b)(ii).
- (d) It is agreed to make allowance for any abnormal fluctuation in values and to charge a premium commensurate with the risk, such premium to be agreed between the parties to this agreement.

The Declaration of Values at the expiry of the Period of Insurance declared in accordance with this memorandum shall not be reduced as the result of loss, destruction or damage in respect of which a claim has been paid or is payable under this Policy.

# CONDITIONS APPLICABLE TO ALL SECTIONS

## 1. MISREPRESENTATION AND NON-DISCLOSURE

If the Insured:

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

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

then -

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

(b) if the non-disclosure or misrepresentation was fraudulent, the Insurer(s) may avoid this Policy.

## 2. ALTERATION

The Insurer(s) shall not be liable for loss, destruction of or damage to any property insured hereunder caused or contributed to by any alteration after the commencement of this Policy:

- (a) by removal of such property from the Premises other than as provided under the terms of Property Exclusion 1;
- (b) in the trade or processes of manufacture carried on at the Premises or whereby the nature of the occupation or other circumstances affecting the Premises and/or the Insured's property therein contained shall be changed in such a way as to increase the risk of loss, destruction or damage;
- (c) whereby any premises containing any property insured hereunder shall become unoccupied, and so remain for a period of more than thirty days; or
- (d) whereby the Insured's interest ceases except by will or the operation of law.

Provided that any such alteration, upon coming to the knowledge of the Insured's officer responsible for insurance, shall be immediately notified to the Insurer(s) and, if agreed to by the Insurer(s) in writing, an appropriate additional premium paid if required.

## 3. SPRINKLER INSTALLATIONS - APPLICABLE TO OWNED PREMISES OR INSTALLATIONS FOR WHICH THE INSURED IS RESPONSIBLE

The Insured warrants that in such of the Premises as are protected or as are required by law to be protected by an approved installation of automatic sprinklers, automatic external alarm signal and automatic alarm signal connected with a fire brigade station, in or on the Premises, due diligence shall be used so that the same shall at all times be maintained in good working order.

The Insured further warrants that provision will be made for the regular maintenance of the installation in accordance with Australian Standard AS 1851 (part 3) Automatic Sprinkler Installation by the installing engineers or firm or, failing this, by a person or organisation who must be approved by the Insurer(s) to carry out such maintenance.

Notice of all alterations and additions to the automatic sprinkler installation shall be given by the Insured to the Insurer(s) as soon as reasonably practicable.

## 4. OTHER INSURANCE

The Insured shall give written notice as soon as possible to the Insurer(s) of any other insurance or insurances effected covering the Property Insured.

## 5. CANCELLATION

- (a) This Policy may be cancelled at any time at the request of the Insured, in which case the Insurer(s) will retain the customary short-period rate for the time this Policy has been in force.
- (b) The Insurer(s) may also cancel this Policy by giving the Insured written notice to that effect where:
  - (i) the Insured or any person who was at any time the Insured failed to comply with the duty of utmost good faith;
  - (ii) the person who was the Insured at the time when this Policy was entered into failed to comply with the duty of disclosure;
  - (iii) the person who was the Insured at the time when this Policy was entered into made a misrepresentation to the Insurer(s) during the negotiations for this Policy but before it was entered into;
  - (iv) the Insured or any person who was at any time the Insured failed to comply with a provision of this Policy, including a provision with respect to the payment of the Premium;

- (v) the Insured has made a fraudulent claim under this Policy or any other policy of insurance (whether with the Insurer(s) or some other insurer) that provided insurance cover during any part of the period during which this Policy provides insurance cover;
  - (vi) the Insured failed to notify the Insurer(s) of any specific act or omission where such notification is required under the terms of this Policy; or
  - (vii) the Insured acted in contravention of or omitted to act in compliance with any condition of this Policy which empowers the Insurer(s) to refuse to pay, or reduce its/their liability in respect of, a claim in the event of such contravention or omission.
- (c) The Insurer(s) notice of cancellation takes effect at the earlier of the following times:
- (i) the time when another policy of insurance between the Insured and the Insurer(s) or some other insurer, being a policy that is intended by the Insured to replace this Policy, is entered into; or
  - (ii) 4.00 p.m. on the thirtieth business day after the day on which notice was given to the Insured.

In the event that the Insurer(s) cancel(s) this Policy, the Insurer(s) will repay to the Insured a rateable proportion of the Premium for the unexpired Period of Insurance from the date of cancellation.

