



## Policy Wording

### Management Consultants Civil Liability

#### Table of Contents

|   |          |  |           |
|---|----------|--|-----------|
| <b>Covers</b>                             | <b>2</b> | <b>Exclusions</b>                                      | <b>7</b>  |
| Civil Liability                           | 2        | Anti-Competitive Conduct                               | 7         |
| Misleading or Deceptive Conduct           | 2        | Bodily Injury/Property Damage                          | 7         |
| Intellectual Property                     | 2        | Contractual Liability/Performance Guarantees           | 7         |
| Defamation                                | 2        | Corporate Advisory Activities                          | 7         |
| Lost Documents                            | 2        | Costs Assessment                                       | 7         |
| Fraud/Dishonesty                          | 2        | Infrastructure   | 8         |
| Defence                                   | 2        | Insolvency   | 8         |
| <b>Standard Extensions</b>                | <b>2</b> | Intentional Acts                                       | 8         |
| Businessguard Advisory Panel              | 2        | Misdeeds   | 8         |
| Court Attendance                          | 2        | Patent/Trade Secret                                    | 8         |
| Extended Reporting Period                 | 3        | Pollution  | 8         |
| Joint Ventures                            | 3        | Prior Claims/ Circumstances                            | 8         |
| Previous Business Name                    | 3        | Trade Debts  | 8         |
| Property Cover for Lost Documents         | 3        | USA/Canada   | 8         |
| Quasi Judicial Costs                      | 3        | US Sanctions   | 8         |
| Vicarious Liability                       | 3        | War/Terrorism  | 8         |
| <b>Optional Extensions</b>                | <b>4</b> | Confidential Information                               | 8         |
| Employment Practice Liability             | 4        | Consequential Loss                                     | 9         |
| Fidelity                                  | 4        | Director/Principal/Partner Dishonesty                  | 9         |
| <b>Definitions</b>                        | <b>4</b> | Dual Controls  | 9         |
| “Bodily Injury”                           | 4        | Extortion or Kidnap & Ransom                           | 9         |
| “Claim”                                   | 4        | Geographical Limits                                    | 9         |
| “Continuity Date”                         | 4        | Loss Establishment Costs                               | 9         |
| “Damages”                                 | 4        | Loss Sustained After Knowledge                         | 9         |
| “Defence Costs”                           | 4        | Profit & Loss or Inventory Computation                 | 9         |
| “Direct Financial Loss”                   | 4        | <b>Claims</b>  | <b>9</b>  |
| “Discovered” or “Discovers” or Discovery” | 5        | Notification of Claims                                 | 9         |
| “Dishonest Acts”                          | 5        | Related Claims   | 10        |
| “Documents”                               | 5        | Related Dishonest Acts                                 | 10        |
| “Employee”                                | 5        | Continuity   | 10        |
| “Fraud/Dishonesty”                        | 5        | Defence/Settlement                                     | 10        |
| “Infringement”                            | 5        | Insurer’s Consent                                      | 10        |
| “Insured”                                 | 5        | Loss Mitigation  | 10        |
| “Insurer”                                 | 5        | Insured’s Consent                                      | 11        |
| “Limit of Liability”                      | 5        | Cooperation  | 11        |
| “Loss”                                    | 6        | Fraudulent Claims                                      | 11        |
| “Misleading or Deceptive Conduct”         | 6        | Fraud/Dishonesty of Principals, Partners and Directors | 11        |
| “Money”                                   | 6        | Allocation   | 11        |
| “Policy Period”                           | 6        | Allocation Disputes                                    | 11        |
| “Policyholder”                            | 6        | Policy Purchase  | 12        |
| “Pollutants”                              | 6        | Administration   | 12        |
| “Premium”                                 | 6        | <b>Limit and Retention</b>                             | <b>12</b> |
| “Professional Services”                   | 6        | Limit of Liability                                     | 12        |
| “Property Damage”                         | 6        | Retention  | 12        |
| “Retention”                               | 6        | <b>General Provisions</b>                              | <b>14</b> |
| “Retroactive Date”                        | 6        | Assignment   | 14        |
| “Sanctioned Country”                      | 6        | Cancellation   | 14        |
| “Securities”                              | 6        | By <b>Policyholder</b> :                               | 14        |
| “Subsidiary”                              | 6        | By <b>Insurer</b> :                                    | 14        |
| “Third Party”                             | 7        | Insolvency   | 14        |
| “Trade Secret”                            | 7        | Plurals, Headings and Titles                           | 14        |
| “Wrongful Act”                            | 7        | Scope and Governing Law                                | 14        |
|   |          | Subrogation  | 14        |
|   |          | Validity   | 14        |



In consideration of the payment of the **Premium** and subject to all the provisions of this policy, the **Insurer** agrees as follows.

## Covers

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All cover under this policy is afforded solely with respect to **Claims** first made against an **Insured** during the **Policy Period** and reported to the **Insurer** as required by this policy.

