



**Annual (Transfer Basis)**

**Construction, Legal Liability and  
Professional Indemnity Insurance Policy**

**Tokio Marine & Nichido  
Fire Insurance Co Ltd**

**Annual (Transfer Basis)**

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## Important Notices

### Who is the Insurer?

Tokio Marine & Nichido Fire Insurance Co., Ltd. (Tokio Marine & Nichido) ABN 80 000 438 291, AFS 246548 is the insurance company that issues this insurance policy.

### Who is the Insurer's Agent in Australia?

Tokio Marine & Nichido's Managing Agent in Australia is Tokio Marine Management (Australasia) Pty. Ltd. ABN 69 004 488 455 (Tokio Marine Management). As managing agent, Tokio Marine Management holds Tokio Marine & Nichido's Power of Attorney that allows it to perform all of the functions of the insurance company on Tokio Marine & Nichido's behalf. Tokio Marine Management is a wholly owned subsidiary of Tokio Marine & Nichido.

### How to Contact Us

You may contact Tokio Marine & Nichido and its managing agent, Tokio Marine Management, in the following ways:

#### NSW

Level 31  
9 Castlereagh Street  
SYDNEY NSW 2000.  
Telephone: (02) 9232 2833  
Facsimile: (02) 9232 6374

#### VICTORIA

Level 13 - North Tower  
459 Collins Street  
MELBOURNE VIC. 3000.  
Telephone: (03) 9621 1911  
Facsimile: (03) 9621 1255

### Your Duty of Disclosure

Before You start or vary a policy with Us, You have a duty under the *Insurance Contracts Act 1984 (Cth)* to tell Us every matter You know, or could reasonably be expected to know, that is relevant to Our decision whether to accept the risk of insuring You and if so, on what terms. We rely on the accuracy of the information You provide to Us. Our decision to insure You is based on this.

You are not expected to tell Us information:

- that lessens the risk We accept
- that is common knowledge
- that We know or ought to know in the ordinary course of Our business; or
- if We waive Your Duty of Disclosure

This means:

- (1) when You ask for cover You must honestly answer specific questions about matters that may affect Our decision whether:
  - [a] to accept the risks of offering You cover; and
  - [b] the terms (including cost) of such cover
- (2) if You asked for the cover to be extended, altered or reinstated We may:

- [a] ask You specific questions as mentioned above, and You must again answer honestly; and/or
- [b] give You a copy of the matters You previously disclosed to Us in relation to the cover, and request You to tell Us:
  - i) if there have been any changes to that matter (being a change that is known to You or that a reasonable person in such circumstances could be expected to disclose); or
  - ii) if there have been no changes to that matter

**If You fail to comply with Your Duty of Disclosure,** including if the information You give is not accurate, We may be entitled to reduce or deny any claim You may make or cancel the policy altogether. If Your non-disclosure is fraudulent, We may also have the option of avoiding the contract from the beginning, which is, treating as though it never existed.

### The Financial Claims Scheme

You may be entitled to payment under the Federal Government's Financial Claims Scheme in the unlikely event that Tokio Marine & Nichido is not able to meet its obligations under the policy. Access to the scheme is subject to eligibility criteria. Information about the scheme can be obtained from the Financial Claims Scheme website at [www.fcs.gov.au](http://www.fcs.gov.au) and the APRA hotline on 1300 55 88 49.

### Transfer Basis Cover

This is an annual Policy providing cover on a "Transfer Basis", meaning:

- Section 1 - Material Damage (Transfer Basis)

#### *Contract Works and Temporary Structures*

We provide cover for Damage occurring at the Project site of any Covered Project during the Period of Insurance and;

- during the Construction Period of that Covered Project whilst:
  - (i) awaiting construction; or
  - (ii) under construction, assembly, erection, or installation; or
- during the Defects Liability Period of that Covered Project provided that such Damage:
  - (i) manifests itself during the Defects Liability Period and originates from a cause occurring during the Construction Period and at the Project Site; or
  - (ii) occurs during the Defects Liability Period and is caused by Your act or omission in complying with the defects liability provisions of Your contract for the Project.

For "Transfer Basis" cover, Covered Project means any construction project that falls within the Project Types (as specified in the Schedule), where:

- (i) the Construction Period for that project commences during the Period of Insurance; or
- (ii) the Construction Period or Defects Liability Period for that project is current as at the

- commencement of the Period of Insurance;
- the Construction Period for that project does not exceed the number of months as specified in the Schedule;
  - the Defects Liability Period for that project does not exceed 12 months;
  - the Estimated Construction Cost of that project, at the commencement of the Construction Period, does not exceed the Maximum Contract Value specified in the Schedule; and
  - the Project Site for that project is in Australia south of the 25th parallel south.

No run-off cover is provided beyond the expiry of the Period of Insurance for projects which run beyond the expiry of the Period of Insurance.

#### *Existing Structures*

We provide cover for Damage occurring:

- during the Period of Insurance only; and
- during the Construction Period only;

and only for those specific Covered Projects where You have requested cover for Existing Structures.

#### *Major Plant & Equipment and Minor Equipment & Tools*

We provide cover for Damage to Major Plant & Equipment and Minor Equipment & Tools occurring during the Period of Insurance.

- Section 2 - Legal Liability

This Section 2 is in 3 parts:

Section 2 A: Construction Liability (Transfer Basis);

Section 2 B: Incidental Public Liability; and

Section 2 C: Products or Completed Operations Liability.

Please read carefully the “1.1 What We Cover” clause in Section 2 to understand the different covers provided.

- *Section 2 A: Construction Liability (Run-Off Basis)*

We cover You in respect of Covered Projects only (see above under Section 1 – Material Damage).

We cover Your legal liability to pay Compensation in respect of Personal Injury and/or Property Damage occurring within the Territorial Limit during the Period of Insurance and during:

- (a) the Construction Period as a result of an Occurrence in connection with Construction Activities for a Covered Project; or
- (b) the Defects Liability Period as a result of an Occurrence when rectifying any defects in connection with a Covered Project.

- *Section 2 B: Incidental Public Liability*

We cover Your legal liability to pay Compensation in respect of Personal Injury and/or Property Damage occurring during the Period of Insurance within the Territorial Limit as a result of an Occurrence in connection with Incidental Activities.

- *Section 2 C: Products or Completed Operations Liability*

We cover Your legal liability to pay Compensation in respect of Personal Injury and/or Property

Damage occurring during the Period of Insurance within the Territorial Limit as a result of an Occurrence in connection with Products or Completed Operations.

- Section 3 – Professional Indemnity

We cover Your legal liability to pay Compensation in respect of any Claim or Claims first made against You and notified to Us during the Period of Insurance arising out of any act, error or omission in the conduct of the Professional Services within the Territorial Limit.

If You require insurance for any project not covered by this Policy, as referred to above, You can either:

- contact Us to include such project under this Policy by Endorsement; or
- request cover under Our Single Project Insurance Policy.

### **Section 3 of This Policy Only Covers “Claims made and notified” in Period of Insurance**

Section 3 (Professional Indemnity) of this Policy operates on a “claims made and notified” basis. This means that Section 3 of this Policy covers You for Claims made against You and notified to Us during the Period of Insurance.

Section 3 of this Policy does not provide cover in relation to:

- acts, errors or omissions actually or allegedly committed prior to the Retroactive Date (if such a date is specified in the Schedule);
- Claims made after the expiry of the Period of Insurance even though the event giving rise to the Claim may have occurred during the Period of insurance;
- Claims notified or arising out of facts or circumstances notified (or which ought reasonably to have been notified) under any previous policy;
- Claims made, threatened or intimated against You prior to the commencement of the Period of Insurance;
- facts or circumstances of which You first became aware prior to the Period of Insurance, and which You knew or ought reasonably to have known had the potential to give rise to a Claim against You;
- Claims arising out of circumstances advised to any prior Insurer.

Where You give notice in writing to the insurer of any facts that might give rise to a claim against You as soon as reasonably practicable after You become aware of those facts but before the expiry of the Period of Insurance, You may have rights under Section 40(3) of the Insurance Contracts Act 1984 to be indemnified in respect of any Claim subsequently made against You arising from those facts notwithstanding that the Claim is made after the expiry of the Period of Insurance.

Any such rights arise under the legislation only. The terms of the Policy and the effect of the Policy is that You are not covered for Claims made against You after the expiry of the Period of Insurance.

## Excess or Deductible

An Excess or Deductible is the sum of money We will not pay and must be borne by You in respect of a claim. The Schedule (or Endorsement) details the Excesses and Deductibles applicable.

## Affecting Our Rights or Subrogation

If You have agreed not to seek compensation from another person or entity that is liable to compensate You for any Damage or liability which is covered by this Policy We will not cover You under this Policy for that Damage or liability, except liability:

- which would have been implied by law in the absence of such agreement;
- assumed under any Incidental Contract, Standard Construction Contract or under the contract specifically designated in the Schedule or in any Endorsement to this Policy, to pay Compensation in respect of Personal Injury or Property Damage.

## Average / Underinsurance

In Section 1 – Material Damage of this Policy, where You request any cover for Existing Structures in respect of a Covered Project, the Sum Insured for Existing Structures must be for the full cost of replacement or reinstatement at the commencement of the Covered Project.

Following an Indemnifiable Event, if it is found that the amount You have specified as Sum Insured for Existing Structures is less than 90% of the cost to replace or reinstate the whole of the Existing Structures the amount to be paid by Us in respect of Damaged Existing Structures shall be reduced in the same proportion as the Sum Insured bears to 90% of the cost to replace or reinstate the whole of the Existing Structures.

## Liability Assumed Under Agreement

This Policy does not cover liability which You have assumed under contract or agreement unless You would have been so liable in the absence of such agreement.

## General Code of Practice

Tokio Marine & Nichido is a signatory to the General Insurance Code of Practice.

The Code of Practice informs the customers of the standards of service to be expected from the Insurance Industry. The objectives of the Code of Practice are to:

- promote more informed relations between insurers and their customers;
- improve consumer confidence in the general insurance industry;
- provide better mechanisms for the resolution of complaints and disputes between insurers and their customers; and
- commit insurers and the professionals they rely upon to higher standards of customer service.

## Complaints

You are entitled to make a complaint to Us about any aspect of Your relationship with Us.

If You need to make a complaint, You can do so over the phone or in writing including by email correspondence.

We will conduct complaints handling in a fair, transparent and timely manner.