## **6. NOTIFICATION OF CLAIMS**

On the happening of any loss, destruction or damage, the Insured shall forthwith give notice thereof in writing to the Insurer(s) and shall (within thirty (30) days after such loss, destruction or damage or such further time as the Insurer(s) may in writing allow), at the Insured's own expense, deliver to the Insurer(s) a claim, in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property lost, destroyed or damaged and of the amount of loss, destruction or damage thereto, having regard to their value at the time of the loss, destruction or damage, together with details of any other insurances on any property hereby insured.

The Insured shall use due diligence and do and occur in doing all things reasonably practicable to minimise any interruption of or interference with the Business to avoid or diminish the loss and shall also deliver to the Insurer(s) a statement in writing of any claim certified by the Insured's auditor, with all particulars and details reasonably practicable of the loss and shall produce and furnish all books of accounts and other business books, invoices, vouchers and all other documents, proofs, information, explanations and other evidence and facilities as may reasonably be required for investigation and verification of the claim together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith.

No claim under this Policy shall be payable unless the Insured has complied with the terms of this condition.

## **7. FRAUD**

If any claim be in any respect fraudulent or if any fraudulent means or devices be used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy, or if any destruction or damage be occasioned by the wilful act or with the connivance of the Insured, the Insurer(s), without prejudice to any other right(s) the Insurer(s) might have under this Policy, shall be entitled to refuse to pay such claims.

## **8. REINSTATEMENT**

If the Insurer(s) elect(s) or become(s) bound to reinstate or replace any property, the Insured shall at the Insured's own expense produce and deliver to the Insurer(s) all such plans, documents and information as the Insurer(s) may reasonably require. The Insurer(s) shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend more than the applicable Limit of Liability.

## **9. INSURER(S) RIGHTS**

On the happening of any loss, destruction or damage in respect of which a claim is or may be made under this Policy the Insurer(s) and every person authorised by the Insurer(s) may, without thereby incurring any liability, and without diminishing the right of the Insurer(s) to rely upon any Conditions of this Policy, enter, take or keep possession of any building or premises where the loss, destruction or damage has happened and may take possession of or require to be delivered to the Insurer(s) any of the property hereby insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner.

This condition shall be evidence of the leave and licence of the Insured to the Insurer(s) so to do. If the Insured or any one acting on the Insured's behalf shall not comply with the requirements of the Insurer(s) or shall hinder or obstruct the Insurer(s) in doing any of the abovementioned acts, then all benefits under this Policy shall be forfeited. The Insured shall not in any case be entitled to abandon any property to the Insurer(s) whether taken possession of by the Insurer(s) or not.

## **10. SUBROGATION**

- (a) Any person claiming under this Policy shall at the request and at the expense of the Insurer(s) 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(s) for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the Insurer(s) shall be or would become entitled or subrogated upon the Insurer(s) paying for or making good any destruction or damage under this Policy.

- (b) If the Insurer(s) make(s) any recovery as a result of such action, the Insured may only recover from the Insurer(s) any amount by which the amount recovered by the Insurer(s) exceeded the amount paid to the Insured by the Insurer(s) in relation to the loss.

#### **11. PRECAUTIONS TO PREVENT LOSS**

The Insured shall take all reasonable precautions to prevent loss, destruction or damage to the property insured by this Policy.

#### **12. INSURED'S ACTION AFTER THEFT OR DAMAGE**

The Insured shall, upon becoming aware of any loss by theft or of any wilful or malicious damage which may give rise to a claim under this Policy, take all practicable steps to trace and recover any missing property and to discover by whom the property was stolen or damaged.

#### **13. TERMINATION OF COVER UNDER SECTION 2**

Notwithstanding anything contained herein to the contrary, if during any period in respect of which this Policy is in force:

- (a) the Insured ceases to carry on the Business or any part of the Business is disposed of, permanently discontinued or the Insured's interest in the Business or such part thereof ceases otherwise than by death; or
- (b) the Insured (being a corporation) is placed in liquidation (or provisional liquidation), is placed under Official Management, enters into a Scheme of Arrangement, has Receivers and/or Managers appointed over its assets or undertaking(s); or
- (c) the Insured (being a natural person) becomes a bankrupt or enters into a scheme of arrangement or compromise or composition with creditors;

then the insurance cover provided under Section 2 of this Policy in respect of such Business or Insured shall automatically and forthwith cease.

In the event of the Indemnity Period having begun to run in respect of any claim relating to such Business or part thereof, the Indemnity Period shall thereupon be at an end, unless its continuance be admitted by memorandum signed for or on behalf of the Insurer(s).