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| <i>Civil Liability</i>                 | The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for any civil liability of the <b>Insured</b> .   |
| <i>Misleading or Deceptive Conduct</i> | The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for any <b>Misleading or Deceptive Conduct</b> of the <b>Insured</b> .  |
| <i>Intellectual Property</i>           | The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for any <b>Infringement</b> .   |
| <i>Defamation</i>                      | The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for libel or slander committed by an <b>Insured</b> .   |
| <i>Lost Documents</i>                  | The <b>Insurer</b> will pay on behalf of any <b>Insured</b> all <b>Damages</b> resulting from any <b>Claim</b> for the destruction, damage to, loss, erasure or mislaying of <b>Documents</b> by an <b>Insured</b> .   |
| <i>Fraud/Dishonesty</i>                | The <b>Insurer</b> will pay on behalf of any <b>Insured</b> , who is not the actual perpetrator, all <b>Damages</b> resulting from any <b>Claim</b> for <b>Fraud/Dishonesty</b> of any:<br>(i) <b>Employee</b> ; or<br>(ii) Any natural person who is or has been a principal, partner or director of the <b>Policyholder</b> or any <b>Subsidiary</b> . |
| <i>Defence</i>                         | The <b>Insurer</b> has the right to defend any <b>Claim</b> which this policy may respond to under its Covers or Extensions. The <b>Insurer</b> shall pay <b>Defence Costs</b> incurred in defending such <b>Claim</b> .   |

The **Insurer** is under no obligation to pay **Loss**, unless the **Wrongful Act**: (i) first takes place on or after the **Retroactive Date**; and (ii) is committed solely in the performance of or failure to perform **Professional Services**.

## Standard Extensions

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### *Businessguard Advisory Panel*

During the **Policy Period** the **Policyholder** is entitled to free advice, not involving a significant time commitment on the part of the member firm, from the *businessguard Advisory Panel* which relates to matters which are relevant to the cover provided under this policy.

The **Insurer** consents to the appointment of any member firm, in the absence of a conflict of interest, to act on behalf of the **Insureds** in respect of any **Claim** notified to the **Insurer**, provided the **Insurer** accepts the notification under the policy and subject always to the "Claims" Conditions.

The **Insureds** may access the services of the *businessguard Advisory Panel* by contacting the firms listed as such at [www.AIG.com.au](http://www.AIG.com.au).

### *Court Attendance*

For any person described in (i) and (ii) below who actually attends court as a witness in connection with a **Claim** notified under and covered by this policy, **Defence Costs** will include the following rates per day on which attendance in court has been required:

- (i) For any principal, partner, or director **Insured** \$500
- (ii) For any **Employee** \$250

No **Retention** shall apply to this Extension.



## Standard Extensions (continued)

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*Extended Reporting Period*

If the **Insurer** cancels or does not renew this policy, other than for non payment of **Premium** or any other breach of the terms of this policy by an **Insured**, the **Policyholder** shall have the right to a period of 30 days following the date of cancellation or expiry in which to give notice of any covered **Claim** first made against the **Insured**. That extended reporting period shall not apply if this policy or its cover has been replaced.

*Joint ventures*

The **insurer** will pay on behalf of any **insured** all **damages** resulting from any **claim** for any civil liability of the **insured** in connection with any association or joint venture of which the **insured** forms part; provided, however, that the **insurer** shall only be liable for the proportion of any **damages** that represents the **insured's** liability in such association or joint venture. No cover is provided to any associate or joint venture partner of the **insured**.

*Previous business name*

“**insured**” is extended to include any entity which previously traded as the **policyholder** under a different business name.

*Property Cover for Lost Documents*

With respect to a **Third Party's Documents**:

- (i) For which an **Insured** is legally responsible, and
- (ii) That, during the **Policy Period**, have been destroyed, damaged, lost, distorted, erased or mislaid solely in the performance or non-performance of **Professional Services**.

**Damages** shall also include costs and expenses reasonably incurred by the **Insured** in replacing or restoring such **Documents** provided that:

- (a) Such loss or damage is sustained while the **Documents** are either:
  - (1) In transit; or
  - (2) In the custody of the **Insured** or of any person to whom the **Insured** has entrusted them;
- (b) Where the lost or mislaid **Documents** have been the subject of a diligent search by or on behalf of the **Insured**;
- (c) The amount of any **Claim** for such costs and expenses shall be supported by evidence of expenditure that shall be subject to written approval by a competent person to be nominated by the **Insurer** with the consent of the **Insured**; and
- (d) The **Insurer** shall not be liable for any **Claim** arising out of wear, tear and/or gradual deterioration, moth and vermin, or other matters beyond the **Insured's** control.

A separate retention of \$1,000 instead of the **Retention** will apply to each **Claim** covered under this Extension.

*Quasi judicial costs*

“**defence costs**” is extended to include any reasonable fees, costs and expenses incurred by or on behalf of the **insured** in the investigation, defence, settlement or appeal of any complaint against the **insured** by any statutory or professional body which has jurisdiction to inquire or adjudicate in any such matter.

