

# **EPSILON UNDERWRITING AGENCIES**

## **COMBINED BUSINESS LIABILITY INSURANCE POLICY**

### **IMPORTANT NOTICE**

**This is a composite liability insurance policy providing cover for Personal Injury, Property Damage and Financial Loss as per the terms and conditions of the Policy.**

**Cover in respect to Financial Loss is provided on a claims made basis. Accordingly, this Policy only covers claims in respect to Financial Loss that are first made against the Insured during the Period of Insurance.**

**The Insured should carefully read all of this Policy.**

# **SECTION 1 – PERSONAL INJURY AND PROPERTY DAMAGE**

## **INSURING CLAUSE**

1. Subject to the terms of this Policy, Underwriters will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay by way of compensation (which includes costs payable by the Insured to a third party as ordered by a court or agreed to be paid with the consent of Underwriters) in respect of Personal Injury and/or Property Damage first happening during the Period of Insurance as a result of an Occurrence in connection with the Insured's Business.

## **LIMIT OF INDEMNITY**

- 2.1 Underwriters' liability to pay compensation (which includes costs payable by the Insured to a third party as ordered by a court or agreed to be paid with the consent of Underwriters) shall not exceed the sum stated in the Schedule in respect of any one claim or series of claims arising from one Occurrence.
- 2.2 The total aggregate liability of Underwriters for any one Period of Insurance for all claims in respect of or in any way connected with the Insured's Products shall not exceed the sum stated in the Schedule.

## **DEFENCE COSTS**

- 3.1 Underwriters will pay, in addition to the Limit of Indemnity, Defence Costs.
- 3.2 Underwriter's monetary liability in respect to Defence Costs shall be in the same proportion as the monetary amount available in the Limit of Indemnity under this Policy, at the time of disposal of any Claim, bears to the amount paid to dispose of the Claim.

## **CROSS LIABILITY**

4. Subject at all times to the terms of this Policy, each person or party indemnified is separately indemnified in respect to claims made by any of them against any other of them provided that Underwriters' total liability shall not exceed the Limit of Indemnity for all claims under this Policy.

## **SECTION 2 – FINANCIAL LOSS (Professional Indemnity)**

### **INSURING CLAUSE**

5. Subject to the terms of this Policy, Underwriters will pay to or on behalf of the Insured all sums which the Insured shall become legally liable to pay as a result of Claims first made against the Insured during the Period of Insurance in respect to Financial Loss arising out of any Wrongful Act committed or alleged to have been committed by or on behalf of the Insured in connection with the Insured's Business.

### **LIMIT OF INDEMNITY**

6. Underwriters' liability for any one Claim and for all Claims in the aggregate during the Period of Insurance will not exceed the Limit of Indemnity.

### **DEFENCE COSTS**

- 7.1 Underwriters will pay, in addition to the Limit of Indemnity, Defence Costs.
- 7.2 Underwriter's monetary liability in respect to Defence Costs shall be in the same proportion as the monetary amount available in the Limit of Indemnity under this Policy, at the time of disposal of any Claim, bears to the amount paid to dispose of the Claim.

### **AUTOMATIC REINSTATEMENT**

8. If this Clause is noted in the Schedule as included, then in the event of notification to Underwriters during the Period of Insurance of a Claim which is totally unrelated to any previous Claim under this Policy, cover will be deemed to be reinstated for such amount, if any, as may be paid by Underwriters to dispose of such Claim or subsequent Claim, so as to remain in force during the Period of Insurance for the Limit of Indemnity, provided that:
  - 8.1 The aggregate of amounts so reinstated will not exceed an amount equal to the Limit of Indemnity; and,
  - 8.2 Such reinstatement applies only in excess of the total aggregate indemnity available under any policy or policies which apply in excess of this Policy.
  - 8.3 Cover as provided by this Clause is limited to one automatic reinstatement.

# CLAUSES APPLICABLE TO BOTH SECTIONS OF THE POLICY

## DEDUCTIBLE

- 9.1 The amount of the Deductible is specified in the Schedule and is the amount which is payable by the Insured in respect of:
- (a) any compensation (including claimant's costs and expenses)/Financial Loss payable by an Insured in respect of a Claim; or
  - (b) Defence Costs
- 9.2 Underwriters' liability applies only to that part of the amount payable to dispose of a Claim which exceeds the Deductible and the Deductible will be borne by The Insured at The Insured's own risk.