#### **14. OBSERVANCE OF TERMS AND CONDITIONS**

The due observance and fulfilment of these Conditions and the other terms of this Policy by the Insured, insofar as the same are capable of being construed as such, are conditions precedent to any liability of the Insurer(s) to make any payment under this Policy.

#### **15. PROGRESS PAYMENTS**

Provided that liability has been admitted progress payments on account of any claim may be made to the Insured at such intervals and for such amounts as may be agreed upon production of a report by the Loss Adjuster (if appointed) provided such payment(s) shall be deducted from the amount finally determined upon adjustment of the claim.

#### **16. HEADINGS**

Headings have been included for ease of reference and it is understood and agreed that the terms and Conditions of this Policy are not to be construed or interpreted by reference to such headings.

# ENDORSEMENTS ATTACHING TO AND FORMING PART OF THE INDUSTRIAL SPECIAL RISKS INSURANCE POLICY

Notwithstanding anything contained herein to the contrary it is hereby declared and agreed that the following endorsements are made to the Policy:

## SECTION 1 - MATERIAL LOSS OR DAMAGE

### THE INDEMNITY

#### LIABILITY TO MAKE ENQUIRIES (ENQUIRxB4)

This policy extends to include costs and expenses incurred by the Insured in respect of any legal liability to make enquiries consequent upon physical loss, destruction or damage insured by this policy, but not exceeding the sub-limit specified in the schedule.

#### UNPACKING EXPENSES (UNPAKxB4)

This policy extends to include costs and expenses incurred by the Insured in taking inventory (including unpacking, repacking and restocking) to identify, quantify and value any property physically lost, destroyed or damaged by any peril insured against by this Section including examination of property not belonging to but in the care, custody or control of the Insured.

#### EXPEDITING EXPENSES (EXPEDxB4)

The policy extends to include reasonable costs and expenses incurred by the Insured for express carriage rates and extra payments for overtime, night, Sunday or holiday working incurred in connection with the repair or reinstatement of the Property Insured directly or indirectly arising from an event insured by the policy.

#### COSTS OF CLEARING DRAINS (DRAINxB4)

The following Clause is added to "The Indemnity, Section 1- Material Loss or Damage":

Costs of clearance of drains including expenses necessarily incurred in clearing and/or repairing drains, gutters, sewers and the like, at or in the vicinity of property hereby insured, consequent upon damage recoverable hereunder.

#### PERSONAL PROPERTY OF EMPLOYEES AND OTHERS (PPROPxB4)

The wording of clause (g) of the Indemnity is amended to read:

- (g) Damage to personal property, tools and effects (excluding money) of directors and employees whilst on the Insured's premises and damage to visitor's personal effects (excluding money) whilst on the Insured's premises, but only to the extent of such property is not otherwise insured

#### LIABILITY FOR DUTY (LDUTYVB4)

The policy extends to include the Insured's liability for customs, excise and other duties which the Insured becomes liable to pay in the event of Damage to Property Insured, but not exceeding the sub-limit specified in the Schedule.

# THE PROPERTY INSURED

## **MONEY - EXTENDED DEFINITION (NEGINXB4)**

The definition of Money extends to include travellers cheques, securities and negotiable instruments.

## **BASIS OF SETTLEMENT**

### **SECURITIES**

The following additional basis of settlement is added to the policy:

- (j) On securities (which shall mean all negotiable and non-negotiable instruments or contracts representing either Money or other property but does not include Australian legal tender as currency notes) the lesser amount arrived at as follows:
  - (i) the actual cash value thereof at the close of business on the day on which the loss was discovered, or if that day is not a business day, the business day immediately following, or;
  - (ii) the actual cash value thereof at the time of the loss, or;
  - (iii) where the property is held by the Insured as security, pledge or collateral for an advance or loan, the lesser of:
    - (a) the value of the property as determined and recorded by the Insured when making the advance or loan, or;
    - (b) in the absence of such record the unpaid portion of the advance or loan plus accrued interest thereon at prevailing commercial rates.

such value to be determined in the currency in which the security was held. Losses will be settled in the currency in which the security was held unless expressly agreed otherwise with the Insurer(s).

If there is no market price or value on the relevant day stated herein, then the value shall be agreed between the Insured and the Insurer(s), or in default thereof, the Insured and the Insurer(s) shall submit to arbitration, and be bound by the decision of the Arbitrator.

The arbitrator must be appointed by mutual agreement between the parties within 7 days of either party giving notice that the matter will be required to be submitted for arbitration. If the parties cannot agree on an arbitrator, then either party may request the President of the Securities Institute of Australia to appoint an arbitrator. If the said President is present or past employee of any parties to this Insurance contract or has a direct or indirect interest in the security or securities in dispute, then another senior officer of the Securities Institute Australia who is not likewise compromised shall appoint the arbitrator.

