

# **EPSILON UNDERWRITING AGENCIES**

## **INDIVIDUAL CONSTRUCTION CONTRACT LIABILITY POLICY**

### **INSURING CLAUSE**

1. Subject to the terms of this Policy, Underwriters will pay to or on behalf of the Insured all Claims which the Insured shall become legally liable to pay by way of compensation and claimant's costs and expenses in respect of Personal Injury and/or Property Damage first happening during the Construction Period as a result of an Occurrence in connection with the Construction Contract.

### **LIMIT OF INDEMNITY**

2. Underwriters' liability to pay compensation and claimant's costs and expenses shall not exceed the sum stated in the Schedule in respect of any one Claim or series of Claims arising from one Occurrence.

### **DEFENCE COSTS**

3. Underwriters will pay, in addition to the Limit of Indemnity, Defence Costs.
4. 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.

### **DEDUCTIBLE**

5. The amount of the Deductible is specified in the Schedule and is the amount which is payable by the Insured in respect of:
  - 5.1 any compensation (including claimant's costs and expenses) payable by an Insured in respect of a Claim; or
  - 5.2 Defence Costs
6. 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.

## CROSS LIABILITY

7. 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.

## DEFINITIONS

8.1 The "**Insured**" means the Insured named in the Schedule and includes:

- (a) any subsidiary companies of the Insured.
- (b) any other entity controlled by the Insured and over which the Insured assumes active management.
- (c) any director, executive officer or Worker 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 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 the Construction Contract 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 the Construction Contract, but subject always to the terms of this Policy.

8.2 "**Underwriters**" means certain Underwriters at Lloyds.

8.3 "**Personal Injury**" means death, bodily injury, sickness, disease or shock to any person.

8.4 "**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.

8.5 "**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.

8.6 The "**Construction Contract**" is the contract specified in the Schedule.

- 8.7 “**Construction Period**” is the period specified in the Schedule.
- 8.8 “**Worker**” means any person employed by the Insured or deemed to be employed by the Insured pursuant to any Workers’ Compensation Law.
- 8.9 “**Workers’ Compensation Law**” means any law relating to compensation for Personal Injury to Workers.
- 8.10 “**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.
- 8.11 “**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.
- 8.12 “**Asbestos**” means:
- (a) that group of natural fibrous silicate minerals that comprises Actinolite, Amosite, Anthophyllite, Chrysotile, Crocidolite and Tremolite.
  - (b) that group of man made fibers that comprises mineral wool, rock wool, glass fiber, ceramic fibers and superfine fibers.
  - (c) Asbestos Products and Products including Asbestos.
- 8.13 “**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.
- 8.14 “**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.
- 8.15 “**Claim**” means a demand for compensation made by a third party against the Insured, but does not include the Insured’s costs and expenses.
- 8.16 “**Completed Operations**” means contracts or work which have been completed and handed over to the Principal/Owner.

## EXCLUSIONS

9. This Policy does not cover liability for Claims or claimant's costs and expenses directly or indirectly caused by, arising out of or in any way connected with:
  - 9.1. (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.
- 9.2 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) arising out of the loading or unloading of goods to or from any vehicle.
  - (b) 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 9.2 (b) does not extend to include liability arising from transit to or from worksites or vehicles used for transport or haulage.
- 9.3 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.

- 9.4 Costs incurred in the rectification of any faulty work performed by or on behalf of the Insured.
- 9.5 Completed Operations.
- 9.6 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.
- 9.7 The rendering of or failure to render professional advice or service by the Insured or any error or omission connected therewith. Provided that this Exclusion does not apply to the rendering of first aid or medical services on the Insured's premises by medical persons employed by the Insured.
- 9.8 Ownership, maintenance, operation, possession or use by or on behalf of the Insured of any watercraft, hovercraft, aircraft or aerial device.
- 9.9 (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 Clause 9.9 shall not exceed the Limit of Indemnity shown in the Schedule.
- 9.10 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.
- 9.11 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.

9.12 Asbestos.

9.13 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.

9.14 Terrorism or occasioned by or happening through or in consequence of Terrorism.

- 9.15 (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.

9.16 Fines, penalties, punitive damages, exemplary damages, liquidated damages and/or aggravated damages.

9.17 Property Damage to underground services (such as but not limited to water, gas, sewerage, sewage, fuel pipes, electric and telephone cables) or any underground property or structure for the purpose of storing, conveying, transporting, transmitting, delivering of electricity, water, gas, fuel, telecommunications media, signals, radio and other waves unless prior to the commencement of any work, the Insured has enquired with the relevant authorities or owners of such services, property or structures as to the exact location of such services, property or structures and takes all precautions to avoid such services, property and structures.

9.18 The use of any electric, oxy-acetylene or similar welding or cutting equipment and allied processes by or on behalf of the Insured unless such welding or cutting was done in full compliance with Australian Standard 1674 "Safety in Welding and Allied Processes.

## CONDITIONS

- 10 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.
- 11 In the event of an Occurrence the Insured shall:
  - 11.1 immediately take at their own expense all responsible steps to prevent Personal Injury or Property Damage arising or continuing out of such Occurrence.
  - 11.2 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.
  - 11.3 not, without Underwriters written consent, make any admission, offer, promise or payment in connection with any Occurrence or Claim.
  - 11.4 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.
- 12 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.
- 13 Underwriters:
  - 13.1 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:
    - (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.
- 13.2 will in addition pay Defence Costs incurred up to the date of the said payment as provided by this Policy.
- 13.3 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.
- 14 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.
- 15 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.
- 16 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.
- 17 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.
- 18 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.
- 19 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.

20 This Policy shall be interpreted in accordance with the laws of New South Wales.