## DEFINITIONS

- 10.1 The "***Insured***" means the Insured named in the Schedule and includes:
- (a) Any subsidiary companies of the Insured provided that any subsidiary companies acquired or created during the Period of Insurance are advised to Underwriters within thirty (30) days of such acquisition/creation and the Insured has agreed to any terms imposed by Underwriters for the inclusion of such newly acquired/created subsidiary companies.
  - (b) Any other entity controlled by the Insured and over which the Insured assumes active management. This includes any entity newly acquired or formed by the Insured of which the Insured are the sole owner or in which The Insured maintain a majority interest provided that cover does not apply to Personal Injury, Property Damage and/or any Wrongful Act occurring/committed before the Insured acquired or formed the entity.
  - (c) Any director or executive officer of the Insured or, where the Insured is a partnership, any partner of the Insured, but only while acting within the scope of their duties for the Insured in such capacity.
  - (d) Any past or present Worker acting within the scope of their employment;
  - (e) The officers, committee and members of the Insured's canteen, social, sports, first aid/medical, fire fighting and employee welfare organizations in their respective capacity as such.
  - (f) Any principal in respect of the liability of such principal to third parties arising out of the performance by the Insured of any work performed under written contract or agreement with such principal

provided this Policy shall only indemnify the principal to the extent that the Insured is required to insure such liability pursuant to such written contract or agreement, but subject always to the terms of this Policy.

- (g) Joint venture arrangements provided that cover does not apply to the other joint venture parties;
  - (h) Any entity of The Insured, as allowed under Definition 10.a), 10.b) and 10.g), which is sold, ceased trading, merged or wound up during the Period of Insurance in respect of those activities of the Insured prior to the sale, cessation of trade, merger or winding-up.
- 10.2 **“Underwriters”** means certain Underwriters at Lloyds.
- 10.3 **“Personal Injury”** means death, bodily injury, sickness, disease or shock to any person.
- 10.4 **“Property Damage”** means physical damage to, loss of or destruction of tangible property including resulting loss of use of property. All such loss of use shall be deemed to happen at the time of the physical damage that caused such loss of use.
- 10.5 **“Financial Loss”** means damages and/or claimants costs payable by the Insured pursuant to any award or judgement entered against the Insured including any settlements negotiated by or with Underwriter’s approval but does not include:
- (a) Compensation in respect of Personal Injury and/or Property Damage
  - (b) Amounts uninsurable at law.
  - (c) Defence Costs
- 10.6 **“Occurrence”** means an event, including continuous or repeated exposure to substantially the same general conditions, which results in Personal Injury and/or Property Damage neither expected nor intended from the standpoint of the Insured. All events of a series consequent on or attributable to one source or original cause shall be deemed one Occurrence.
- 10.7 **“Wrongful Act”** means any:
- (a) Act, error or omission.
  - (b) Negligent misstatement or negligent misrepresentation
  - (c) Infringement of any Intellectual Property Right;
  - (d) Libel, slander or defamation;
- 10.8 The **“Insured’s Business”** is the business specified in the Schedule.

- 10.9 “**Period of Insurance**” is the period specified in the Schedule or the period specified in any subsequently issued renewal documentation.
- 10.10 “**Claim**” means a written demand for compensation made by a third party against the Insured, but does not include Defence Costs.
- 10.11 “**Defence Costs**” means expenses (including legal, investigative and expert (medical and non-medical) costs, fees, disbursements and expenses) incurred with the prior written consent of Underwriters by or on behalf of the Insured or Underwriters in the investigation of an Occurrence or settlement or defence of a Claim.
- 10.12 “**Insured’s Products**” means any goods or products (after they have ceased to be in the possession or under the control of the Insured) which have been manufactured, constructed, produced, processed, assembled, erected, installed, treated, altered, serviced, repaired, sold, supplied or distributed by the Insured.
- 10.13 “**Worker**” means any person employed by the Insured or deemed to be employed by the Insured pursuant to any Workers’ Compensation Law.
- 10.14 “**Workers’ Compensation Law**” means any law relating to compensation for Personal Injury to Workers or employees.
- 10.15 “**Intellectual Property Right**” means trade name, trade secret, trade mark, domain names, metatags and copyright.
- 10.16 “**Employment Practices**” means any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination (sexual or otherwise) in respect of employment by the Insured.
- 10.17 “**Pollutants**” means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 10.18 “**Asbestos**” means that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite.
- 10.19 “**Terrorism**” shall mean any act, use, threat of force, violence, and intimidation by any person, persons, body, group, network or organisation for any political, religious, ideological purpose whatsoever.