## **LANDSCAPING (LANDBXS4)**

The Property Insured and Basis of Settlement (a) of Section 1 are extended to include landscaping, which term includes trees, shrubs, plants and lawns. Property Exclusions 7 and 8 shall not apply to the cover granted by this endorsement. It is agreed that the liability of the Insurer(s) shall not exceed the amount of the sub-limit stated in the schedule of the policy against "Landscaping" for any one loss or series of losses arising out of any one event or occurrence.

## **LEASED EQUIPMENT (RESIDUAL VALUE) (LEASEXB4)**

The basis of settlement under Section 1 of the policy is extended to include the following clause, notwithstanding clause (a):

On machinery, plant and equipment leased on a Residual Value basis; in the event of actual or constructive total loss, the amount for which the lessee is contractually liable to the lessor, but not exceeding the sum represented by rent payable under such lease(s) for the period commencing on the date of physical loss, destruction or damage and ending on the retirement date(s) of such lease(s), plus the current market value of the property immediately before its loss or damage or the Residual Value, whichever is the greater, less any salvage value, but in any case not exceeding 10% above replacement value. In the event of damage which does not amount to a constructive total loss, the cost of repair in accordance with the provisions of the Reinstatement or Replacement and Extra Cost of Reinstatement Memorandum as set out herein.

For the purpose of this basis of settlement, the term "Residual Value" shall mean the minimum amount which the lessee has guaranteed that the leased property will realise, being the same amount which the lessee has agreed would be payable to acquire such property upon the retirement date of the lease.

**DESIGNATION (DESIGVB4)**

The following sentence is added to the first paragraph of Basis of Settlement (a):

For the purpose of ascertaining the classification under which any property is insured, the Insurer(s) agree to accept the designation applied to such property by the Insured.

**VALUATION OF PROPERTY - EMPLOYEES AND OTHERS (VALPRXB4)**

Clause (h) of the basis of settlement under Section 1 is amended to read:

- (h) On personal property, tools and effects of the Insured's directors, employees and of visitors to the Insured's premises; the replacement cost at the time and place of replacement.

**GOODS SOLD BUT NOT DELIVERED (UNDELXB4)**

The basis of settlement under Section 1 of the policy is extended to include the following clause:

On goods sold but not delivered for which the Insured is responsible and with regard to which, under the conditions of sale, the sale contract is by reason of the Damage cancelled either wholly or to the extent of the Damage; the contract price.



# MEMORANDA APPLICABLE TO SECTION 1

## **PECUNIARY OR ECONOMIC INTERESTS OF OTHERS (OWNERV4)**

The term "insurable interest" in the memorandum to Section 1 headed Interests of Other Parties is amended to read "pecuniary or economic interest".

## **LABELS, CONTAINERS AND WRAPPINGS (LABELXB4)**

In the event of Damage affecting labels, containers or wrappings, the Insurer(s) shall not be liable for more than an amount sufficient to pay the cost of new labels, containers or wrappings, and the cost of reconditioning the goods, but in no case shall the Insurer(s) be liable for more than the insured value of the damaged merchandise.

## **EXTRA COST OF REINSTATEMENT – PROVISION (V) DELETED (UNLIMXB4)**

Provision (v) of the Extra Cost of Reinstatement memorandum is deleted.

## **ACQUIRED COMPANIES (ACQCXS4)**

Notwithstanding the provisions of the Acquired Companies Memorandum, the term "controlling interest" where used therein shall also extend to include companies and other organisations over which the Insured acquires the capacity during the Period of Insurance to directly or indirectly dominate decision-making in relation to financial and operational policies, providing the acquired company is of a similar business activity.

## **CONSTRUCTIVE TOTAL LOSS (SEALDXB4)**

For the purposes of this endorsement there shall be deemed to be a constructive total loss when the Property Insured specified herein or any part thereof is reasonably abandoned:

- (a) because its actual total loss seems unavoidable; or
- (b) because it could not be preserved from actual total loss without an expenditure which would exceed its repaired and/or recovered value.

It is understood and agreed that the words "actual total loss" shall mean loss, destruction or damage (and not merely physical loss, destruction or damage) of or to the Property Insured specified herein or any part thereof.