*Vicarious liability*

The **insurer** will pay on behalf of any **insured** all **damages** resulting from any **claim** for any civil liability of an agent or consultant acting on the **policyholder's** behalf and for whom an **insured** is legally liable.



## Optional Extensions

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### *Employment Practice Liability*

The **Insurer** will pay on behalf of any **Insured** all **Damages** resulting from any liability from a **Claim** against:

- (i) The **Policyholder** or any **Subsidiary**; or
- (ii) Any natural person, who is or has been a principal, partner or director of the **Policyholder** or any **Subsidiary**; or
- (iii) Any **Employee**;

By an **Employee** or prospective **Employee** of the **Policyholder** or any **Subsidiary** based upon any civil liability in connection with the recruitment, employment of or the termination of such **Employee** or, decision not to employ the prospective **Employee**, including, but not limited to, any employment-related retaliation or harassment.

### *Fidelity*

The **Insurer** shall pay the **Policyholder** or any **Subsidiary** for its **Direct Financial Loss** due to **Dishonest Acts** committed after the **Continuity Date** which are **Discovered** during the **Policy Period** and reported to the **Insurer** as required by this policy.

## Definitions

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### “Bodily Injury”

Means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.

### “Claim”

Means any:

- (I) Written demand; or
- (ii) Civil or administrative proceedings;

That seeks **Damages** as a result of **Wrongful Acts**.

### “Continuity Date”

Means the date specified as such in the Schedule.

### “Damages”

Means any amount that an **Insured** shall be legally liable to pay to a **Third Party** in respect of judgments rendered against an **Insured**, or for settlements which conform with the consent requirements set out in the “Claims Conditions”, subject to the limitations of the “**Loss**”.

### “Defence Costs”

Means reasonable fees, costs and expenses incurred by or on behalf of the **Insured** in the investigation, defence, adjustment, settlement or appeal of any **Claim**. “**Defence Costs**” shall not mean any internal or overhead expenses of any **Insured** or the costs of any **Insured’s** time.

### “Direct Financial Loss”

Means direct financial loss caused by the loss of **Money** or **Securities** owned by the **Policyholder** or any **Subsidiary**.

“**Direct Financial Loss**” does not include: (i) wages, salaries or other remuneration or benefits paid by the **Policyholder** or any **Subsidiary** to its **Employees**, partners, principals or directors; (ii) complete or partial non-payment or default under any credit arrangement; or (iii) any costs, fees or other expenses incurred by the **Insured** in prosecuting or defending any demand, claim or legal proceeding resulting from a **Direct Financial Loss** which is covered under this policy.

## Definitions (continued)

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| <p><b>“Discovered” or “Discovers” or Discovery”</b></p> | <p>Means when any of the <b>Policyholder’s</b>, or a <b>Subsidiary’s</b> partners, principals, directors, officers, departmental seniors, senior managers or equivalent (who are not in collusion with an <b>Employee</b> who has or is attempting to commit a <b>Dishonest Act</b>) first becomes aware of any facts which would cause a reasonable person to assume that a <b>Direct Financial Loss</b> which may be covered under this policy has been or is likely to be incurred, even though the exact amount or details of the <b>Direct Financial Loss</b> are not known at the time the person first became aware of such facts. The first <b>Discovery</b> constitutes <b>Discovery</b> by each and Every <b>Insured</b>.</p>  |
| <p><b>“Dishonest Acts”</b></p>                          | <p>Means any fraudulent or dishonest acts committed by an <b>Employee</b> (acting alone or in collusion with others) with the principal intent to cause the <b>Policyholder</b> or any <b>Subsidiary</b> to sustain a <b>Direct Financial Loss</b> and results in the <b>Employee</b> making an improper financial gain for themselves or for any other individual or entity intended by the <b>Employee</b> to receive such gain.</p>   |
| <p><b>“Documents”</b></p>                               | <p>Means all documents of any nature whatsoever including computer record and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.</p>  |
| <p><b>“Employee”</b></p>                                | <p>Means any natural person who is or has been expressly engaged as an employee under a contract of employment with the <b>Policyholder</b> or any <b>Subsidiary</b>.</p> <p><b>“Employee”</b> shall not mean any: (i) principal, partner or director; or (ii) temporary contract labour, self-employed person or labour-only sub-contractor.</p>  |
| <p><b>“Fraud/Dishonesty”</b></p>                        | <p>Means fraudulent or dishonest conduct:</p> <ul style="list-style-type: none"> <li>(i) Not condoned, expressly or implicitly, by; and</li> <li>(ii) That results in liability to;</li> </ul> <p>The <b>Policyholder</b> or any <b>Subsidiary</b>.</p>  |
| <p><b>“Infringement”</b></p>                            | <p>Means an infringement of any intellectual property right of any <b>Third Party</b>, other than patents and <b>Trade Secrets</b>.</p>  |
| <p><b>“Insured”</b></p>                                 | <p>Means:</p> <ul style="list-style-type: none"> <li>(i) The <b>Policyholder</b> or any <b>Subsidiary</b>;</li> <li>(ii) Any natural person, who is or has been a principal, partner or director of the <b>Policyholder</b> or any <b>Subsidiary</b>;</li> <li>(iii) Any <b>Employee</b>; and</li> <li>(iv) Any temporary contract labour, self-employed persons, labour-only subcontractors, solely under contract with, and under the direction and direct supervision of the <b>Policyholder</b> or any <b>Subsidiary</b>;</li> </ul> <p>But only when providing <b>Professional Services</b> in the foregoing capacities. <b>“Insured”</b> also includes any estate or legal representatives of any <b>Insured</b> described in (ii) and (iii) of this definition with respect to the <b>Insured’s</b> provision of <b>Professional Services</b> in any such capacity.</p> |
| <p><b>“Insurer”</b></p>                                 | <p>Means the entity specified as such in the Schedule.</p>   |
| <p><b>“Limit of Liability”</b></p>                      | <p>Means the amount specified as such in the Schedule.</p>   |