## **EXCLUSIONS APPLICABLE TO SECTION 1**

11. Section 1 of this Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:
- 11.1 (a) Personal Injury to any Worker.  
(b) Any Workers' Compensation Law provided that any liability created by such Workers' Compensation Law is otherwise coverable under a statutory fund and/or statutory scheme, policy of insurance or self insurance in respect to the relevant Workers' Compensation Law .  
(c) The provisions of any industrial award or agreement or determination or any contract of employment or workplace agreement where such liability would not have been imposed in the absence of such industrial award or agreement or determination.  
(d) Employment Practices.
- 11.2 The ownership, operation, possession or use by or on behalf of the Insured of any vehicle or trailer which is required by law to be registered or in respect of which there is required by law to be in force a policy of compulsory liability insurance or in relation to which there existed a statutory scheme providing compensation for Personal Injury. This Exclusion does not apply to liability:  
(a) In respect to Personal Injury where the compulsory liability insurance or statutory scheme does not provide indemnity provided that the failure to provide indemnity by the compulsory liability insurance or statutory scheme is not due to the Insured's breach of legislation relating to vehicles.  
(b) Arising out of the loading or unloading of goods to or from any vehicle.  
(c) Caused by the use of any vehicle or trailer or plant forming part of or attached to or used in connection with any vehicle or trailer whilst being used as a tool of trade at any worksite. Cover allowed under this Clause 11.2 (c) does not extend to include liability arising from transit to or from worksites or vehicles used for transport or haulage.
- 11.3 Property Damage to property owned, leased, hired by, under hire purchase, on loan or rented to the Insured or otherwise in the Insured's care, custody or control other than:  
(a) Premises (or to contents thereof) temporarily occupied by the Insured for the purpose of carrying out works thereto or thereon, but no indemnity is granted for liability in respect of physical damage or destruction of that part of any premises on

which the Insured is or has been working on if the physical damage or destruction arises from such work.

- (b) Premises tenanted by the Insured.
  - (c) Directors', employees' or visitors' personal effects.
  - (d) Other property (not owned by the Insured) temporarily in the Insured's possession but:
    - i. No indemnity is granted for liability in respect to physical damage to or destruction of that part of any property upon which the Insured is or has been working; and
    - ii. Underwriters' limit of liability under this Clause 11.3 (d) does not exceed \$100,000 each and every occurrence,
- 11.4 Liability assumed by the Insured under any contract or agreement which requires the Insured to effect material damage insurance on premises, property or goods not owned by the Insured.
- 11.5 Loss of or damage to or the costs of recall, removal, repair, alteration, reconditioning, replacement or reinstatement of any of the Insured's Products caused or necessitated by the defective condition or unsuitability of any such Products or part of such Products.
- 11.6 Any Product which is incorporated into the structure, machinery or controls of any aircraft or aerial device.
- 11.7 (a) The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants, provided always that this Clause shall not apply to liability which is directly caused by a sudden, accidental, instantaneous, unintended, identifiable and unexpected happening which takes place in its entirety at a specific time and place.
- (b) Cost and expenses incurred in the prevention of the actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.
- (c) The total aggregate liability of Underwriters for all claims covered in any one Period of Insurance in respect to this Exclusion 11.9 shall not exceed the Section 1 Limit of Indemnity shown in the Schedule.
- 11.8 Personal Injury sustained due to the inhalation or ingestion of, or exposure to:
- (a) Tobacco or tobacco smoke.
  - (b) Any ingredient or additive present in any articles, items or goods which contain or include tobacco.

## EXCLUSIONS APPLICABLE TO SECTION 2

12. Section 2 of this Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:

### 12.1 Claims:

- (a) Made against or intimated to The Insured prior to the commencement of the Period of Insurance;
- (b) Notified under any previous policy;
- (c) Arising out of or connected with any things, facts or circumstances which:
  - i. The Insured were aware of prior to commencement of the Period of Insurance; and,
  - ii. A reasonable person in The Insured's position would have considered might give rise to a claim against The Insured.