### Stage 1

- within 15 days, if We have all the relevant information and We have completed Our investigation, We will provide You with Our decision on Your complaint in writing
- within 15 days, if We require additional information or require more time to investigate, We will let You know and will attempt to agree with You to an alternative timeline
- if You are satisfied with Our decision, Your complaint has been resolved
- if the decision does not resolve Your complaint to Your satisfaction, You can request Us to review Our decision

### Stage 2

- Your complaint will be reviewed by the relevant Department Manager or an employee with appropriate authority, knowledge and experience
- We will keep You informed about the progress of Our review at least every 10 business days
- within 15 days, if the reviewer has all the information they need and has completed their investigation, You will be advised of Our final decision
- within 15 days, If the reviewer requires more information or more time, they will let You know and will attempt to agree with You to an alternative timeline
- if You are satisfied with the final decision, Your complaint has been resolved
- if the final decision does not resolve Your complaint to Your satisfaction, You are entitled to refer Your complaint to the Financial Ombudsman Service (FOS)
- the FOS is an independent external dispute resolution scheme

We further advise that Stage 1 and Stage 2 of Our complaints process described above will not exceed 45 calendar days in total, unless We are unable to provide You with a final decision within 45 calendar days.

If We are unable to provide You with a final decision within 45 calendar days, We will inform You before the end of that period of the reasons for the delay and Your right to refer Your complaint to the FOS, together with contact details for the FOS.



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## If Your Problem is Not Resolved

If You disagree with Our decision, You can appeal to the Financial Ombudsman Service (FOS). We will advise You how to do this and provide all relevant assistance.

The Financial Ombudsman Service is an independent industry dispute resolution scheme. The decisions made by FOS are binding on Us provided You agree. You do not have to accept any decision that We or the FOS make. You always have the option of seeking other solutions.

You can contact the FOS on 1300 780 808 (local call cost) or by email to [info@fos.org.au](mailto:info@fos.org.au). You can also visit the FOS website at [www.fos.org.au](http://www.fos.org.au). You can also write to FOS at GPO Box 3, Melbourne, Vic, 3001. This is a free service.



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## Annual (Transfer Basis) Construction Material Damage, Legal Liability and Professional Indemnity Insurance

The Company and You are identified and referred to in the Policy and the Schedule.

You having paid, or agreed to pay, to Us, the premium shown in the Schedule for the Period of insurance or a premium as advised by Us as applying to any subsequent period, We will provide insurance against the risks described in each Section, subject to the Terms, Conditions, Exclusions and Endorsements of this Policy.

The insurance applies only in respect of those Sections of this Policy against which an amount representing the Sum Insured, Sub-Limit or Limit of Liability is shown in the Schedule or which are otherwise indicated in the Schedule as being operative.



## General Definitions Applicable to all Sections

Wherever used in this Policy, the following terms shall be deemed to have the meanings ascribed to them below. Unless the context requires another meaning, a reference to the singular includes the plural and vice versa.

**Compensation** shall mean monetary amount of judgment, award (including costs taxed or awarded against the Insured) or settlement for Personal Injury, and/or Property Damage excluding:

- (a) punitive, exemplary, aggravated damages or multiplication of compensatory damages;
- (b) liquidated damages;
- (c) fines or penalties;
- (d) any non-pecuniary relief ordered or granted (or agreed with the claimant); and/or
- (e) amounts which We are legally prohibited from indemnifying under the legal jurisdiction in which the claim against You is brought or maintained.

**Completed Operations** shall mean any:

- (a) operations of a Project Type performed by or on behalf of You under any contract or agreement for the performance of work or service by or on behalf of You after such operations have been completed; or
- (b) thing or property forming part of any operations of a Project Type performed by or on behalf of You under any contract or agreement for the performance of work or service by or on behalf of You after such operations have been completed.

Operations shall be deemed completed at the earliest of the following times:

- (i) when all operations to be performed by or on behalf of You under such contract or agreement have been completed;
- (ii) when all operations to be performed by or on behalf of You at the site have been completed;
- (iii) when that operation has reached practical completion or the certificate of practical completion has been issued for that operation, whichever is earlier; or
- (iv) when the portion of work, out of or by which the Personal Injury or Property Damage arises or is caused, has been put to its intended use by any person or entity other than You.

Operations which may require further service or maintenance work or correction, repair, replacement or reinstatement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

**Construction Period** shall mean, in respect of each Covered Project, the period commencing at the:

- (a) time the Named Insured (or Named Insured's contractor if the Named Insured is the Principal) first takes legal possession of the Project Site; or
- (b) time the Contracts Works at the Project Site commence; whichever occurs later and ending:
  - (i) at the time any portion (or separable portion if the contract specifically provides for separable portion) is taken over





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or put into use by any party other than You, with respect to that portion of the Contract Works; or

- (ii) at the time of Practical Completion;

whichever occurs first.

**Contract Works** shall mean, in respect of each Covered Project, the whole of the work to be executed in accordance with the contract for that Covered Project, including:

- (a) consumables and all other materials (including Principal supplied materials);
- (b) cost of labour; and
- (c) overheads and profit margin;

incorporated in, or to be incorporated in that Covered Project and included within the Estimated Construction Cost at the commencement of that Covered Project.

Contract Works do not include Major Construction Machinery, Minor Plant, Equipment & Tools or Temporary Structures but the Sum Insured for Contract Works may include an amount in connection with the use of such property in the execution of the Contract Works.

**Covered Project** shall mean any construction or building project that falls within the Project Types, where:

- (a) (i) the Construction Period for that project commences during the Period of Insurance; or
  - (ii) the Construction Period or Defects Liability Period for that project is current as at the commencement of the Period of Insurance;
- (b) the Construction Period for that project does not exceed the number of months as specified in the Schedule;
- (c) the Defects Liability Period for that project does not exceed 12 months;
- (d) the Estimated Construction Cost of that project, at the commencement of the Construction Period, does not exceed the Maximum Contract Value specified in the Schedule; and
- (e) the Project Site for that project is in Australia south of the 25th parallel south.

**Defects Liability Period** shall mean, in respect of each Covered Project, the period commencing on the expiry of the Construction Period and ending at the expiry of:

- (a) 12 months; or
- (b) the defects liability period required under the contract for that Covered Project;

from commencement, whichever is earlier.

**Defence Costs** shall mean:

- (a) reasonable costs, charges or expenses (other than Your loss of wages or salaries), incurred by Us or with Our written consent (which shall not be unreasonably withheld), in investigating, defending and/or settling or in bringing or defending appeals in connection with any claim or suit in respect of which indemnity under Section 2 or Section 3 of this Policy applies;
- (b) Your loss of wages or salaries because of Your attendance at any inquest, inquiry, hearing or trial at Our request; and
- (c) reasonable costs, charges and expenses of legal representation, incurred by Us or with Our written consent (which shall not be unreasonably withheld), at any coroner's inquest, inquiry or any proceeding in any



court or tribunal in connection with liability in respect of which indemnity under Section 2 or Section 3 of this Policy applies.

**Employee** shall mean any person employed or engaged under a contract of service or deemed contract of service or apprenticeship with any of the Insured(s) whether pursuant to any Workers Compensation Law or otherwise.

Workers Compensation Law means any law relating to compensation for Personal Injury to any workers or employees.

**Employment Practices** shall mean any wrongful or unfair dismissal, denial of natural justice, defamation, misleading representation or advertising, harassment or discrimination in respect of Your Employees.

**Estimated Construction Cost** shall mean, in respect of each Covered Project,:

- (a) the cost to complete that Covered Project (including the replacement or reinstatement value of all Principal Supplied Materials), estimated at commencement of the Construction Period for that Covered Project; or
- (b) the contract value accepted by the Principal for that Covered Project prior to the commencement of the Construction Period for that Covered Project plus the replacement or reinstatement value of all Principal Supplied Materials;

whichever is greater.

**Excess** shall mean the amount shown in the Schedule for which We shall have no liability in respect of:

- (a) each and every Occurrence, in respect of Sections 2 and 3 of this Policy; or
- (b) any one Claim, in respect of Section 3 of this Policy.

**Hovercraft** shall mean any vessel, craft or thing designed to transport persons or property over land or water supported on a cushion of air.

**Insured (You or Your)** shall mean:

- (a) **for the purposes of Sections 1 of this Policy**
  - (i) the Named Insured; and
  - (ii) any of the following entities for which the Named Insured is required to arrange insurance by virtue of the Named Insured's contract for any Covered Project, but only to the extent required by the terms of such contract:
    - (aa) contractors and sub-contractors engaged by or on behalf of the Named Insured, but only in respect of their interest in and work performed as a part of that Covered Project;
    - (bb) the Principal; or
    - (cc) mortgagees or other holders of financial encumbrance in respect of their insurable interest in that Covered Project or any part of that Covered Project;
- (b) **for the purposes of Section 2A of this Policy**
  - (i) the Named Insured and:
    - (aa) any director, executive officer, Employee, partner or shareholder of the Named Insured; and
    - (bb) any officer or member of the Named Insured's firefighting, first aid or other



emergency services (excluding any medical practitioner) or canteens at the Project Site; but only whilst acting as such; and

- (ii) any of the following persons or entities for whom or for which the Named Insured is required to arrange insurance by virtue of the Named Insured's contract for the Project, but only to the extent required by the terms of such contract and only in respect of work performed as a part of the Project:
  - (aa) contractors and sub-contractors engaged by or on behalf of the Named Insured;
  - (bb) the Principal;
  - (cc) any director, executive officer, Employee, partner or shareholder of entities referred to in paragraphs (ii)(aa) and (ii)(bb) above, but only whilst acting as such;
  - (dd) any officer or member of the firefighting, first aid or other emergency services (excluding any medical practitioner) of the entities referred to in paragraphs (ii)(aa) and (ii)(bb) above, but only whilst acting as such.
- (c) **for the purposes of Sections 2B, 2C and 3 of this Policy**
  - (i) the Named Insured;
  - (ii) any person who is, or becomes, during the Period of Insurance, a partner, director, executive officer or Employee of the Named Insured; and
  - (iii) any past partner, director, executive officer or Employee of the Named Insured, for the purposes of Section 3 of this Policy only.

**Limit of Liability** shall mean the amount specified in the Schedule, representing Our maximum liability under:

- (a) Section 2 of this Policy in respect of any one Occurrence but in the aggregate in respect of Section 2C; and
- (b) Section 3 of this Policy in the aggregate, inclusive of Defence Costs and all additional covers, in respect of all Claims made against any of You during the Period of Insurance.

**Market Value** means the cost to buy an equivalent item, of the same age, condition, model and make, as assessed by Us including any tools supplied with the item and any accessories fitted to the item and any signwriting applied to the item.

**Named Insured** shall mean the entity specified in the Schedule as Named Insured.

**Period of Insurance** shall mean the period specified in the Schedule as Period of Insurance.

**Personal Injury** shall mean:

- (a) bodily injury, death, sickness, disease, illness, disability, shock, fright, mental anguish, and/or mental injury, including loss of consortium or services resulting therefrom;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution or humiliation;
- (c) wrongful entry or wrongful eviction or other invasion of privacy;
- (d) libel, slander or defamation of character or invasion of the right of privacy; and/or
- (e) assault and battery not committed by You or at Your direction, unless committed for the purpose of preventing or eliminating danger to persons or property.

