

EPSILON UNDERWRITING AGENCIES PTY LTD

EXCESS PUBLIC AND PRODUCTS LIABILITY POLICY

INSURING CLAUSE

1. Subject to the terms of this Policy, Underwriters will indemnify the Insured in accordance with the applicable terms, exceptions, conditions and endorsements of the Primary Insurance on a follow form basis with which this Policy shall run concurrently.
2. Provided that such loss is covered by, or but for the relevant limit of liability would have been covered by the Primary Insurance, Underwriters shall only be liable after the Primary Insurer(s) have paid or have been held legally liable to pay the respective limits of liability under the Primary Insurance.

LIMIT OF INDEMNITY

3. Underwriters' liability in respect of one occurrence or series of occurrences arising from one originating cause shall not exceed the sum stated in the Schedule.
4. If the Primary Insurance allows cover in respect to Products Liability, the total aggregate liability of Underwriters for any one Period of Insurance for all claims in respect of or in any way connected with Products Liability shall not exceed the sum stated in the Schedule.

DEFENCE COSTS

5. Underwriters will pay, in addition to the Limit of Indemnity, the proportion of Defence Costs as the Limit of Indemnity available under this Policy bears to the amount paid to dispose of any Claim.
6. Underwriters shall not pay Defence Costs in respect of any Claim after Underwriters have indemnified the Insured to the Limit of Indemnity.

MAINTENANCE OF PRIMARY INSURANCE

7. The Insured shall maintain the Primary Insurance and renewals or replacements thereof with the limits of liability as stated in the Schedule in full effect during the Period of Insurance, except for any reduction or exhaustion of the aggregate limit or limits contained in such policies solely by payment of claims arising out of losses happening during the Period of Insurance.
8. Failure to comply with clause 7 of this Policy or the bankruptcy or insolvency of any of the Primary Insurers shall not invalidate this Policy but in the event of such circumstances Underwriters shall be liable only to the extent that they would have been liable had such circumstances not occurred during the Period of Insurance.

STEP-DOWN PROVISION

9. If, following the payment of any claim or claims by the Primary Insurer(s) during the Period of Insurance, the amount of indemnity provided by such Primary Insurance is:-
 - a) Partially reduced, then this Policy shall apply in excess of the reduced amount of the underlying insurance for the remainder of the Period of Insurance.

- b) Totally exhausted, then this Policy shall continue in force as underlying insurance until expiry thereof subject to the terms and conditions of the underlying insurance.

DEFINITIONS

10. The “**Insured**” means the Insured named in the Schedule.
11. “**Underwriter/s**” means certain Underwriters at Lloyds.
12. “**Primary Insurance**” means a policy or policies of public and/or products liability insurance issued to the Insured by the Primary Insurer(s).
13. “**Primary Insurer(s)**” means the insurers who have issued the Primary Insurance.
14. “**Period of Insurance**” is the period specified in the Schedule or the period specified in any subsequently issued renewal documentation.
15. “**Products Liability**” means cover provided under the Primary Insurance in respect to 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.
16. “**Defence Costs**” means expenses incurred with the prior written consent of Underwriters by or on behalf of the Insured or Underwriters in the investigation, settlement or defence of a Claim including legal costs and disbursements.
17. “**Claim**” means a demand for compensation made by a third party against the Insured, but does not include the Insured’s costs and expenses.

CONDITIONS

18. The insurance afforded by this Policy shall follow that of the underlying insurance provided that:-
- a) Underwriters shall not be obliged to assume charge of the settlement or defense of any claim or suit brought or proceedings instituted against the Insured, but Underwriters shall have the right and be given the opportunity to participate with the Insured or the Primary Insurer(s), or both, in the defense and control of any claim, suit or proceedings relative to an occurrence where the claim or suit or proceedings involve or appears reasonably likely to involve Underwriters in which event the Insured, the Primary Insurer(s) and the Underwriter shall co-operate in all things in the defense and control of such claim, suit or proceedings.
 - b) The Insured shall co-operate with the Primary Insurer(s) as required by the terms of the Primary Insurance, and comply with all the terms and conditions thereof, and shall enforce any right of contribution or indemnity against any person, corporation or organisation who may be liable to the Insured in respect of any occurrence.
 - c) The Insured shall not, without Underwriters written consent, make any admission, offer, promise or payment in connection with any occurrence or Claim.
19. 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.

20. In respect to any Claim or occurrence that is likely to exceed 50% of the relevant limit of liability of the Primary Insurance, the Insured shall give notice in writing to Underwriters as soon as practicable and shall immediately forward to Underwriters all information as Underwriters may require. Every letter, claim, demand, writ, summons or process in respect to such matters shall be forwarded to Underwriters immediately it is received.
21. Underwriters:
- a) may at any time discharge their total liability to the Insured in respect of any one Claim or series of Claims arising from one occurrence by paying to or on behalf of the Insured:
 - I. The total amount in respect of the said Claim or Claims to which the Insured is entitled to indemnity under this Policy, or
 - II. The total amount sought by the Claimant(s) in the said Claim or Claims, or
 - III. The total amount for which the said Claim or Claims can be settled.
 - b) will in addition pay Defence Costs incurred up to the date of the said payment as provided by this Policy.
 - c) 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. This Policy shall be interpreted in accordance with the laws of Australia.