### 12.2 Any Claim:

- (a) By any company, firm or partnership in which the Insured named in the Schedule have a financial interest or which the Insured named in the Schedule otherwise control, direct or influence;
- (b) By any family member of any person who has a financial interest or otherwise controls, directs or influences the Insured named in the Schedule;
- (c) By any Related Body Corporate (as defined in s.50 of the Corporations Act) of The Insured named in the Schedule;
- (d) Arising out of or resulting from the Insured's activities as a trustee, partner, director, officer or employee of any employee trust or employee welfare organisation or superannuation/pension fund.
- (e) Arising out of any breach by an Insured of a duty owed in the capacity of a director, secretary or officer of a body corporate.
- (f) Arising out of an allegation of an infringement or breach of Parts IV (Restrictive Trade Practices), IVA (Unconscionable Conduct) or VIII (Resale Price Maintenance) of the *Trade Practices Act 1974* (Cth) or similar Australian or international legislation.

12.3 Any Wrongful Act committed prior to the Retroactive Date specified in the Schedule, if any.

12.4 The insolvency or bankruptcy of The Insured.

- 12.5 Any Wrongful Act of the Insured or the Insured's consultants, contractors, sub-contractors or agents which are dishonest, reckless, wilful, malicious, fraudulent or criminal. This Exclusion shall not apply to the vicarious liability of the Insured in respect to any dishonest, reckless, wilful, malicious, fraudulent or criminal Wrongful Act committed by a Worker or by a consultant, contractor, sub-contractor or agent of the Insured (as defined by Definition 11.1 a) and 11.1 b) of the Policy); provided that no cover will apply to any person/organisation who actually or allegedly committed such dishonest, reckless, wilful, malicious, fraudulent or criminal Wrongful Act.
- 12.6 The actual, alleged or threatened discharge, dispersal, release, seepage, migration or escape of Pollutants.
- 12.7 Any trading debt incurred, or any guarantee in respect of such debt given, by the Insured.
- 12.8 Any Claim for loss of use of tangible property resulting from the failure of The Insured's Products to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by The Insured.
- 12.9 The actual or alleged infringement of any patent or inducing the infringement of any patent.

## **EXCLUSIONS APPLICABLE TO BOTH SECTION 1 AND SECTION 2**

- 13. This Policy does not cover liability directly or indirectly caused by, arising out of or in any way connected with:
  - 13.1 Liabilities assumed by the Insured under the terms of a contract, agreement or warranty unless the Insured would have been liable in the absence of such contract, agreement or warranty.
  - 13.2 Costs incurred in the rectification of any faulty work performed by or on behalf of the Insured.
  - 13.3 Ownership, maintenance, operation, possession or use by or on behalf of the Insured of any watercraft, hovercraft, aircraft or aerial device provided however that this Exclusion 11.7 does not apply to Section 1 of this Policy in respect to watercraft under 8 metres in length.

- 13.4 Claims made and actions instituted within the United States of America, the Dominion of Canada, their respective territories and protectorates and any other territory coming within the jurisdiction of the courts of the United States of America or the Dominion of Canada and claims and actions to which the laws of the United States of America, the Dominion of Canada and their territories and protectorates apply. Provided that this Exclusion 13.2 does not apply to claims and actions caused by an employee of the Insured who normally resides outside of the United States of America and/or the Dominion of Canada while such employee is temporarily traveling on behalf of the Insured.
- 13.5 Asbestos.
- 13.6 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, insurrection, rebellion, revolution, military or usurped power or confiscation, nationalization, requisition, destruction of or damage to property by or under order of any government or public or local authority.
- 13.7 Terrorism or occasioned by or happening through or in consequence of Terrorism.
- 13.8 (a) Ionising radiations or contamination from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self sustaining process of nuclear fission or fusion.  
(b) Nuclear weapons material.
- 13.9 Fines, penalties, punitive damages, exemplary damages, multiple damages, liquidated damages and/or aggravated damages.