## Definitions (continued)

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| <b>“Loss”</b>                            | Means <b>Damages</b> and <b>Defence Costs</b> . <b>“Loss”</b> shall not mean and this policy shall not cover any: <ul style="list-style-type: none"> <li>(I) Taxes payable by the <b>insured</b>;</li> <li>(li) Non-compensatory damages, including punitive, multiple, exemplary or liquidated damages;</li> <li>(lii) Restitutionary relief;</li> <li>(lv) Fines or penalties;</li> <li>(V) The costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;</li> <li>(Vi) Employment related compensation or benefits, overhead, charges or expenses of any <b>insured</b>; or</li> <li>(Vii) Any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a <b>claim</b> is brought.</li> </ul> |
| <b>“Misleading or Deceptive Conduct”</b> | Means any actual or alleged misleading or deceptive conduct at law or under the <i>Corporations Act 2001</i> (Cth), <i>Australian Securities and Investments Commission Act 2001</i> (Cth), <i>Trade Practices Act 1974</i> (Cth) or any similar provisions in the States’ Fair Trading Acts.  |
| <b>“Money”</b>                           | Means local or foreign currency, coins, bank notes, cheques, travellers cheques, registered cheques, postal orders, money orders and bullion.  |
| <b>“Policy Period”</b>                   | Means the period of time specified in the Schedule unless the policy is cancelled in which event the <b>Policy Period</b> will end on the effective date of the cancellation.  |
| <b>“Policyholder”</b>                    | Means the entity or natural person specified as such in the Schedule.  |
| <b>“Pollutants”</b>                      | Means, but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including asbestos, smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. “waste” includes, but is not limited to, material to be recycled, reconditioned or reclaimed.   |
| <b>“Premium”</b>                         | Means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this policy.  |
| <b>“Professional Services”</b>           | Means the following management consulting services of the <b>Policyholder</b> and any <b>Subsidiary</b> : <ul style="list-style-type: none"> <li>(I) Analysis of others management, operational, structural, communication, information and marketing processes and interests, including, but not limited to, goals, objectives, policies, strategies and principal functional or operating areas</li> <li>(li) Identification of any issues arising out of such analysis;</li> <li>(lii) Recommendation and implementation of resolutions to such issues.</li> </ul>  |
| <b>“Property Damage”</b>                 | Means damage to or loss of or destruction of tangible property or loss of use thereof.   |
| <b>“Retention”</b>                       | Means the amount specified as such in the Schedule.  |
| <b>“Retroactive Date”</b>                | Means the date specified as such in the Schedule.  |
| <b>“Sanctioned Country”</b>              | Means Cuba, Burma (Myanmar), Sudan, Iran, Iraq, Syria and North Korea.   |
| <b>“Securities”</b>                      | Means any negotiable or non-negotiable instruments or contracts representing <b>Money</b> or other property including but not limited to shares, preference shares, stocks, debentures, warrants, options, bonds, promissory notes or other equity or debt security.   |
| <b>“Subsidiary”</b>                      | Means companies in which the <b>Policyholder</b> either directly, or indirectly through one or more of its <b>Subsidiaries</b> ; <ul style="list-style-type: none"> <li>(I) Controls the composition of the board of directors;</li> </ul>   |