**Policy** shall mean this Annual (Transfer Basis) Construction Material Damage, Legal Liability and Professional Indemnity Insurance wording, including any Schedule and Endorsements(s) attaching thereto.

**Pollutants** shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste material. "Waste material" includes materials that are intended to be recycled, reconditioned or reclaimed.

**Practical Completion** shall mean, in respect of each Covered Project, that stage in the execution of the Contract Works or operations when:

- (a) practical completion has been reached as per the terms of the construction or building contract for that Covered Project; or
- (b) Up to 90 days after the owner, or the Principal named as such in any contract formally accepts the Contract Works for that Covered Project as complete, but only if:
  - i) Your contract for that Covered Project requires this, or
  - ii) ownership of the project for that Covered Project has not formally transferred; or
- (c) the Contract Works are complete except for minor omissions or minor defects which do not prevent the Contract Works from being reasonably capable of being used for their intended purpose, if the contract for that Covered Project does not have provisions for practical completion.

**Principal** shall mean the entity:

- (a) **for the purposes of Sections 1 and 2A of this Policy** for or on behalf of whom the Contracts Works is being executed, in respect of each Covered Project.
- (b) **for the purposes of Section 3 of this Policy** for whom the Professional Services are provided.

**Products** shall mean anything (after it has ceased to be in the Named Insured's possession or control) which has been designed, specified, formulated, manufactured, grown, extracted, altered, produced, processed, assembled, constructed, erected, installed, treated, serviced, altered, repaired, sold, supplied, resupplied, imported, exported, parcelled, packaged, bottled, labelled or distributed by or on behalf of the Named Insured including any packaging or container of the thing including:

- (a) directions, markings, labels, instructions, warnings or advice given or omitted to be given in connection with the thing; and
- (b) anything in respect of which the Named Insured is taken or deemed to be the manufacturer by operation of a law of Australia or New Zealand.

Products shall not include any:

- (a) operations, whether of a Project Type or not, performed by or on behalf of You under any contract or agreement for the performance of work or service by or on behalf of You after such operations have been completed; or
- (b) thing or property forming part of any operations, whether of a Project Type or not, performed by or on behalf of You under any contract or agreement for the performance of work or service by or on behalf of You after such



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operations have been completed.

**Products or Completed Operations Liability** shall mean Your legal liability for Personal Injury and/or Property Damage caused by, arising out of or in connection with any Products or Completed Operations.

**Professional Services** shall mean one or more of the following services conducted by or on behalf of the Named Insured:

- (a) design, including advice in relation to design, in accordance with all relevant building, construction or engineering codes and standards;
- (b) drafting;
- (c) technical calculation;
- (d) technical specification;
- (e) construction and project management;
- (f) programming and time flow management;
- (g) quantity surveying; and/or
- (h) land and engineering surveying;

provided always that it is in connection with a construction or building project that falls within the Project Types and performed by or under the direct supervision of:

- (i) a properly registered engineer, architect or surveyor;
- (ii) a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors; or
- (iii) any other person providing a professional service of a skillful character according to an established discipline, appropriate to the professional services being performed or supervised.

Professional Services does not mean performance or supervision (where such supervision would normally be undertaken by a building contractor) of construction-related activities, either on-site or off-site, including temporary works, manufacture, assembly, installation, erection, maintenance or physical alteration of buildings, goods, products or property, programming, time flow management, environmental protection, workplace health and safety or industrial relations, by the Insured or its agent, where such performance or supervision is undertaken in the capacity solely as a building or engineering contractor.

For the purpose of this definition, construction and project management means the control, planning, administration, scheduling, evaluation and supervision of construction and completion of a project including the procurement and allocation of labour, materials and services where;

- the Named Insured is specifically remunerated by way of a fee for such service; or
  - the Named Insured has not been specifically remunerated by way of a fee for such service, but;
- (a) the Named Insured is the head contractor or the main contractor for that project;
  - (b) the contract the Named Insured has entered into for the purpose of the project contains provisions imposing on the Named Insured the responsibility for construction and project management; and
  - (c) there is no other construction and project manager or entity responsible for construction and project management for that project.

**Project Site** shall mean, in respect of each Covered Project, the location where the Contract Works for that Covered Project are carried out.

**Project Types** shall mean the types of construction or building projects:

- (a) as specified in the Schedule;
- (b) the Named Insured is or may become involved in for the purposes of this Policy; and
- (c) to which indemnity under this Policy is restricted.

**Property Damage** shall mean:

- (a) physical damage to, physical loss or physical destruction of tangible property and any resultant loss of use; and/or
- (b) loss of use of tangible property which has not been physically damaged, lost or destroyed as long as such loss of use is caused by physical damage to or physical loss or destruction of some other tangible property.

All such loss of use shall be deemed to have occurred at the point in time the physical damage to or physical loss or destruction of the tangible property, which caused the loss of use, first occurred.

**Provisional Premium** shall mean 100% of the premium calculated by:

- (a) multiplying:
  - (i) the estimated turnover for the Period of Insurance; plus
  - (ii) estimated replacement value of all Principal Supplied Materials to be incorporated into Contract Works during the Period of Insurance in connection with Covered Projects;
 in respect of Section 1 and Section 2A of this Policy, by the agreed premium rates; plus
- (b) multiplying the estimated turnover for the Period of Insurance, in respect of Section 2B, Section 2C and Section 3 of this Policy, by the agreed premium rates.

If the “deposit premium basis” specified in the Schedule is not 100% or the premium is paid in instalments:

- (i) such deposit premium or instalment premium shall not constitute Provisional Premium; and
- (ii) Provisional Premium will be the amount that represents 100% of the amount produced in accordance with paragraphs (a) and (b) above;

for the purpose of condition 13. Premium Adjustment applicable to this Policy.

**Schedule** shall mean the schedule attaching to this Policy.

**Sub-Limit** shall mean the amount specified in the Schedule:

- (a) for each additional cover under Section 1 of this Policy;
- (b) for:
  - (i) “care, custody and control”, in respect of cover for property in physical legal control, as per the proviso 4.2.6 to Exclusion 4.2 in Section 2 of this Policy;
  - (ii) “vibration, removal and/or weakening of support”, in respect of cover for vibration, removal weakening of support, as per proviso to Exclusion 4.9 in Section 2 of this Policy; and
  - (iii) additional cover 2.1 Loss of Documents in Section 3 of this Policy.

**Tool of Trade** shall mean a Vehicle that has tools, implements, machinery or plant attached to or towed by the Vehicle but only



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whilst the tools, implements, machinery or plant attached to the Vehicle is being used.

Tool of Trade does not include any Vehicle:

- (a) whilst travelling to or from a Project Site or Your premises; or
- (b) that is used to carry goods to or from any premises.

**Vehicle** shall mean any type of machine on wheels, on skis or on self-laid tracks made or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine whilst attached thereto.

**Watercraft** shall mean any vessel or craft or thing designed to float on or in or travel through water for the purpose of carrying persons or property.

**Territorial Limit** shall mean;

- (a) anywhere in Australia south of the 25<sup>th</sup> parallel, for the purposes of Section 1 of this Policy; or
- (b) anywhere in Australia, for the purposes of Sections 2 and 3 of this Policy.

**We, Us, Our, Insurer or Company** shall mean TOKIO MARINE & NICHIDO FIRE INSURANCE CO LTD.

## Section 1: Material Damage (Transfer Basis)

### 1. Cover

#### 1.1 What We Cover – Property Insured

##### 1.1.1 Contract Works

With respect to Covered Projects only, We will indemnify You for Damage to any tangible property forming part of the Contract Works occurring at the Project Site of any Covered Project during the Period of Insurance and:

- (a) during the Construction Period of that Covered Project whilst:
  - (i) awaiting construction; or
  - (ii) under construction, assembly, erection, or installation; or
- (b) during the Defects Liability Period of that Covered Project provided that such Damage:
  - (i) manifests itself during the Defects Liability Period and originates from a cause occurring during the Construction Period and at the Project Site; or
  - (ii) occurs during the Defects Liability Period and is caused by Your act or omission in complying with the defects liability provisions of Your contract for the Project.

##### 1.1.2 Existing Structures

If an amount representing the Sum Insured for Existing Structures is specified in respect of any specific Covered Project, either in the Schedule or in an Endorsement, We will indemnify You for Damage to Existing Structures occurring at the Project Site for that Covered Project during:

- (a) the Period of Insurance; and
- (b) the Construction Period of that Covered Project.

Average applies (See clause 4.7).

##### 1.1.3 Temporary Structures

With respect to Covered Projects only, If an amount representing the Sum Insured for Temporary Structures is specified in the Schedule, We will indemnify You for Damage to Temporary Structures occurring at the Project Site of any Covered Project during the Period of Insurance and:

- (a) during the Construction Period of that Covered Project whilst:
  - (i) awaiting construction; or
  - (ii) under construction, assembly, erection, or installation; or
- (b) during the Defects Liability Period of that Covered Project provided that such Damage:
  - (i) manifests itself during the Defects

Liability Period and originates from a cause occurring during the Construction Period and at the Project Site; or

- (ii) occurs during the Defects Liability Period and is caused by Your act or omission in complying with the defects liability provisions of Your contract for the Project.

##### 1.1.4 Major Plant & Equipment

If an amount representing the Sum Insured for Major Equipment & Tools is specified in the Schedule, We will indemnify You for Damage to Major Plant & Equipment occurring at the Project Site of any Covered Project during the Period of Insurance.

##### 1.1.5 Minor Equipment & Tools

If an amount representing the Sum Insured for Minor Equipment & Tools is specified in the Schedule, We will indemnify You for Damage to Minor Equipment & Tools used in the performance of the Contract Works of any Covered Project anywhere within the Territorial Limit during the Period of Insurance.

Maximum indemnity is limited to \$2,000 per item where any loss or damage occurs away from the Project Site.

We will not cover any claim for theft of Minor Equipment & Tools from a Vehicle unless the Minor Equipment & Tools were in a securely locked Vehicle and the theft was consequent upon forcible and violent entry to the Vehicle.

We will not cover any claim for theft of Minor Equipment & Tools away from the Project Site, unless at the time of the theft the Minor Equipment & Tools were:

- i) securely affixed to a building or Vehicle and the theft was consequent upon forcible and violent removal of the Minor Equipment & Tools; or
- ii) secured in a locked building or room and the theft was consequent upon forcible and violent entry to the building or room.