## **UNDAMAGED FOUNDATIONS (FDNOKVB4)**

When Property Insured is damaged but its foundations are not destroyed and, due to the exercising of statutory powers or delegated legislation or authority by any government department, local government or other statutory Authority, reinstatement of the Property Insured is carried out upon another site or sites, then the abandoned foundations shall be deemed to have been destroyed: If the presence of the abandoned foundations increases the sale value of the original site, then such increase shall be regarded as salvage and shall be payable to the Insurer(s) by the Insured upon completion of the sale, or shall be deducted from the total amount otherwise payable by the Insurer(s) under this Policy, whichever shall occur later.

All differences relating to the amount of such increase in site sale value shall forthwith be referred to the decision of two registered valuers, one to be appointed by each of the parties to this policy. If the two valuers fail to agree, their differences shall be referred to the decision of a third valuer, appointed by the President of the Australian Institute of Valuers as an expert, whose decision shall be binding.

## **UNDAMAGED ANCILLARY AND/OR PERIPHERAL EQUIPMENT (OBSOLXB4)**

If plant and machinery is destroyed but its ancillary and/or peripheral equipment is not destroyed but upon replacement of the destroyed plant and/or machinery the ancillary and/or peripheral equipment is rendered superfluous, then such equipment shall be deemed to be destroyed and its salvage value shall be payable to the Insurer(s) by the Insured upon completion of any sale or shall be deducted from the total amount otherwise payable by the Insurer(s) under the policy, whichever shall occur later.

## SECTION 2 - CONSEQUENTIAL LOSS

### BASIS OF SETTLEMENT

#### SEVERANCE PAY (SEVERXB4)

The insurance under this item is limited to such further additional expenditure beyond that recoverable under Clause (a) of Item no. 3 as the Insured is obligated or has agreed to pay under industrial awards, determinations, decisions or agreements for severance pay and/or in lieu of notice to employees whose services are terminated during the Indemnity Period in consequence of the damage.

#### ACCOUNTS RECEIVABLE (BDEBTXB4)

The insurance under this item is limited to the loss sustained by the Insured in respect of all outstanding debit balances if the Insured is unable to effect collection thereof as a direct result of Damage to records of accounts receivable. The Insurers will also pay:

- (i) interest charges at ruling bank rates on any loan to offset impaired collections pending repayment of such amounts rendered uncollectable in consequence of the Damage;
- (ii) interest lost by the Insured in consequence of such impaired collections;
- (iii) additional expenditure necessarily and reasonably incurred in tracing and establishing the amounts of accounts receivable;
- (iv) collection expenses in excess of normal collection costs, incurred in consequence of the Damage.

Where there is proof that a loss covered by the policy has occurred, but the Insured cannot accurately establish the total amount of accounts receivable outstanding at the date of Damage, such amount shall be computed as follows:

- (a) Determine the total amount of accounts receivable outstanding on the last working day of the fiscal month which ended twelve months before the beginning of the month in which the Damage occurs;
- (b) Calculate the average increase or decrease in the monthly total amounts of accounts receivable outstanding on the last working day of each of the twelve months immediately preceding the month in which Damage occurs;
- (c) The amount determined under paragraph (a), increased or decreased by the percentage calculated in accordance with paragraph (b) shall be deemed to be the total amount of accounts receivable outstanding at the time and date of the Damage;
- (d) The amount determined under paragraph (c) shall be adjusted as may be necessary to provide for any demonstrable variance from the amount so determined occurring before but during the month in which the Damage occurs; due consideration also being given to normal monthly trends in receipts.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the Insured, and an equitable amount to provide for doubtful debts. The cover hereby granted shall be subject to the sub-limit stated in the Schedule against "Account Receivable".

### DEFINITIONS

#### CURRENT COST ACCOUNTING (CCACCB4)

For the purpose of the following definitions, any adjustment implemented in current cost accounting shall be disregarded.

#### GOVERNMENT INCENTIVES (BOOSTXB4)

The definition of "Turnover" is extended to include financial incentives or concessions granted to the Insured by any Australian or State Government Department in recognition of specific performance in the development of market opportunities or employment of disadvantaged persons.

#### PAYROLL: AMENDED DEFINITION (FBTSPVB4)

The definition of Payroll in Section 2 of the policy is amended to read:

The remuneration (including but not limited to payroll tax, fringe benefits tax, bonuses, holiday pay, sick pay, long service leave, workers' compensation insurance premiums and/or accident compensation levies, superannuation and pension fund contributions and the like) paid to all employees of the Insured.