## Definitions (continued)

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|                       | (li) Controls more than half of the voting power; or<br>(lii) Holds more than half of the issued share capital.<br>For any <b>Subsidiary</b> or any <b>Insured</b> thereof, cover under this policy shall only apply to <b>Wrongful Acts</b> committed while such company is a <b>Subsidiary</b> of the <b>Policyholder</b> .  |
| <b>“Third Party”</b>  | Means any entity or natural person; provided, however, <b>Third Party</b> does not mean:<br>(i) Any <b>Insured</b> ;<br>(ii) Any other entity or natural person having a financial interest or executive role in the operation of the <b>Policyholder</b> or any <b>Subsidiary</b> .<br>However, for the purposes of the “Employment Practice Liability” Optional Extension only, <b>Third Party</b> means “an <b>Employee</b> or prospective <b>Employee</b> of the <b>Policyholder</b> or any <b>Subsidiary</b> .” |
| <b>“Trade Secret”</b> | Means information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.   |
| <b>“Wrongful Act”</b> | Means (a) any breach of duty, act, error, misstatement, breach of confidentiality or omission; (b) any <b>Misleading or Deceptive Conduct</b> of the <b>Insured</b> ; (c) any <b>Infringement</b> ; (d) libel or slander committed by an <b>Insured</b> ; (e) any destruction, damage to, loss, erasure or mislaying of <b>Documents</b> by an <b>Insured</b> ; or (f) <b>Fraud/Dishonesty</b> .   |

## Exclusions

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This policy shall not cover **Loss** in connection with any **Claim**:

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| <i>Anti-Competitive Conduct</i>                     | Arising out of, based upon or attributable to any actual or alleged restrictive trade practices, restraint of trade or unfair competition.   |
| <i>Bodily Injury/Property Damage</i>                | Arising out of, based upon or attributable to <b>Bodily Injury</b> or <b>Property Damage</b> unless arising from:<br>(i) An actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing <b>Professional Services</b> ; or<br>(ii) An allegation of emotional distress under the “Employment Practice Liability” Optional Extension or the “Defamation” Cover.      |
| <i>Contractual Liability/Performance Guarantees</i> | Arising out of, based upon or attributable to any:<br>(i) Liability assumed or accepted by an <b>Insured</b> under any contract or agreement, other than with an <b>Employee</b> in the case of the “Employment Practice liability” Optional Extension, or except to the extent such liability would have attached to the <b>Insured</b> in the absence of such contract or agreement; or<br>(ii) Guarantee or warranty. |
| <i>Corporate Advisory Activities</i>                | Arising out of, based upon or attributable to any rendering of advice, recommendations, a fairness opinion in connection with any actual or alleged merger, acquisition, divestiture, tender offer, capital restructuring, dissolution or sale of all or substantially all of the assets or stock of a business entity, or any activity similar in nature or effect.   |
| <i>Costs Assessment</i>                             | Arising out of, based upon or attributable to any failure by any <b>Insured</b> or other party acting for the <b>Insured</b> to make an accurate pre-assessment of the cost of performing <b>Professional Services</b> .   |



## Exclusions (continued)

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| <i>Infrastructure</i>                  | Arising out of, based upon or attributable to:<br>(i) Mechanical failure;<br>(ii) Electrical failure, including any electrical power interruption, surge, brown out or black out; or<br>(iii) Telecommunications or satellite systems failure.   |
| <i>Insolvency</i>                      | Arising out of, based upon or attributable to the insolvency, administration or receivership of the <b>Insured</b> .   |
| <i>Intentional Acts</i>                | Arising out of, based upon or attributable to any intentional act by an <b>Insured</b> .   |
| <i>Misdeeds</i>                        | Arising out of, based upon or attributable to any act which a court, official tribunal or arbitrator finds, or which an <b>Insured</b> admits, to be a criminal, dishonest or fraudulent act; and in such event, the <b>Insurer</b> shall be reimbursed for all <b>Loss</b> paid in connection with such <b>Claim</b> ; provided, however, that this exclusion shall not apply to the "Fraud/Dishonesty" Cover or the "Fidelity" Optional Extension.                           |
| <i>Patent/Trade Secret</i>             | Arising out of, based upon or attributable to the breach of licenses concerning, infringement of or misappropriation of patents or <b>Trade Secrets</b> .  |
| <i>Pollution</i>                       | Arising out of, based upon or attributable to:<br>(i) The actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of <b>Pollutants</b> ; or<br>(ii) Any direction, request or effort to:<br>(a) Test for, monitor, clean up, remove, contain, treat, detoxify or neutralise <b>Pollutants</b> ; or<br>(b) Respond to or assess the effects of <b>Pollutants</b> .   |
| <i>Prior Claims/<br/>Circumstances</i> | (i) Made prior to or pending at the inception of this policy; or<br>(ii) Arising out of, based upon or attributable to any circumstance that, as of the inception of this policy, may reasonably have been expected by any <b>Insured</b> to give rise to a <b>Claim</b> .   |
| <i>Trade Debts</i>                     | Arising out of, based upon or attributable to any:<br>(i) Trading debt incurred by an <b>Insured</b> ; or<br>(ii) Guarantee given by an <b>Insured</b> for a debt.   |
| <i>USA/Canada</i>                      | Made or pending within; or to enforce a judgment obtained in, the United States of America, Canada or any of their territories or possessions.   |
| <i>US Sanctions</i>                    | Arising in, out of, based upon, attributable to or otherwise in connection with any <b>Sanctioned Country</b> .  |
| <i>War/Terrorism</i>                   | Arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation. |