### 1.2 Sum Insured

Subject to additional benefit 3.2:

- 1.2.1 Our maximum aggregate liability under paragraph 1.1.1 Contract Works for the Period of Insurance, in respect of each Covered Project, shall not exceed:
  - (a) the Sum Insured for Contract Works; or
  - (b) the amount representing 115% of the Estimated Construction Cost of that Covered Project;

whichever is lesser, in respect of Damage to Contract Works;

- 1.2.2 Our maximum aggregate liability under paragraph 1.1.2 Existing Structures shall not exceed the Sum

Insured for Existing Structures (as specified in the Schedule or Endorsement for the relevant specific Covered Project), in respect of Damage to Existing Structures;

- 1.2.3 Our maximum aggregate liability under paragraph 1.1.3 Temporary Structures for the Period of Insurance, in respect of each Covered Project, shall not exceed the Sum Insured for Temporary Structures, in respect of Damage to Temporary Structures;
- 1.2.4 Our maximum aggregate liability under paragraph 1.1.4 Major Plant & Equipment for the Period of Insurance shall not exceed the Sum Insured for Major Plant & Equipment, in respect of Damage to Major Plant & Equipment; and
- 1.2.5 Our maximum aggregate liability under paragraph 1.1.5 Minor Equipment & Tools for the Period of Insurance shall not exceed the Sum Insured for Minor Equipment & Tools (not the “any one item” amount), in respect of Damage to Minor Equipment & Tools.

### 1.3 Deductible

Any indemnity under Section 1 of this Policy is subject to a Deductible to be borne by You. Deductible applies to each and every Indemnifiable Event.

The Sum Insured is reduced by the amount of the applicable Deductible but Sub-Limit is not reduced by any Deductible.

## 2. Additional Covers

Subject to the terms applicable to Section 1 of this Policy, including Definitions, Conditions and Exclusions, cover under Section 1 of this Policy is extended to include any of the following additional covers, which have an amount specified in the Schedule representing the Sub-Limit for that additional cover.

If no Sub-Limit is specified in the Schedule for any additional cover, that additional cover does not apply.

### 2.1 Expediting Expenses

Following an Indemnifiable Event, We agree to indemnify You for the costs of:

- 2.1.1 express delivery within the Commonwealth of Australia;
- 2.1.2 overtime rates of wages;
- 2.1.3 the hire of additional labour and equipment; and
- 2.1.4 the costs of purchasing resources:

necessarily and reasonably incurred to repair or urgently replace or reinstate Damaged Contract Works.

Express delivery shall include carriage by airfreight within the Commonwealth of Australia but only by licensed airline(s) utilizing regular scheduled services, and not aircraft chartered specifically for such carriage unless agreed in writing by Us.

Indemnity provided by this additional cover does not include reimbursement of costs incurred solely to

compensate for delay in completion of any Covered Project.

Subject to additional benefit 3.2, Our maximum aggregate liability for each Covered Project, under this additional cover shall not exceed the percentage of the Estimated Construction Cost as specified in the Schedule as Sub-Limit for Expediting Expenses.

Sub-Limit for Expediting Expenses applies in addition to the Sum Insured for the Property Insured that suffered Damage.

### 2.2 Mitigation Expenses

Following an Indemnifiable Event, We agree to indemnify You for the costs and expenses necessarily and reasonably incurred in containing, mitigating, suppressing or preventing further Damage to the Contract Works or Temporary Structures.

Subject to additional benefit 3.2, Our maximum aggregate liability for each Covered Project, under this additional cover shall not exceed the percentage of the Estimated Construction Cost as specified in the Schedule as Sub-Limit for Mitigation Expenses.

Sub-Limit for Mitigation Expenses applies in addition to the Sum Insured for the Property Insured that suffered Damage.

### 2.3 Off-Site Storage

We agree to indemnify You for Damage to any tangible property forming part of:

- 2.3.1 Contract Works for any Covered Project; and
- 2.3.2 Temporary Structures for any Covered Project;

occurring during:

- (a) the Period of Insurance; and
- (b) the Construction Period or Defects Liability Period of that Covered Project;

whilst in storage other than at the Project Site but within the Territorial Limit.

Subject to additional benefit 3.2, Our maximum aggregate liability for each Covered Project, under this additional cover shall not exceed \$100,000 or 5% of the contract value, whichever is the greater.

Sub-Limit for Off-Site Storage forms part of and shall not be in addition to the Sum Insured for the Property Insured that suffered Damage.

### 2.4 Professional Fees

Following an Indemnifiable Event, We agree to indemnify You for the fees of architects, surveyors, consulting engineers and other such professionals (not being Your Employees) employed in the repair, replacement or reinstatement of Damage to the Contract Works, Existing Structures or Temporary Structures (but excluding any fees for the preparation of any claim under the Policy).

Subject to additional benefit 3.2, Our maximum aggregate liability for each Covered Project, under this additional cover shall not exceed the percentage of the Estimated Construction Cost as specified in the Schedule as Sub-Limit for Professional Fees.



Sub-Limit for Professional Fees applies in addition to the Sum Insured for the Property Insured that suffered Damage.

## 2.5 Removal of Debris

Following an Indemnifiable Event, We agree to indemnify You for the cost of:

2.5.1 demolition, removal and disposal of the Damaged Property Insured; and

2.5.2 demolition, removal and disposal of undamaged property necessary to enable the Damaged Property Insured to be repaired, replaced or reinstated.

Subject to additional benefit 3.2, Our maximum aggregate liability for each Covered Project, under this additional cover shall not exceed the percentage of the Estimated Construction Cost as specified in the Schedule as Sub-Limit for Removal of Debris.

Sub-Limit for Removal of Debris applies in addition to the Sum Insured for the Property Insured that suffered Damage.

## 2.6 Transit

We agree to indemnify You for Damage to any tangible property forming part of:

2.6.1 Contract Works for any Covered Project; and

2.6.2 Temporary Structures for any Covered Project; occurring during:

- (a) the Period of Insurance; and
- (b) the Construction Period or Defects Liability Period of that Covered Project;

whilst in transit within the Territorial Limit.

Subject to additional benefit 3.2, Our maximum aggregate liability, for each Covered Project, under this additional cover shall not exceed the Sub-Limit for Transit, as specified in the Schedule.

Sub-Limit for Transit forms part of and shall not be in addition to the Sum Insured for Property Insured Damaged.

## 2.7 Search and locate costs

Following an Indemnifiable Event, We agree to indemnify You for costs incurred to search for and locate pipeline leak(s).

Cover under the Item shall be limited to the cost of:

- a. searching for and locating leaks, including the cost of excavation for that purpose;
- b. effecting repairs; and
- c. replacing the excavated material.

Our maximum aggregate liability for the Period of Insurance under this additional cover shall not exceed the Sub-Limit for Search and Locate Costs, as specified in the Schedule.

Sub-Limit for Search and Locate Costs applies in addition to the Sum Insured for the Property Insured that suffered Damage.

## 3. Additional Benefits

Subject to the terms applicable to Section 1 of this Policy, including Definitions, Conditions and Exclusions, We further agree to extend cover to include the following additional benefits.

### 3.1 Loss Accumulation

For the purpose of the application of the Deductible, all Damage resulting from storm, tempest, flood, cyclone or earthquake occurring during any period of 72 consecutive hours shall be considered as arising from one Indemnifiable Event whether or not such storm, tempest, flood, cyclone or earthquake is continuous or sporadic in its sweep or scope and whether or not the Damage was due to the same climatic or seismological conditions.

You may choose the date and time when any such period of 72 consecutive hours commences for the purpose of one Indemnifiable Event and, if the storm, tempest, flood, cyclone or earthquake is of greater duration than 72 consecutive hours, the storm, tempest, flood, cyclone or earthquake shall be divided into two or more Indemnifiable Events, provided no Indemnifiable Events overlap and provided no Indemnifiable Event commences earlier than the date and time of the occurring of the first recorded Damage from that storm, tempest, flood, cyclone or earthquake.

### 3.2 Reinstatement of Sum(s) Insured

Following payment of a claim under Section 1 of this Policy, We will reinstate the affected Sum Insured and Sub-Limit, provided You pay any additional premium We request.

## 4. Basis of Loss Settlement

### 4.1 Contract Works and Existing Structures

Following an Indemnifiable Event, the basis of any settlement under this Section of the Policy will be the cost to repair, replace or reinstate the Damaged Property Insured, without deduction for depreciation provided that:

- 4.1.1 Our payment to repair, replace or reinstate the Damaged Property Insured will not exceed the amount actually spent by You to repair, replace or reinstate the Damaged Property Insured with property of like kind and quality;
- 4.1.2 if original materials, machinery or equipment are no longer available the settlement will be based on the cost of suitable alternatives;
- 4.1.3 the Damaged Property Insured will be repaired, replaced or reinstated to a condition equal to, but not better than when new; and
- 4.1.4 claims for Damaged Property Insured that are not repaired, replaced or reinstated will be settled at the Indemnity Value immediately prior to the Damage.





## 4.2 Temporary Structures

Following an Indemnifiable Event, the basis of any settlement under this Section of the Policy will be:

- 4.2.1 in the case of Damage which can be repaired, the cost of repairs necessary to restore the Damaged Property Insured to a condition as good as but not better or more efficient or extensive than its condition immediately prior to the Damage; and
- 4.2.2 in the case of a total loss, the Indemnity Value of the Damaged Property Insured immediately prior to the Damage, less any salvage.

Damage that can be repaired must be repaired, but if the cost of repairing any damage equals or exceeds the Indemnity Value of the Damaged Property Insured immediately prior to the Damage, the Damaged Property Insured will be deemed a total loss and settlement will be in accordance with paragraph 4.2.2.

## 4.3 Major Plant & Equipment and Minor Equipment & Tools

Following an Indemnifiable Event, the basis of any settlement under this Section of the Policy will be:

- 4.3.1 in the case of Damage which can be repaired, the costs necessary to repair the Damaged Property Insured and return it to its state of serviceability immediately prior to the Damage, less allowance for depreciation in respect of parts replaced; or
- 4.3.2 in the case of a total loss, the current Market Value of the Damaged Property Insured immediately prior to the Damage, less any salvage.

Damage that can be repaired must be repaired, but if the cost of repairing any damage equals or exceeds the current Market Value of the Damaged Property Insured immediately prior to the Damage, the Damaged Property Insured will be deemed a total loss and settlement will be in accordance with paragraph 4.3.2.

## 4.4 Supporting Documentation

We will not make any payment unless You have produced to Our reasonable satisfaction all accounts, invoices, receipts and any other supporting documentation necessary to substantiate that repairs have been affected or replacement or reinstatement has taken place.

## 4.5 Betterment or Temporary Repairs

We will not pay costs for any alterations, additions, improvements or overhauls or the cost of any temporary repairs that do not constitute a part of the final repairs.