## **CONDITIONS**

14. The Insured shall notify Underwriters in writing as soon as practicable of any change materially affecting the facts or circumstances existing at the commencement of this insurance or at any subsequent renewal date.
- 15.1 The Insured shall take all reasonable precautions to prevent Personal Injury, Property Damage and Financial Loss.
- 15.2 If the Insured becomes aware of a situation which could, if not rectified, lead to an Occurrence/Claim or increase the quantum of any subsequent claim made under this Policy, the Insured shall use due diligence and do

- and concur in doing all things reasonably practicable to avoid or diminish any liability hereunder.
- 15.3 Costs incurred in compliance with this Condition 14.2 shall be at the Insured's own cost, unless otherwise agreed in writing by Underwriters.
16. In the event of an Occurrence the Insured shall:
- 16.1 Immediately take at their own expense all responsible steps to prevent Personal Injury or Property Damage arising or continuing out of such Occurrence.
  - 16.2 Give notice in writing to Underwriters as soon as practicable of every Occurrence, and shall immediately forward to Underwriters all information as Underwriters may require. Every letter, claim, demand, writ, summons or process shall be forwarded to Underwriters immediately it is received.
  - 16.3 Not, without Underwriters written consent, make any admission, offer, promise or payment in connection with any Occurrence or claim.
  - 16.4 Use its best endeavors to preserve all property, products, appliances and plant and all other things which may assist in the investigation or defence of a claim or in the exercise of rights of subrogation and so far as may be reasonably practicable no alteration or repair shall be effected without the consent of Underwriters until Underwriters shall have had an opportunity of inspection.
17. In the event of a Claim in respect to Financial Loss the Insured shall:
- 17.1 Give notice in writing to Underwriters as soon as practicable within the Period of Insurance provided always that such written notice is given to Underwriters during the Period of Insurance in which the claim is made and shall immediately forward to Underwriters all information as Underwriters may require and every letter, claim, demand, writ, summons or process shall be forwarded to Underwriters immediately it is received.
  - 17.2 Not, without Underwriters written consent, make any admission, offer, promise or payment in connection with any Claim.
18. Underwriters shall be entitled to take over the conduct in the name of the Insured of the defence or settlement of any claim or to prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as Underwriters require.

19. Underwriters:
- 19.1 May at any time discharge their total liability to the Insured in respect of any one Claim or series of Claims (whether arising from one Occurrence or in the aggregate any one Period of Insurance) by paying to or on behalf of the Insured:
- (a) The total amount in respect of the said Claim or Claims to which the Insured is entitled to indemnity under this Policy, or
  - (b) The total amount sought by the Claimant(s) in the said Claim or Claims, or
  - (c) The total amount for which the said Claim or Claims can be settled.
- 19.2 Will in addition pay Defence Costs incurred up to the date of the said payment as provided by this Policy.
- 19.3 Upon such payment, shall relinquish conduct or control of such Claims and be under no further liability under this Policy in connection with such Claim or Claims.
20. In the event of any payment under this Policy, Underwriters shall be subrogated to all the Insured's rights of recourse against any party(ies) and the Insured shall execute and deliver any appropriate instruments and papers and do whatever else is necessary to secure such rights. The Insured is not to waive, release or abandon any right of recourse against such other party(ies) without first obtaining written permission from the Underwriters.
21. When a loss paid under this Policy is also recoverable under another policy or policies of insurance, Underwriters reserve the right to seek contribution from the other insurer or insurers.
22. If The Insured are deceased, incompetent, infirm, disabled, insolvent or bankrupt, Underwriters will cover The Insured's estate, heirs, legal personal representatives or powers of attorney for Claims to the extent that in the absence of such death, incompetency, infirmity, disability, insolvency or bankruptcy, such Claims would have been covered under this Policy.
23. Where any of The Insured fails to comply with The Insured's duty of disclosure, makes a misrepresentation or is in breach of a Policy term or condition, Underwriters will not deny indemnity to any other one of The Insured on these grounds if that other one of The Insured was unaware of

- the matter not disclosed or the fact of the misrepresentation or did not breach or condone the breach of the Policy term or condition.
24. The Insured may cancel this Policy at any time by giving written notice to Underwriters. Underwriters may cancel this Policy at any time where it is entitled to do so pursuant to the Insurance Contracts Act 1984 or any amendments thereto.
  25. This Policy and any endorsements attached to this Policy shall be read as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule shall bear such specific meaning wherever it may appear.
  26. This Policy shall be interpreted in accordance with the laws of New South Wales.