### For the "Fidelity" Optional Extension only, this policy shall not cover:

|                                 |  |
|---------------------------------|--|
| <i>Confidential Information</i> | <b>Direct Financial Loss</b> arising out of, based upon, attributable to or in any way connected with the accessing and dissemination of, any confidential information including, but not limited to, trade secrets, computer programs, customer information, patents, trademarks, copyrights or processing methods. |
|---------------------------------|--|



## Exclusions (continued)

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|---|--|
| <i>Consequential Loss</i>                         | Any indirect or consequential loss of any nature, including but not limited to any loss of income such as interest and dividends not realised by the <b>Policyholder</b> or any <b>Subsidiary</b> or any other person or organisation, Resulting from a <b>Direct Financial Loss</b> which is covered under this policy.   |
| <i>Director/Principal/Partner Dishonesty</i>      | <b>Direct Financial Loss</b> arising out of, based upon, attributable to or in any way connected with any fraudulent or dishonest activities involving collusion or complicity of a partner, principal or director of the <b>Policyholder</b> or any <b>Subsidiary</b> .   |
| <i>Dual Controls</i>                              | <b>Direct Financial Loss</b> or make any payment in connection with any <b>Dishonest Acts</b> arising out of, based upon or attributable to the <b>Insured's</b> failing to ensure that at least one principal, partner or director and one authorised signatory sign any cheques or funds transfer instructions.  |
| <i>Extortion or Kidnap &amp; Ransom</i>           | <b>Direct Financial Loss</b> arising out of, based upon, attributable to or in any way with connected with any extortion or kidnap and ransom.   |
| <i>Geographical Limits</i>                        | <b>Direct Financial Loss</b> arising out of, based upon, attributable to or in any way connected with any <b>Dishonest Acts</b> outside of Australia or New Zealand.   |
| <i>Loss Establishment Costs</i>                   | Fees, costs or other expenses incurred by the <b>Insured</b> in establishing the existence or amount of any <b>Direct Financial Loss</b> covered under this policy.  |
| <i>Loss Sustained After Knowledge</i>             | <b>Direct Financial Loss</b> arising out of, based upon, attributable to or in any way connected with any <b>Employee</b> from the time the <b>Policyholder's</b> , or a <b>Subsidiary's</b> partners, principals, directors, officers, departmental seniors, senior managers or equivalent (who are not in collusion with such <b>Employee</b> for the purpose of committing a <b>Dishonest Act</b> ) had actual knowledge that the <b>Employee</b> had committed or was suspected of having committed a <b>Dishonest Act</b> .   |
| <i>Profit &amp; Loss or Inventory Computation</i> | <b>Direct Financial Loss</b> the proof of which is dependent solely upon: <ul style="list-style-type: none"> <li>(i) A profit and loss computation; or</li> <li>(ii) A comparison of inventory records with an actual physical count.</li> </ul> If, however, an <b>Employee</b> is identified as having caused or is suspected of having caused a <b>Direct Financial Loss</b> , then inventory records and actual physical count of inventory can be submitted as partial evidence in support of proof of the <b>Direct Financial Loss</b> as required by the "Notification" Claims Condition. |

## Claims

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|-------------------------------|---|
| <i>Notification of Claims</i> | <p>The <b>Insured</b> shall, as a condition precedent to the obligations of the <b>Insurer</b> under this policy, give written notice to the <b>Insurer</b> of any <b>Claim</b> first made against the <b>Insured</b> or <b>Direct Financial Loss</b> as soon as practicable and during the <b>Policy Period</b>. All notifications must be in writing or by facsimile, and addressed as required in the "Claims Notice" Item on the Schedule.</p> <p>If the <b>Insured</b> notifies a <b>Direct Financial Loss</b> to the <b>Insurer</b>, the <b>Insured</b> must also, as soon as practicable, provide the <b>Insurer</b> with:</p> <ul style="list-style-type: none"> <li>(A) Affirmative proof of the <b>direct financial loss</b>; and</li> <li>(B) All requested information and documents and co-operation in all matters pertaining to the <b>direct financial loss</b>.</li> </ul> |
|-------------------------------|---|

## Claims (continued)

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### *Related Claims*

If notice of a **Claim** against an **Insured** is given to the **Insurer** pursuant to the terms and conditions of this policy, then:

- (i) Any subsequent **claim** alleging, arising out of, based upon or attributable to the facts alleged in that previously notified **claim**; and
- (ii) Any subsequent **claim** alleging any **wrongful act** which is the same As or related to any **wrongful act** alleged in that previously notified **claim**, shall be considered made against the **insured** and reported to the **insurer** at the time notice was first given.

Any **Claim** or **Claims** arising out of, based upon or attributable to:

- (i) The same cause; or
- (ii) A single **wrongful act**; or
- (iii) A series of continuous, repeated or related **Wrongful Acts**;

Shall be considered a single **Claim** for the purposes of this policy.