## 4.6 Overheads and Profit

Where We have agreed to pay a claim under this Section of the Policy and the repairs are carried out by You, allowance shall be made for a reasonable margin of profit and overhead in relation to such repairs.

## 4.7 Average

Where cover is requested for Existing Structures, the Sum Insured for Existing Structures must be for the full cost of replacement or reinstatement at the commencement of the

Covered Project.

If the amount You have specified as Sum Insured for Existing Structures is less than 90% of the cost to replace or reinstate the whole of the Existing Structures the amount to be paid by Us in respect of Damaged Existing Structures shall be reduced in the same proportion as the Sum Insured bears to 90% of the cost to replace or reinstate the whole of the Existing Structures.

## 5. Definitions Applicable to Section 1

Wherever used in this Section 1 of the Policy, the following terms shall be deemed to have the meanings ascribed to them below. Unless the context requires another meaning, a reference to the singular includes the plural and vice versa.

**5.1 Damage** shall mean sudden and physical loss, destruction of or damage to the Property Insured with the word Damaged having a corresponding meaning.

The existence of any defect in material, workmanship, design, plan or specification, by itself, does not constitute Damage.

**5.2 Deductible** shall mean the amount shown in the Schedule for which must be borne by You in respect of each and every Indemnifiable Event.

Deductible applies inclusive of amounts payable under any additional cover.

**5.3 Existing Structure(s)** shall mean any permanent building(s) or structure(s) (including all fixed pipework, cables and other services within such building or structure) located at the Project Site of the relevant Covered Project prior to commencement of that Covered Project.

Existing Structure(s) does not include any:

- (a) moveable personal property kept on the Project Site;
- (b) furniture, appliances or other contents in such building or structure; or
- (c) driveways, pathways, external paving, swimming pools, landscaping, vegetation or fencing, unless specifically stated in the Schedule.

**5.4 Indemnifiable Event** shall mean a sudden happening unintended from Your standpoint, which causes Damage to Property Insured:

- 5.4.1 neither expected nor intended from Your standpoint;
- 5.4.2 in respect of which indemnity under Section 1 of this Policy applies; and
- 5.4.3 not excluded by this Policy.

**5.5 Indemnity Value** shall mean the cost to repair, replace or reinstate less an amount for age, wear and tear and depreciation and less an adjustment for general condition and remaining useful life.

**5.6 Major Plant & Equipment** shall mean fixed and mobile cranes, concrete mixing Vehicles, earth moving equipment and other similar construction machinery or

Vehicles whether self-propelled or not, which:

- 5.6.1 belongs to the Named Insured; or
  - 5.6.2 the Named Insured is required by contract to insure;
- and is used in the process of executing the Contract Works.

**5.7 Market Value** means the cost to buy an equivalent item, of the same age, condition, model and make, as assessed by Us including any tools supplied with the item and any accessories fitted to the item and any signwriting applied to the item.

**5.8 Minor Equipment & Tools** shall mean hoists, welding equipment, air compressors, pumps, surveying equipment, concrete mixing and batching equipment (not permanently attached to or forming part of concrete mixing Vehicle), drying equipment, de-humidifying equipment, hand held tools (powered or non-powered) and portable generators, which:

- 5.8.1 belongs to the Named Insured; or
  - 5.8.2 the Named Insured is required by contract to insure;
- and is used in the process of executing the Contract Works.

Minor Equipment & Tools does not include laptop computers, mobile phones, cameras or any other communication or electronic equipment (unless forming part of Contract Works).

**5.9 Principal Supplied Materials** means any item supplied free, by the Principal, for incorporation within the Contract Works.

**5.10 Property Insured** shall mean any:

- 5.10.1 tangible property forming part of the Contract Works;
- 5.10.2 Existing Structure, if an amount representing a Sum Insured for Existing Structures is specified in the Schedule;
- 5.10.3 Major Plant & Equipment, if an amount representing a Sum Insured for Major Plant & Equipment is specified in the Schedule;
- 5.10.4 Minor Equipment & Tools, if an amount representing a Sum Insured for Minor Equipment & Tools is specified in the Schedule; and
- 5.10.5 Temporary Structures, if an amount representing a Sum Insured for Temporary Structures is specified in the Schedule;

**5.11 Sum(s) Insured** shall mean the amount specified in the Schedule in respect of each type of Property Insured.

**5.12 Temporary Structures** shall mean scaffolding, hoardings, false work and re-usable formwork and temporary buildings, which:

- 5.12.1 belongs to the Named Insured; or
- 5.12.2 the Named Insured is required by contract to insure;

and is used in the process of executing the Contract Works.

## 6. Exclusions Applicable to Section 1

Indemnity provided by Us under Section 1 of this Policy does not apply to:

**6.1** Damage to and the cost necessary to replace repair or rectify

(a) Any component or individual item of the Property Insured which is defective in design plan specification materials or workmanship

(b) Property Insured lost or damaged to enable the replacement repair or rectification of Property Insured excluded by (a) above

Exclusion (a) above shall not apply to other parts or items of Property Insured which are free from defect but are damaged in consequence thereof.

For the purpose of the Policy and not merely this exclusion the Property Insured shall not be regarded as Damaged solely by virtue of the existence of any defect in design plan material specification or workmanship in the Property Insured or any part thereof.

**6.2** Damage to any Major Plant & Equipment or Minor Equipment & Tools caused by, arising out of or following mechanical, hydraulic, electrical or electronic breakdown, failure, derangement or malfunction.

**6.3** Damage to any Major Plant & Equipment or Minor Equipment & Tools or any other Property Insured whilst hired out by You to others.

**6.4** Damage to any Major Plant & Equipment:

- 6.4.1 for which the supplier or manufacturer or anyone else is responsible either by law or under contract;
- 6.4.2 which is attached to or towed by Watercraft or Hovercraft or is underground;
- 6.4.3 which is a Vehicle licensed or registered for general road use, except whilst being used at the Project Site as a Tool of Trade; or
- 6.4.4 consisting of scratching or discolouration of painted, plated or polished surfaces.

**6.5** any amount, cost or expense incurred in the repair, replacement or reinstatement of any:

- 6.5.1 gases, fluids or liquids requiring periodic or frequent replacement or topping up; or
- 6.5.2 parts, consumables or other property requiring periodic or frequent repair, replacement or maintenance, including but not limited to:
  - (a) fuses, shear-pins, rupture plates or other expendable load limiting devices;
  - (b) bits, drills, knives, saw blades or other cutting devices;
  - (c) dies, moulds or other patterns;
  - (d) pulverising or crushing surfaces;
  - (e) jointing and packing material;
  - (f) screens, sieves or other filters; or
  - (g) ropes, belts, chains, elevator and conveyor belts, batteries, flexible pipes, tyres or tracks;
 as a result of the inherently replaceable nature of



such parts.

- 6.6** any amount, cost or expense caused by, arising from or in connection with:
- 6.6.1** piles or retaining wall elements, which:
- (a) have become misplaced, misaligned or jammed during their installation, erection or construction;
  - (b) are lost, abandoned or Damaged during driving or extraction; or
  - (c) have become obstructed by jammed or Damaged piling equipment or casings;
- 6.6.2** disconnected or declutched sheet piles;
- 6.6.3** leakage or infiltration of material of any kind;
- 6.6.4** filling voids or replacing lost bentonite;
- 6.6.5** piles or foundation elements failing to pass a load bearing test or otherwise not reaching their designed load bearing capacity; or
- 6.6.6** reinstating profiles or dimensions.
- 6.7** **6.7.1** any amount, cost or expense caused by, arising from or in connection with dewatering or removing water from, on or around the Project Site provided that this paragraph 6.7.1 shall not apply to costs and expenses incurred in any additional dewatering to remove additional water (including grouting or other remedial measures to prevent ingress of additional water) but only in respect of:
- (a) costs and expenses in connection with that quantity of water exceeding quantities anticipated for the Covered Project; or
  - (b) costs and expenses exceeding the amount allowed in the Estimated Construction Cost; whichever is lesser; or
- 6.7.2** Damage due to failure of the dewatering system if such Damage could have been avoided or prevented by sufficient standby facilities.
- 6.8** Damage discovered only at the time an inventory is taken.
- 6.9** Damage to, cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes, securities, computer systems, software or data.
- 6.10** any amount, cost or expense caused by, arising from or in connection with erosion, wasting away, wearing away, abrasion, corrosion, rust, oxidation, atmospheric conditions, creep, heave or any gradually deteriorating or developing cause.
- 6.11** Damage due to or caused by moths, termites or other insects, vermin, mildew, mould, dampness, seepage, wet or dry rot, evaporation, variations in temperature, change of colour, texture or finish, contamination or pollution.
- 6.12** any amount, cost or expense caused by, arising from or in connection with normal upkeep or routine making good.
- 6.13** Damage occurring during the course of ocean marine transit including unloading following ocean marine transit, other than transit within Australian coastal waters, in connection with a Covered Project.
- 6.14** Damage due to embezzlement or fraudulent misappropriation or induced by trickery by any Employee.
- 6.15** Damage arising out of the imposition of abnormal conditions, intentional overloading or overheating or experiments.
- 6.16** any amount, cost or expense caused by, arising from or in connection with any disease, inherent defect, faulty packing or faulty storage.
- 6.17** Damage to floor or wall finishes or coverings or contents of any Existing Structures.
- 6.18** Damage to road works.
- 6.19** Damage to pipe trenches, but this exclusion does not apply to pipe trenching forming part of the construction of a building.
- 6.20** Damage resulting from any action of the sea
- 6.21** Damage to any vegetation caused by or arising from disease, lack of water, excess of water, or replanting operations.
- 6.22** any amount, cost or expense caused by, arising from or in connection with any consequential loss or legal liability of any kind or nature, including but not limited to:
- 6.22.1 loss of use;
  - 6.22.2 fines or penalties; or
  - 6.22.3 liquidated, aggravated, punitive or exemplary damages.
- 6.23** Damage occurring:
- 6.23.1 prior to the commencement of the Period of Insurance; or
  - 6.23.2 after the expiry of the Period of Insurance.

## Section 2 - Legal Liability

This Section is only operative if an amount representing the Limit of Liability is specified for this Section in the Schedule.

This Section is in 3 parts:

- Section 2A: Construction Liability (Transfer Basis);
- Section 2B: Incidental Public Liability; and
- Section 2C: Products or Completed Operations Liability.

Please read carefully the “What We Cover” clause below to understand the different covers provided.

### 1. Cover

#### 1.1 What We Cover

##### **Section 2A: Construction Liability (Transfer Basis)**

We agree to pay to You or on Your behalf all amounts You shall become legally liable to pay as Compensation in respect of Personal Injury and/or Property Damage occurring within the Territorial Limit:

- (a) during the Period of Insurance and caused by or arising out of Construction Activities in connection with a Covered Project; and
- (b) during the:
  - (i) Construction Period as a result of an Occurrence in connection with a Covered Project; or
  - (ii) the Defects Liability Period as a result of an Occurrence when rectifying any defects in connection with a Covered Project.