## MEMORANDA TO SECTION 2

### **PUBLIC UTILITIES MEMORANDUM EXTENDED (UTILAXB4)**

Any loss resulting from interruption of or interference with the Business directly or indirectly in consequence of Damage anywhere in Australia to any land based communication link and/or electric power station or sub-station, gasworks, waterworks of the public supply undertaking from which the Insured obtains electric current, gas or water shall be deemed to be loss resulting from damage to Property used by the Insured at the Premises. It shall not be a condition precedent to liability under this endorsement that payment shall be made or liability admitted for damage under Section 1 of the policy.

### **UNSPECIFIED CUSTOMERS &/OR SUPPLIERS PREMISES – AUSTRALIA WIDE (UPREMS09)**

For the purposes of this Clause, the term “Damage” is extended to include Damage to property at the premises anywhere in Australia of any producer or merchant, which shall be deemed to be Damage to property used by the Insured at the Premises.

The liability of the Insurer under this extension, in respect of any one loss or series of losses arising out of any one original source or cause at any one premises, shall be limited to the amount specified in the schedule against “Customers &/or Suppliers Premises”, of the total of the Gross Profit and Payroll as at the day of the commencement of the Period of Insurance.

For the purposes of this extension, the term “premises of a producer” refers to premises other than “Public Utilities” at which goods or services used by the Insured are produced, assembled or stored. The term “premises of a merchant” refers to premises to which the Insured provides goods or services.

### **INTERDEPENDENCY -AUSTRALIA (IDEPAXB4)**

Loss as insured by Section 2 of the policy resulting from interruption of or interference with the Business in consequence of Damage to property not insured by Section 1 of the policy and situated at any other premises in Australia owned and/or occupied by the Insured for the purpose of the Business shall be deemed to be resulting from Damage to property used by the Insured at the Premises.

### **INFECTIOUS OR CONTAGIOUS DISEASE; VERMIN, PESTS OR DEFECTIVE SANITARY ARRANGEMENTS; FOOD OR DRINK POISONING; MURDER, SUICIDE.**

Loss as insured by this Policy resulting from interruption of or interference with the Business directly or indirectly arising from closure or evacuation of the whole or part of the Insured Premises by order of a competent public authority consequent upon:

- (i) human infectious or contagious disease manifested by any person whilst at the Insured Premises;
- (ii) the outbreak of a notifiable human infectious or contagious disease in humans occurring within the immediate vicinity of the Insured premises;
- (iii) vermin or pests or defects in the drains or other sanitary arrangements at the Insured Premises;
- (iv) poisoning directly caused by the consumption of food or drink provided on or from the Insured Premises;
- (v) murder or suicide occurring in or at the Insured Premises;

shall be deemed to be loss resulting from Damage to property used by the Insured at the Insured Premises. However, paragraphs (i) and (ii) will not indemnify Loss resulting from interruption of or interference with the Business directly or indirectly arising from or in connection with highly Pathogenic Avian Influenza in Humans or any other diseases declared to be a quarantinable disease under the Quarantine Act 1908 and subsequent amendments. Perils exclusion 4(a) shall not apply to the cover granted by this endorsement.

### **GOODS & SERVICES TAX**

#### **The Basis of Settlement – Additional clause applicable to Section 1 and Section 2**

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

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

When you are:

- (a) not registered for GST, the amount we pay is the sum insured/limit of indemnity or the other limits of insurance cover including GST.
- (b) registered for GST, we will pay the sum insured/limit of indemnity or the other limits of insurance and where you are liable to pay an amount for GST in respect of an acquisition relevant to your claim (such as services to repair a Damaged item insured under the Policy) we will pay for the GST amount.

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

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

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

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

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

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

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

# EXCLUSIONS TO ALL SECTIONS

## PROPERTY EXCLUSIONS

### PROPERTY IN THE OPEN AIR (LATERXB4)

Property Exclusion 13 is deleted.

### LOSS DISCOVERED LATE (LATERXB4)

Property Exclusion 2(d) is amended to read:

- (d) where the loss is not discovered within fifteen (15) working days of the event.

## CYBER EXCLUSION

It is hereby agreed and declared that that the following new Property exclusion is added to this policy

### 18. Electronic Data

Provided that the Insurer will indemnify the Insured for any Damage to Electronic Data arising out of fire, lightning, thunderbolt, explosion, implosion, earthquake, subterranean fire, volcanic eruption, impact, aircraft and/or other aerial device and/or articles dropped therefrom, sonic boom, theft which is a consequence of theft of any computer and/or computer hardware and/or firmware and/or microchip and/or integrated circuit and/or similar device containing such Electronic Data, breakage of glass, the acts of persons taking part in riots or civil commotions or of strikers or of locked out workers or of persons taking part in labor disturbances which do not assume the proportions of or amount to an uprising, storm and/or tempest and/or rainwater and/or wind and/or hail, water and/or other liquids and/or substances discharged and/or overflowing and/or leaking from any apparatus and/or appliance and/or pipes at the premises.