### *Related dishonest acts*

Any **direct financial loss** resulting from a series of continuous, repeated or related **dishonest acts** shall be considered a single **direct financial loss**.

### *Continuity*

In the absence of fraudulent non-disclosure, where a **Claim** that would otherwise be covered by this policy is excluded by the "Prior Claims/Circumstances" Exclusion part (ii), then cover is provided under this policy for that **Claim**, provided always that:

- (i) The **Insured** first became aware of the facts that might give rise to the **Claim** after the **Continuity Date**; and
- (ii) The cover shall be in accordance with the provisions of the policy in force when the **Insured** first became so aware.

### *Defence/settlement*

The **insurer** does not assume any duty to defend, and the **insured** shall defend and contest any **claim** made against them unless the **insurer**, in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any **claim**. If the **insurer** does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the **insurer**. The **insurer** has the right at any time after notification of a **claim** to make a payment to the **insured** of the unpaid balance of the **limit of liability**, and upon making such payment, all obligations of the **insurer** to the **insured** under this policy, including, if any, those relating to defence, shall cease.

### *Insurer's consent*

As a condition precedent to cover under this policy, no **insured** shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any **defence costs** without the prior written consent of the **insurer**. Only those settlements, judgments and **defence costs** consented to by the **insurer**, and judgments resulting from **claims** defended in accordance with this policy, shall be recoverable as **loss** under this policy. The **insurer's** consent shall not be unreasonably withheld, provided that the **insurer** shall be entitled to exercise all of its rights under the policy.

### *Loss mitigation*

As soon as the **insured** discovers a **direct financial loss** involving an identified **employee**, the **insured** must immediately take all necessary steps to prevent any additional **direct financial loss** being caused by the same identified **employee**. Any further **direct financial loss** caused by the same **employee** after the date of **discovery** will not be covered by this policy.



## Claims (continued)

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### *Insured's consent*

The **insurer** may make any settlement of any **claim** it deems expedient with respect to any **insured**, subject to such **insured's** written consent. If any **insured** withholds consent to such settlement, the **insurer's** liability for all **loss** on account of such **claim** shall not exceed the amount for which the **insurer** could have settled such **claim**, plus **defence costs** incurred as of the date such settlement was proposed in writing by the **insurer**, less coinsurance (if any) and the applicable **retention**.

### *Cooperation*

The **Insured** will at their own cost:

- (i) Render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion of indemnification and contribution rights;
- (ii) Use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** under this policy;
- (iii) Give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any **Loss** or determine the **Insurer's** liability under this policy.

### *Fraudulent claims*

If any **insured** shall give notice or claim cover for any **loss** under this policy knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such **loss** shall be excluded from cover under the policy, and the **insurer** shall have the rights to cancel the policy, as allowed by the *insurance contracts act 1984* (cth).

### *Fraud/Dishonesty of Principals, Partners and Directors*

In the case of any **Claim** for **Fraud/Dishonesty** of any principal, partner or director of the **Policyholder** or any **Subsidiary**, the "Fraud/Dishonesty" Cover only applies in circumstances where:

- (i) At least one principal, partner or director and one authorised signatory signed any cheques or funds transfer instructions; and
- (ii) The **Policyholder's** bank accounts were not reconciled by any person who had the authority to operate those bank accounts.

### *Allocation*

Where any **Loss** is incurred in respect of any **Claim** which arises from both covered matters and matters not covered by this policy, the **Insurer's** liability under this policy is limited to the proportion of the **Loss** which represents a fair and equitable allocation between each **Insured** and the **Insurer**, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

Where the **Insurer's** liability under this policy is limited under this clause, the **Insured** and the **Insurer** must use their best endeavours to agree upon the allocation to be adopted by them as the fair and equitable allocation.

### *Allocation Disputes*

If the parties are unable to agree, then the fair and equitable allocation is to be determined by a Senior Lawyer (to be mutually agreed upon by the **Policyholder** and the **Insurer**, or in the absence of agreement, to be appointed by the President of the Law Society, or equivalent organisation, in the jurisdiction in which the **Loss** was incurred).

The Senior Lawyer is to determine the fair and equitable allocation as an expert, not as an arbitrator. The **Policyholder** (or its designee) and the **Insurer** may make submissions to the Senior Lawyer. The Senior Lawyer is to take account of the parties' submissions, but the Senior Lawyer is not to be fettered by such submissions and is to determine the fair and equitable allocation in accordance with his or her own judgement and opinion. The Senior Lawyer's determination shall be final and binding. The costs of the Senior Lawyer's determination are to be borne by the **Insurer**.

## Claims (continued)

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For so long as the proportion of **Defence Costs** to be paid under the policy remains unagreed and undetermined, the **Insurer** shall pay the proportion of the **Defence Costs** which it considers represents a fair and equitable allocation. The fair and equitable allocation finally agreed or determined shall be applied retrospectively to any **Defence Costs** incurred prior to agreement or determination.