**Indemnity provided under Section 2A does not apply to any Products or Completed Operations Liability.**

##### **Section 2B: Incidental Public Liability**

We agree to pay to You or on Your behalf all amounts You shall become legally liable to pay as Compensation in respect of Personal Injury and/or Property Damage occurring during the Period of Insurance within the Territorial Limit as a result of an Occurrence in connection with Incidental Activities.

**Indemnity provided under Section 2B does not apply to any Products or Completed Operations Liability.**

##### **Section 2C: Products or Completed Operations Liability**

We agree to pay to You or on Your behalf all amounts You shall become legally liable to pay as Compensation in respect of Personal Injury and/or Property Damage occurring during the Period of Insurance within the Territorial Limit as a result of an Occurrence in connection with any Products or Completed Operations.

#### 1.2 Defence Costs and Supplementary Payments

With respect to the indemnity provided by this Section 2 of the Policy, We will:

- 1.2.1 defend, in Your name and on Your behalf, any

claim or suit against You alleging Personal Injury or Property Damage and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent; and

- 1.2.2 pay Defence Costs and Supplementary Payments in connection with such claim or suit.

The amounts of such Defence Costs and Supplementary Payments incurred, except payments in settlement of claims and suits, are payable by Us in addition to the Limit of Liability applicable to this Section.

### 1.3 Limit of Liability and Excess

#### 1.3.1 Limit of Liability

Subject to clause 1.2 of this Section, Our maximum liability under Section 2 of this Policy shall not exceed the Limit of Liability applicable to this Section.

The Limit of Liability applies to each Occurrence, except Section 2C where the Limit of Liability applies in the aggregate in respect of for all Personal Injury and/or Property Damage occurring during the Period of Insurance.

#### 1.3.2 Excess

Any indemnity under Section 2 of this Policy is subject to an Excess to be borne by You. Excess applies to each and every Occurrence.

The applicable Limit of Liability or Sub-Limit will not be reduced by the amount of any Excess payable by You.

### 2. Additional Cover

Subject to the terms applicable to Section 2 of this Policy, including Definitions, Conditions and Exclusions, We further agree to extend cover to include the following additional cover.

#### 2.1 Claims Preparation Costs

We agree to reimburse You up to \$20,000 for reasonable professional fees and such other expenses incurred by You for the preparation of a claim covered under this Section of the Policy.

The cover provided under this additional cover operates in addition Limit of Liability and Defence Costs and Supplementary Payments.

### 3. Definitions Applicable to Section 2

Wherever used in Section 2 of this Policy, the following terms shall be deemed to have the meanings ascribed to them below. Unless the context requires another meaning, a reference to the singular includes the plural and vice versa.

**3.1 Aircraft** shall mean any craft or object designed to travel through air or space.

**3.2 Construction Activities** shall mean all construction and/or building and associated activities, including but not limited to:

3.2.1 occupation of the Project Sites;

3.2.2 loading and unloading of Vehicles at or near the

Project Sites in connection with Contract Works;

- 3.2.3 erection, use and/or maintenance of signs at or in the vicinity of the Project Sites;
- 3.2.4 provision and management of canteens at the Project Sites; and
- 3.2.5 provision of first aid, firefighting or other emergency services at the Project Sites;

in connection with any Covered Project.

**3.3 Incidental Activities** shall mean reasonable business activities necessary to support Construction Activities of the Named Insured, including:

- 3.3.1 ownership and/or occupation of premises, except Project Sites;
- 3.3.2 repair and maintenance of Vehicles, construction machinery and/or equipment owned by the Named Insured;
- 3.3.3 participation in construction or building industry conferences or exhibitions;
- 3.3.4 operation of display homes; and
- 3.3.5 erection, use and/or maintenance of advertising signs, except in connection with any Covered Project;

but excluding any Construction Activities.

**3.4 Incidental Contracts** shall mean;

- 3.4.1 any written rental agreement or lease of real or personal property not requiring an obligation to insure such property or be strictly liable regardless of fault;
- 3.4.2 any written contract with any authority or entity responsible for the supply of electricity, fuel, gas, natural gas, air, steam, water, sewerage reticulation control systems, waste disposal facilities, telephone and communication services or other essential services, except those contracts in connection with work done for such authorities or entities;
- 3.4.3 any written contract with any railway authority for the loading, unloading and/or transport of products, including contracts relating to the operation of railway sidings; or
- 3.4.4 those contracts designated in the Schedule.

**3.5 Occurrence** shall mean an event which results in Personal Injury and/or Property Damage that is neither expected nor intended from Your standpoint.

**3.6 Standard Construction Contract** shall mean a contract for construction or building work or service, which is prepared and/or published (including jointly published) by Standards Association of Australia, Master Builders Australia, Australian Institute of Architects, Housing Industry Association, NSW Fair Trading, Consumer Affairs Victoria or QLD Building Services Authority.

**3.7 Supplementary Payments** shall mean reasonable expenses incurred by You for:

- 3.7.1 rendering first aid and/or surgical or medical relief to others at the time of any Personal Injury (other than any medical expenses, which We are prevented from paying by any law);
- 3.7.2 temporary protection of damaged or undamaged property of any person or party, including

temporary repairs, shoring up and/or underpinning thereof; or

- 3.7.3 purchasing and/or hiring and/or erection and dismantling of hoarding, barriers, fences and any other form of temporary protection, including such protection which You must provide in compliance with the requirements of any Government, Local Government or other Statutory Authority.

**3.8 Underground Services** shall mean any underground pipes, ductwork, mains, wires, cables, conduits and their supports.

**3.9 Worker on Project Site** means any:

- 3.9.1 contractor or subcontractor (of any tier);
- 3.9.2 Employee of entity referred to in paragraph 3.9.1;
- 3.9.3 Employee of the Named Insured; or
- 3.9.4 other person;

involved in or working in connection with the Project, whilst such person is within the boundaries of the Project Site.

## 4. Exclusions Applicable to Section 2

Indemnity provided under Section 2 of this Policy does not apply to:

**4.1** any liability caused by, arising out of or in connection with:

- 4.1.1 any Personal Injury to any Employee in respect of which You are or would be entitled to indemnity under any policy of insurance, fund, scheme or self-insurance pursuant to or required by any legislation relating to Worker's Compensation or Accident Compensation whether or not such policy, fund, scheme or self-insurance has been effected, provided that this paragraph 4.1.1 shall not apply to the extent that Your liability would not be covered under any such policy, fund, scheme, or self-insurance arrangement had You complied with its obligations pursuant to such law;
- 4.1.2 any 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 or contract of employment or workplace agreement; or
- 4.1.3 any Employment Practices.

**4.2** any liability caused by, arising out of or in connection with any Property Damage to:

- 4.2.1 any property owned by You;
- 4.2.2 any property, on or for which You have assumed responsibility to effect insurance; or
- 4.2.3 any other property not referred to in paragraphs 4.2.1 or 4.2.2 in Your physical or legal control or possession provided that this paragraph 4.2.3 shall not apply with regard to:
  - (a) the personal property, tools and effects of any of Your directors, partners, proprietors, officers, executives or Employees, or the clothing and personal effects of any of Your visitors;



- (b) premises or part(s) of premises (including their contents) temporarily occupied by You for the purpose of carrying out work in connection with the Project;
- (c) any other property temporarily in Your possession for the purpose of being worked upon, but no indemnity is granted for damage to that part of any property upon which You are or have been working if the damage arises solely out of such work;
- (d) any Vehicle (including its contents, spare parts and accessories while they are in or on such Vehicles) not belonging to or used by You, whilst such Vehicle is in a car park owned or operated by You at or for the Project Site, provided that You do not operate the car park for reward; or
- (e) any other property (except for property referred to in paragraphs 4.2.1 or 4.2.2) not mentioned in paragraphs (a) to (d) whilst in Your physical or legal control or possession provided that Our liability under this paragraph (f) in respect of any one Occurrence shall not exceed the Sub-Limit specified in the Schedule for “care, custody and control”.

**4.3** any liability caused by, arising out of or in connection with the ownership, possession, operation or use by You of any Vehicle:

- 4.3.1 which is registered or which is required under any legislation to be registered;
- 4.3.2 in respect of which compulsory liability insurance or statutory indemnity is required by virtue of any legislation (whether or not that insurance is effected) but this paragraph 4.3.2 shall not apply to Personal Injury where:
  - (a) compulsory liability insurance or statutory indemnity does not provide indemnity: and
  - (b) the reason or reasons why that compulsory liability or statutory indemnity does not provide indemnity do not involve a breach by You of legislation relating to Vehicles;

Provided that this exclusion shall not apply to Property Damage caused by or arising from:

- (a) the loading or unloading of goods to or from any stationary Vehicle or the delivery or collection of goods to or from any stationary Vehicle:
  - (i) at a Project Site, in respect of Construction Activities; or
  - (ii) anywhere within the Territorial Limit, in respect of Incidental Activities; or
- (b) the operation of any Tool of Trade by You or on Your behalf at:
  - (i) a Project Site, in respect of Construction Activities; or
  - (ii) Your premises, in respect of Incidental Activities, but only whilst the Vehicle is stationary.

**4.4** any liability caused by, arising out of or in connection with the utterance of libel and/ or slander or the publication of any libellous, slanderous or defamatory material:

- 4.4.1 made prior to the commencement of the Period of Insurance; or
- 4.4.2 made at Your direction or with Your authority or with knowledge of its falsity; or
- 4.4.3 related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of You.

**4.5** any liability caused by, arising out of or in connection with the loss of use of tangible property, which has not been physically destroyed or damaged, directly arising out of:

- 4.5.1 a delay in or lack of performance by You or on Your behalf of any contract or agreement; or
- 4.5.2 the failure of any Products, Completed Operations or work performed by You or on Your behalf to meet the level of performance, quality or fitness impliedly warranted or represented by or on behalf of You provided that this paragraph 4.5.2 shall not apply to Your legal liability for loss of use of other tangible property resulting from sudden and accidental physical loss, destruction of or damage to any Products, Completed Operations or work performed by You or on Your behalf after or such Products, Completed Operations or work have been put to use by any person or organisation other than You.