For the purpose of this exclusion Electronic Data means any facts, concepts and/or information converted to a form usable for communications and/or displays and/or distribution and/or processing by electronic and/or electromechanical data processing and/or electronically controlled equipment which includes but is not limited to programs and/or software and/or other coded instructions for such equipment

It is further agreed and declared that Basis of Settlement (e) of this policy is amended to read as follows:

- (e) On computer systems records which includes Electronic Data as defined in Property exclusion 18., documents, manuscripts, securities, deeds, specifications, plans, drawings, designs, business books and other records of every description, the Basis of Settlement shall be the cost of repairing, replacing, reproducing or restoring them, including the information contained on or in them, but excluding the value to the insured of that information. If repairs, replacement, reproduction or restoration is not required, the Basis of Settlement shall be the replacement cost of the materials as blank stationery calculated at the time and place of the Damage, provided that replacement shall have been carried out with reasonable dispatch.

## PERILS EXCLUSIONS

### WAR & TERRORISM EXCLUSION

It is hereby agreed and declared that Perils Exclusion 1 of this policy is deleted in full and replaced by the following:-

loss, destruction, damage, cost or expense of any nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in other consequence to the loss

- (a) war, invasion, act of foreign enemies, hostilities or war like 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) any act of terrorism,

An act of terrorism includes 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 damage to property; 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.
- (c) confiscation, nationalisation, requisition or damage to property by or under the order of any government or public or local authority.

Furthermore any loss, destruction, damage, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1(a) or 1(b) above is also excluded from this policy.

Notwithstanding 1(c) above the Insurer(s) will indemnify the Insured for loss, destruction, damage, cost or expense for the removal of sound property at the premises for the purpose of preventing or diminishing imminent damage by, or inhibiting spread of, fire or any other peril insured by this policy except for those events described in 1(a) or 1(b) above.

#### **THEFT IN OPEN (EXCEPT MONEY) EXCLUSION MODIFIED (YARDSXB4)**

Perils Exclusion 6(a) is amended to read:

Theft, without forcible entry or threat of violence, of property in the open air.

The liability of the Insurer(s) shall not exceed the sub-limit stated in the Schedule of the policy against "Theft of Property in the open air" for any one loss or series of losses arising out of any one event of occurrence at anyone location.

#### **LOSS OF LAND VALUE (LANDVL04)**

##### **Notwithstanding the provision of Perils Exclusion 9 and Property Exclusion 8:**

- (a) In the event of the absolute refusal by the competent local or government Authority to allow reconstruction of the premises following destruction or damage, the Insurer shall pay by way of indemnity the amount in excess of the Land Value before over the land value after the destruction or damage to improvements, or
- (b) In the event of the competent local or government Authority allowing only partial reconstruction of the premises after destruction or damage, the Insurer shall pay by way of indemnity the deficiency between Land Value after such reconstruction and the Land Value before the destruction or damage,

less any sum saved by way of compensation by such Authority arising out of the action referred to in (a) or (b) above.

The liability of the Insurer shall be limited to the sub-limit stated in the schedule against "Loss of Land Value" for any one loss or series of losses arising out of any one original source or cause at any one location.

#### **DEFINITION**

**LAND VALUE** The sum certified by the Valuer General as being the value of the land so described in the policy after due allowance has been made for variations in or other circumstances affecting such value either before or after the damage or which would have been affected the value had the damage not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the true Land Values pertaining both before and after the damage.

#### **SPECIAL CONDITIONS**

1. Settlement shall be made following the ruling of the competent local or government Authority resulting in the loss of land value. Should settlement have been made however and subsequently the ruling of the competent local or government Authority be changed prior to completion of the reconstruction, resulting in an increase in the Land Value, the part of the claim paid in excess of the revised Land Value shall be refunded to the Insurer.
2. all differences relating to the Land Value arising out of the policy shall forthwith be referred to the decision of two registered valuers; one to be appointed by each of the parties and in case the two registered valuers do not agree, of a third valuer, appointed by the President of the Australian Institute of Valuers as an expert, whose decision shall be binding.

# MEMORANDA TO ALL SECTIONS

## **EVENT (EVNTAXB4)**

The memorandum to Sections 1 and 2 under this heading is extended to include the following perils in addition to Earthquake:

- (a) Storm and Tempest, Rainwater, Flood
- (b) Subterranean Fire, Volcanic Eruption.