## Purchase and Administration

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### *Policy Purchase*

In granting cover to the **Insured**, the **Insurer** has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. If the **Insurer** becomes entitled to avoid this policy from inception or from the time of any variation in cover, the **Insurer** may at its discretion maintain this policy in full force but exclude the consequences of and any **Claim** relating to any matter which ought to have been disclosed before inception or any variation in cover.

### *Administration*

The **Policyholder** has acted and shall act on behalf of each and every **Insured** with respect to:

- (i) Negotiating terms and conditions of, binding and amending cover;
- (ii) Exercising rights of **Insureds**;
- (iii) Notices;
- (iv) **Premiums**;
- (v) Endorsements;
- (vi) Dispute resolution;
- (vii) Claims management and consent to defence/settlement; and
- (viii) Payments to any **Insured**.

## Limit and Retention

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### *Limit of Liability*

The total amount payable by the **Insurer** for a single **Claim** (as specified in the "Related Claims" Condition), including **Defence Costs**, shall not exceed the **Limit of Liability (Any one Claim)**. The total amount payable by the **Insurer** under this policy for all **Claims** or **Losses** shall not exceed the **Limit of Liability (Aggregate)**. **Sublimits of Liability** and Extensions are part of that amount and are not payable in addition to the **Limit of Liability (Aggregate)**. The **Limit of Liability (Any one Claim)** and the **Limit of Liability (Aggregate)** for the period provided in the "Extended Reporting Period" Extension are part of, and not in addition to, the **Limit of Liability (Any one Claim)** and the **Limit of Liability (Aggregate)** for the **Policy Period**. The inclusion of more than one **Insured** under this policy does not operate to increase the total amount payable by the **Insurer** under this policy.

### *Retention*

The **Insurer** shall only pay for the amount of any **Loss** or **Direct Financial Loss** which is in excess of the **Retention**. For the avoidance of doubt, the **Retention** also applies to **Defence Costs**. The **Retention** is to be borne by the **Insured** and shall remain uninsured. A single **Retention** shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Direct Financial Loss** arising from the same **Dishonest Acts**.

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## General Provisions

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|--|---|
| <i>Assignment</i>                              | This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the <b>Insurer</b> .   |
| <i>Cancellation</i><br><i>By Policyholder:</i> | This policy may be cancelled by the <b>Policyholder</b> at any time only by written prior notice of at least 14 days to the <b>Insurer</b> . In such case, if no <b>Claim</b> has been made and no circumstance has been notified prior to such cancellation; the <b>Insurer</b> shall retain the pro-rata proportion of the <b>Premium</b> . Otherwise, <b>Premium</b> shall not be returnable and shall be deemed fully earned at cancellation.   |
| <i>By Insurer:</i>                             | This policy may be cancelled by the <b>Insurer</b> only as prescribed by the <i>Insurance Contracts Act 1984</i> (Cth). In such case, the <b>Insurer</b> shall be entitled to a pro-rata proportion of the <b>Premium</b> . Payment or tender of any unearned <b>Premium</b> by the <b>Insurer</b> shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.  |
| <i>Insolvency</i>                              | Insolvency, receivership, bankruptcy of any <b>Insured</b> shall not relieve the <b>Insurer</b> of any of its obligations hereunder.  |
| <i>Plurals, Headings and Titles</i>            | The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in <b>bold</b> typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.   |
| <i>Scope and Governing Law</i>                 | Where legally permissible and subject to the “U.S.A./Canada” and “US Sanctions” Exclusions, this policy shall apply to any <b>Claim</b> made against any <b>Insured</b> anywhere in the world. Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of Australia and in accordance with the English text as it appears in this policy.   |
| <i>Subrogation</i>                             | If any payment is to be made under this policy in respect of a <b>Claim</b> , the <b>Insurer</b> shall be subrogated to all rights of recovery of the <b>Insured</b> whether or not payment has in fact been made and whether or not the <b>Insured</b> has been fully compensated for its actual loss. The <b>Insurer</b> shall be entitled to pursue and enforce such rights in the name of the <b>Insured</b> , who shall provide the <b>Insurer</b> with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The <b>Insured</b> shall do nothing to prejudice these rights. Any amount recovered in excess of the <b>Insurer’s</b> total payment shall be restored to the <b>Insured</b> less the cost to the <b>Insurer</b> of such recovery. The <b>Insurer</b> agrees not to exercise any such rights of recovery against any <b>Employee</b> unless the <b>Claim</b> is brought about or contributed to by serious or willful misconduct of the <b>Employee</b> in the course of or arising out of the employment. In its sole discretion, the <b>Insurer</b> may, in writing, waive any of its rights set forth in this Subrogation Clause. |
| <i>Validity</i>                                | This policy is not binding upon the <b>Insurer</b> unless it is countersigned on the Schedule by an authorised representative of the <b>Insurer</b> or its general agent  |

MB08/00607  
14/May/08



Bring on tomorrow

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