**4.6** 4.6.1 (a) the cost of making any refund on the price paid for any Product or Completed Operations;

- (b) the cost of completing, performing, restoring, repairing, replacing, reinstating, correcting or improving any Product, Completed Operations or any work undertaken by You or on Your behalf; or
- (c) loss, cost or expense incurred by You in relation to any withdrawal, recall, inspection, removal or disposal of any Product or Completed Operations;

4.6.2 any liability caused by, arising out of, contributed to by, in respect of or in connection with the loss of use of any Product or Completed Operations or of:

- (a) any property of which any Product or Completed Operations form a part; or
- (b) any property containing or incorporating any Product or Completed Operations;

if such Product, Completed Operations or property is withdrawn from the market or from use; or

4.6.3 any liability caused by, arising out of, contributed to by, in respect of or in connection with any withdrawal, recall, inspection, repair, replacement, removal or disposal of:

- (a) any property of which any Company’s Product form a part; or
- (b) any property containing or incorporating any Company’s Product;

**4.7** any liability caused by, arising out of or in connection with any act, error or omission:

- 4.7.1 in the provision of Professional Services by You or



on Your behalf; or

4.7.2 in breach of professional duty or duty owed in a professional capacity.

**4.8** any liability which has been assumed by You under any contract or agreement that requires You to:

4.8.1 effect insurance over property, either real or personal; or

4.8.2 assume liability for, Personal Injury or Property Damage regardless of fault, provided that this paragraph 4.8.2 shall not apply with regard to liability:

- (a) which would have been implied by law in the absence of such agreement;
- (b) assumed under any Incidental Contracts;
- (c) assumed under the Your contract for a construction or building project provided that it is a Standard Construction Contract; or
- (d) assumed under the contracts specifically designated in the Schedule or in any endorsement(s) to this Policy.

**4.9** any liability caused by, arising out of or in connection with any Property Damage caused by or arising out of or in connection with:

4.9.1 vibration; and/or

4.9.2 removal and/or weakening of, or interference with, support to land, buildings or any other property.

However, if an amount representing the Sub-Limit for “vibration, removal and/or weakening of support” is shown in the Schedule, We will indemnify You for liability which would otherwise have been excluded by this exclusion, provided that the aggregate amount of such indemnity for the Period of Insurance shall not exceed such Sub-Limit.

**4.10** any liability caused by, arising out of or in connection with:

4.10.1 any discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water;

4.10.2 the cost of removing, nullifying, or cleaning up of Pollutants; or

4.10.3 the cost of testing for or monitoring for or of Pollutants;

provided that, paragraphs 4.10.1 and 4.10.2 shall not apply to liability caused by or arising out of any discharge, dispersal, release or escape of Pollutants arising out of a sudden, accidental, identifiable, unintended and unexpected happening which takes place in its entirety at a specific time and place.

**4.11** any liability caused by, arising out of or in connection with the ownership, possession, maintenance, operation or use by You or on Your behalf of any Aircraft, Hovercraft or Watercraft.

**4.12** the cost of repairing, replacing or reinstating any property consisting or forming part of any Property Insured under Section 1 of this Policy.

**4.13** any liability caused by, arising out of or in connection with any Property Damage to any Underground Services, unless You can establish that You:

- (a) obtained written details or plans of the position of any Underground Services prior to commencing any digging or excavation;
- (b) used the detail or plan, taking reasonable care, to locate the position of any Underground Services; and
- (c) took reasonable care when working around or near any Underground Services to avoid contact or impact with the Underground Services.

Reasonable care includes, where possible, following relevant State guidelines on safe work practice in that State.

**4.14** any liability caused by, arising out of or in connection with the operation of a crane that is in an unsafe condition, or where all laws, by-laws regulations and recognised standards for the operation of the crane or for safety of persons or property, in the state or territory in which the crane is being or was operated, have not been observed.

**4.15** any liability caused by, arising out of or in connection with any Personal Injury and/or Property Damage occurring:

4.15.1 prior to the commencement of the Period of Insurance; or

4.15.2 after the expiry of the Period of Insurance.

**4.15** any liability caused by, arising out of or in connection with the vibration, weakening or the removal of support of any property unless the work that vibrated, weakened or removed the support was performed in strict accordance with plans, specifications and geotechnical report for the work and as approved by a design, structural, or consulting engineer.

## **5. Conditions Applicable to Section 2**

### **5.1 Non-Imputation**

Where this insurance is arranged in the joint names of more than one Insured, as described in the definition of Insured, it is hereby declared and agreed that:

5.1.1 each Insured shall be covered as if it made its own proposal for this insurance;

5.1.2 any declaration, statement or representation made in any proposal shall be construed as a separate declaration, statement or representation by each Insured; and

5.1.3 any knowledge possessed by any Insured shall not be imputed to any other Insured.

### **5.2 Cross Liabilities**

Subject at all times to the terms of this Policy, each Insured is separately indemnified in respect of claims made by any other Insured provided that nothing in this condition will result in an increase in the Limit of Liability or the Excess in respect of any one Occurrence or in the aggregate for the Period of Insurance.

## Section 3 - Professional Indemnity

This Section is only operative if an amount representing the Limit of Liability is specified for this Section in the Schedule.

### 1. Cover

#### 1.1 What We Cover

We agree to pay to You or on Your behalf all amounts You shall become legally liable to pay as Compensation in respect of any Claim or Claims first made against You and notified to Us during the Period of Insurance arising out of any act, error or omission committed after the Retroactive Date in the conduct of the Professional Services within the Territorial Limit in connection with any construction or building project falling within the Project Types.

#### 1.2 Defence Costs

With respect to any Claim in respect of which the indemnity provided by this Section 3 of the Policy applies, We will:

1.2.1 defend, in Your name and on Your behalf, such Claim even if the Claim is groundless, false or fraudulent; and

1.2.2 pay Defence Costs in connection with such Claim.

#### 1.3 Limit of Liability and Excess

##### 1.3.1 Limit of Liability

Our maximum aggregate liability under Section 3 of this Policy, inclusive of all additional covers, shall not exceed the Limit of Liability.

Limit of Liability applies inclusive of Defence Costs.

##### 1.3.2 Excess

Any indemnity under Section 3 of this Policy is subject to an Excess to be borne by You. Excess applies to each and every Claim.

The applicable Limit of Liability or Sub-Limit will not be reduced by the amount of any Excess payable by You.

### 2. Additional Covers

Subject to the terms applicable to Section 3 of this Policy, including Definitions, Conditions and Exclusions, We further agree to extend cover to include the following additional covers.

#### 2.1 Competition and Consumers Acts

We agree that Claim referred to in clause 1.1 of this Section 3 of the Policy includes a Claim alleging that You have engaged in conduct that is misleading, deceptive or likely to mislead or deceive under the terms of the Competition and Consumer Act 2010 (Cth) or any Fair Trading Legislation of any State or Territory of Australia in the conduct of the Professional Services.

#### 2.2 Continuous Cover

If You failed to notify or opted not to notify, a fact or circumstance which You could have elected, pursuant to section 40(3) Insurance Contracts Act 1984 (Cth), to notify Us under an earlier policy issued by Us providing the same or similar indemnity as provided under Section 3 of this Policy, We will accept notification of such fact or circumstance under this Policy if You notify Us in writing of such fact or circumstance during the Period of Insurance. Then, any Claims arising out of such fact or circumstance, regardless of when they are actually made against You shall be deemed to have been first made against You on the date that You notified Us of such fact or circumstance.

This additional cover only applies if:

- (a) You have been continuously covered, without interruption, under a policy issued by Us, for liabilities which would have been covered under Section 3 of this Policy, between the date You first became aware of such fact or circumstance and the commencement of the Period of Insurance; and
- (b) liability in respect of such Claim would have been covered under the earlier policy current on the date You first became aware of such fact or circumstance, but for the late notification, and is also covered under this Policy.

We may reduce the amount of indemnity for claims under this additional cover by the amount that represents any prejudice We have suffered due to the late notification.

The most We will pay under this additional cover is the lesser of:

- (i) the Limit of Liability applicable to Section 3 of this Policy; and
- (ii) the limit of indemnity available under such earlier policy current at the time You first became aware of such fact or circumstance.

For the purpose of this additional cover, exclusion 4.8.2 does not apply.

#### 2.3 Intellectual Property

We agree that Claim referred to in clause 1.1 of this Section 3 of the Policy includes a Claim alleging You have infringed Intellectual Property Rights in the conduct of the Professional Services.

No cover is provided under this additional cover or under this Section 3 of the Policy for Claims resulting from any intentional infringement of Intellectual Property Rights.

#### 2.4 Loss of Documents

Notwithstanding exclusion 4.7, We agree to indemnify You in respect of:

- 2.4.1 any Claim against You in respect of any physical loss or destruction of or physical damage to any Documents; and
- 2.4.2 reasonable costs and expenses incurred by You, with Our prior written consent, in replacing such Documents;

Provided that such loss, destruction or damage:

- (a) occurs in the conduct of the Professional Services

within the Territorial Limit in connection with any construction or building project falling within the Project Types; and

- (b) is first discovered by You and notified to Us in writing during the Period of Insurance.

Indemnity provided by this additional cover shall not apply in respect of or in connection with any loss, destruction or damage caused by, arising or resulting from:

- (i) wear and tear or gradual deterioration; or  
(ii) any computer virus.

Our maximum aggregate liability for the Period of Insurance under this additional cover shall not exceed the Sub-Limit for Loss of Documents, as specified in the Schedule.

## 2.5 Principal's Indemnity

To the extent that You are contractually required, We will also indemnify the Principal in respect of any Claim first made against the Principal and notified to Us during the Period of Insurance arising out of any act, error or omission in the conduct of the Professional Services by You for the Principal within the Territorial Limit in connection with any construction or building project falling within the Project Types.

Provided that:

- (a) any Claim is such that if made upon You that You would be entitled to be indemnified by this Section 3 of the Policy;  
(b) We shall have the conduct and control of all Claims for which the Principal seeks cover hereunder or from You; and  
(c) We will not indemnify the Principal in respect of any Claim arising out of the Principal's own act, error or omission.

## 2.6 Vicarious Liability

We agree to pay You on Your behalf any Compensation which You become legally liable as a result of a Claim first made against You and notified to Us during the Period of Insurance alleging an act, error or omission by an Agent in the conduct of the Professional Services within the Territorial Limit in connection with any construction or building project falling within the Project Types.

We will not be liable under this additional cover for the Agent's own liability nor will We be prevented from seeking recovery from any Agent.

## 3. Definitions Applicable to Section 3

Wherever used in Section 3 of this Policy, the following terms shall be deemed to have the meanings ascribed to them below. Unless the context requires another meaning, a reference to the singular includes the plural and vice versa.

- 3.1 Agent** shall mean a natural person or company or other entity that has a written contract with You under which You engage the Agent to conduct any of the Professional Services.

- 3.2 Claim (or Claims)** shall mean:

- 3.2.1 any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim or counterclaim or third or similar party notice; or  
3.2.2 any written or verbal notice of demand for Compensation.

- 3.3 Document** shall mean a document of any nature whether written, printed or reproduced by any method including computer records, designs, drawings or electronic data, in Your possession or control but does not include Money.