## **STORAGE AGREEMENTS (STOREXB4)**

When the Insured enters into a contract for storage of property and the terms of the contract contain a disclaimer clause, then the insurance provided by the policy shall not be prejudiced by the Insured agreeing to such terms. The Insured's officer responsible for insurance shall, upon becoming aware of such a contract, inform the Insurer(s) as soon as is reasonably practicable and the Insured shall pay a reasonable additional premium if required by the Insurer(s).

## **LEASED BUILDING AGREEMENTS (LEASEXB4)**

When the Insured enters into a lease agreement for occupancy of any building or part of a building and the terms of the lease contain a disclaimer clause in favour of the lessor, then the insurance provided by the policy shall not be prejudiced by the Insured agreeing to such terms. The Insured's officer responsible for insurance shall, upon becoming aware of such an agreement, inform the Insurer(s) as soon as is reasonably practicable and the Insured shall pay a reasonable additional premium if required by the Insurer(s).

## **SUBROGATION WAIVER (PARTNERS) (PTNERXB4)**

**The wording of the memorandum to all Sections, headed "Subrogation Waiver", is amended to read:**

**The Insurer(s) agree(s) to waive any rights and remedies or relief to which it/they may become entitled by subrogation against:**

- (a) any Insured named or described by this policy (including its directors, partners, officers, employees or servants);
- (b) any corporation or organisation (including its directors, officers, partners, employees or servants) owned or controlled by any Insured named herein or subsidiary to any Insured named herein or any co-owner of the property insured hereunder.

## **SUBROGATION WAIVER (OTHER INTERESTED PARTIES) (OTHERXB4)**

The wording of the memorandum to all Sections, headed "Subrogation Waiver", is extended to include the following paragraph:

Any party described in the memorandum to Section 1, headed "Interests of Other Parties", unless the Insured expressly agrees to the pursuit of recovery action against that party.

# CONDITIONS APPLICABLE TO ALL SECTIONS

## **MISDESCRIPTION, NON-DISCLOSURE AND ALTERATION (UNDISXB4)**

Condition 1 of the policy is extended to include the following paragraph:

Notwithstanding the provisions of Conditions 1 and 2, the Insured shall not be prejudiced by any unintended and/or inadvertent error, omission or misdescription of the risk, interest or property insured under the policy, failure to advise the Insurer(s) of any change of risk, interest or property insured or failure to comply with any statutory requirement, provided that the Insured's officer responsible for insurance shall, upon becoming aware of any such unintended and/or inadvertent act, error or omission, inform the Insurer(s) as soon as reasonably practicable and that the Insured shall, upon request, pay any reasonable extra premium to the Insurer(s) from the date of the increase in risk.

## **SPRINKLER INSTALLATIONS (SPRAYXB4)**

Condition 3 is amended as follows:

The words "or are required by law to be protected" are deleted.

The following paragraphs are added:

Where the sprinkler Premises are leased to a tenant and the lease provides that the tenant shall provide for maintenance of the installation, any failure so to do will not prejudice the rights of the Insured, provided that the Insured, upon becoming aware of the failure, shall either immediately provide for maintenance of the installation or immediately give notice in writing to the Insurer(s) and on demand pay such reasonable additional premium as the Insurer(s) may require.

Where the Insured or a tenant responsible to provide for maintenance of the installation enters into an agreement for maintenance with a contractor and such an agreement provides in substance that the Insured or tenant shall indemnify and/or hold harmless and/or release from liability the contractor in respect of loss, destruction or damage which may occur as a result of any peril insured against by this policy, the insurance hereby shall not be prejudiced by the Insured or the said tenant agreeing to such provision. The indemnity and/or hold harmless provision and/or release from liability shall be equally binding upon the Insurer(s), who shall waive all rights of subrogation which may have otherwise existed against the tenant.

The Insured's officer responsible for insurance shall, upon becoming aware of such agreement, inform the Insurer(s) as soon as reasonably practicable and a reasonable additional premium will be paid if required by the Insurer(s).

## **NOTIFICATION OF CLAIMS (CLMSAXB4)**

The words "within thirty (30) days" in Condition 6 are amended to read "as soon as practicable". The final sentence of Condition 6 is deleted.

## **BREACH OF CONDITIONS (BREAKXB4)**

Any breach of a condition without the knowledge or consent of the Insurance Officer of the Insured shall not prejudice or invalidate this insurance provided that due diligence is exercised at all times by the Insured.