- 3.4 Intellectual Property Rights** shall mean all existing and future intellectual property rights throughout the world in whatever media, whether registered or unregistered and whether or not capable of registration, including copyright, trademarks, trade names, domain names, brand names, slogans, logos, emblems and designs (and all applications or renewals for the protection or registration of these rights) together with all confidential information concerning trade secrets, know-how, formulae, methods or routines and other proprietary technology.

- 3.5 Money** shall mean money, negotiable instruments, shares, bonds, coupons, stamps, bank or currency notes or precious metals.

- 3.6 Retroactive Date** shall mean the date specified in the Schedule as the Retroactive Date.

## 4. Exclusions Applicable to Section 3

Indemnity provided under Section 3 of this Policy does not apply to:

- 4.1** 4.1.1 any liability assumed under any contract, warranty, guarantee or otherwise, unless You would in any event be legally liable in the absence of such contract, warranty, guarantee or assumed liability; or  
4.1.2 any liability caused by, arising out of or in connection with:  
(a) the insolvency, receivership, administration, bankruptcy or liquidation of any Insured;  
(b) the failure to provide, effect, or maintain any bond, surety or insurance;  
(c) any trading debt; or  
(d) the refund of professional fees.
- 4.2** any liability caused by, arising out of or in connection with:  
4.2.1 any Personal Injury to any Employee or Property Damage to any property belonging to any Employee;  
4.2.2 any 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 or contract of employment or workplace agreement;  
4.2.3 any law governing workers' compensation, unemployment compensation or benefit, employers' liability or disability benefits or other

- similar law; or
- 4.2.4 any Employment Practices.
- This exclusion applies notwithstanding the exception to exclusion 4.7.
- 4.3 any liability caused by, arising out of or in connection with the estimation of construction costs.
- 4.4 any liability caused by, arising out of or in connection with the reimbursement of cost overruns and or additional costs incurred as a result of any delay unless directly arising out of any act, error or omission in the conduct of the Professional Services by You or on Your behalf.
- 4.5 any liability caused by, arising out of or in connection with:
- 4.5.1 any defect (or alleged defect) in any Product or Completed Operations;
- 4.5.2 the failure of any Product or Completed Operations to meet the level of performance, quality, fitness or durability expressly or impliedly warranted or represented by You or on Your behalf; or
- 4.5.3 any defect (or alleged defect) in construction, assembly, installation, maintenance or workmanship generally;
- unless directly arising out of any act, error or omission in the conduct of the Professional Services by You or on Your behalf.
- 4.6 any Claim directly or indirectly arising from or in connection in any way whatsoever with the occupation, leasing or ownership of any real or other property (whether mobile or immobile) by You.
- 4.7 any liability caused by, arising out of or in connection with any:
- 4.7.1 Personal injury to any person; or
- 4.7.2 Property Damage;
- unless directly arising out of any act, error or omission in the conduct of the Professional Services by You or on Your behalf.
- 4.8 any Claim:
- 4.8.1 made against or by any Insured prior to the commencement of the Period of Insurance;
- 4.8.2 directly or indirectly arising from or in connection with any fact or circumstance known to any Insured at commencement of the Period of Insurance and which a reasonable person in the circumstances might expect to give rise to a Claim against or by any Insured; or
- 4.8.3 directly or indirectly arising from or in connection with any fact or circumstance that was the subject of any written notice given under any insurance prior to the commencement of the Period of Insurance.
- 4.9 any Claim made by or on behalf of:
- 4.9.1 one or more Insured against another Insured unless the Claim seeks indemnity or contribution from the Insured in respect of a Claim brought or maintained by persons or entities other than an Insured;
- 4.9.2 a spouse, partner, parent (and their spouses or partner's) or a child of an Insured or a sibling of an Insured;
- 4.9.3 any entity which is owned, controlled or managed by any Insured; or
- 4.9.4 any parent or subsidiary of any Insured.
- 4.10 any liability caused by, arising out of or in connection with Your failure to give written disclosure of any conflict of interest, or entitlement to receive a commission, fee or other benefit from a third party.
- 4.11 any liability caused by, arising out of or in connection with:
- 4.11.1 any discharge, dispersal, release or escape of Pollutants into or upon land, the atmosphere or any watercourse or body of water;
- 4.11.2 the cost of removing, nullifying, or cleaning up of Pollutants; or
- 4.11.3 the cost of testing for or monitoring for or of Pollutants.
- 4.12 any liability caused by, arising out of or in connection with the failure to effect and/or maintain any insurance, bond or surety.
- 4.13 any liability caused by, arising out of or in connection with any advice and/or the provision of, application for, or any representation in relation to finance, insurance, marketing, accounting or tax.
- 4.14 any liability caused by, arising out of or in connection with any activities in relation to property development or property valuation.
- 4.15 any liability caused by, arising out of or in connection with any act, error or omission actually or allegedly committed prior to the Retroactive Date.

## General Exclusions Applicable to all Sections

We shall not be liable under this Policy for any loss, Damage or legal liability of whatsoever nature directly or indirectly caused by, arising out of, contributed to by, happening through or in connection with;

1. any Act of Terrorism. Act of Terrorism is defined as an act involving the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or ethnic or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.
2. any war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, terrorism, military or usurped power or confiscation or nationalisation, or requisition or destruction of or damage to property by or under the orders of any government or public or local authority.
3. any:
  - 3.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste; or
  - 3.2 nuclear assembly or nuclear component thereof, nuclear weapons or material.
4. any Product warranty or guarantee given by You or on Your behalf or any warranty or guarantee given by You or on Your behalf in connection with any Completed Operations but this exclusion shall not apply to requirements of any Federal or State legislation as to product safety or information.
5. any cessation of work exceeding 30 consecutive days, or following abandonment.
6. the non-availability of funds to finance the Contract Works, or for the repair, replacement or reinstatement of the Contract Works.
7.
  - 7.1 total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation of Electronic Data and/or Software;
  - 7.2 any error in creating, amending, entering, deleting or using Electronic Data and/or Software; or
  - 7.3 total or partial inability or failure to receive, send, access or use Electronic Data and/or Software for any time or at all; from any case whatsoever, regardless of any other contributing cause or event whenever it may occur.

Electronic Data means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation, or, processing or electromechanical data processing or electronically controlled equipment.

Software means programs, procedures and routines associated with the operation of electronic or

electromechanical data processing or electronically controlled equipment, including any operating systems.

8. any asbestos or any material containing asbestos in any form or quantity.
9. any fines, penalties, punitive damages, liquidated damages, exemplary or aggravated damages and any additional damages resulting from the multiplication of compensatory damages.
10.
  - 10.1 any claim 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; or
  - 10.2 any claim and/or action to which the laws of the United States of America, the Dominion of Canada and their respective territories and protectorates apply.
11. any Damage or liability in respect of which You are or would have been entitled to recover damages or seek contribution from another party but for Your agreement to release or waive recovery rights against such party for the whole or part of such Damage or liability.
12. any alleged or actual fraudulent, dishonest, malicious, wilful or criminal act or omission of the Insured.
13. any wilful breach of any statute, contract or duty by any Insured.
14. or in respect of which;
  - (a) more specific insurance has been effected or arranged by the Insured under a contract of insurance entered into by a party other than the Insured;
  - (b) more specific insurance is in effect under a contract of insurance entered into by a party other than the Insured;
  - (c) more specific insurance is in effect for that activity, work, service or project, as required under the contract between the Insured and other contracting party in respect of that activity, work, service or project; or
  - (d) other valid and collectible indemnity is available to the Insured under insurance effected by a party other than the Insured, where the Insured:
    - (i) has been added as an additional Insured by endorsement; or
    - (ii) is included as an insured by any term of that insurance;

due to or pursuant to any provision of or requirement in a contract or agreement, to which the Insured is a party.
15. or in respect of which:
  - (a) protection or indemnity is available to the Insured from another party (other than another Insured);
  - (b) insurance is in effect under a contract of insurance entered into by a party other than the Insured; or
  - (c) indemnity is available under any insurance.





TOKIO MARINE  
NICHIDO

## 16. SANCTION LIMITATION AND EXCLUSION CLAUSE

We shall not provide any cover or be liable to pay any claim or provide any benefit under this **Policy** to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America, or Australia.

## General Conditions Applicable to all Sections

### 1. Bankruptcy or Insolvency

In the event that You should become bankrupt or insolvent, We shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

In case of execution against You of any final judgement covered by this Policy being returned 'unsatisfied' by reason of such bankruptcy or insolvency, then an action may be maintained by the injured party or their representative against Us in the same manner and to the same extent as You but not in excess of the Limit of Liability.

### 2. Breach of Conditions or Warranty

Your rights under this Policy shall not be prejudiced by any unintentional and/or inadvertent:

- 2.1 breach of a condition or warranty without Your knowledge or consent;
- 2.2 error in the name or title of any person(s), corporation and/or other organisation which forms part of the definition of Insured (You or Your);
- 2.3 error in name, description or situation of property; or
- 2.4 failure to report any property and/or entity and/or insurable exposure in which You have an interest.

Provided always that, upon discovery of any such breach, error or failure referred to above, Your officer responsible for insurance matters shall give written notice thereof to Us as soon as reasonably practicable thereafter and You shall (if so requested) pay such reasonable additional premium that We may require.

### 3. Cancellation

- 3.1 Pursuant to the Insurance Contracts Act 1984 (Cth) and any amendments thereto, We may cancel this Policy at any time by giving notice in writing to You of the date from which cancellation is to take effect, where You have:
  - (a) failed to comply with Your duty of utmost good faith;
  - (b) failed to comply with Your duty of disclosure at the time when the Policy, was entered into, varied, altered, or renewed; or
  - (c) made a misrepresentation to Us during the negotiations for this Policy, but before We



agreed to issue this Policy;

- (d) failed to comply with a provision of the Policy;
- (e) failed to pay the premium for the Policy;
- (f) made a fraudulent claim under this Policy, or any other contract of insurance (whether with Us or another insurer) that provided cover during any part of the Period of Insurance of this Policy;
- (g) failed to comply with a requirement in this Policy that You notify Us of an act or omission which occurred after this Policy was entered into;
- (h) failed to notify Us of any specific act or omission or such a notification as is required under the terms of this Policy.

3.2 Pursuant to the Insurance Contracts Act 1984 (Cth) and any amendments thereto, We may cancel this Policy at any time where:

- (a) it is in force by virtue of Section 58 of the Insurance Contracts Act 1984; or
- (b) it is an interim contract of general insurance.

3.3 You may cancel this Policy at any time by notifying Us in writing.

After cancellation, We will refund the premium for the time remaining on the Policy, less any non-refundable duties, unless You have made a fraudulent claim.

### 4. Conduct of Claims

We shall have full discretion in the conduct of any proceedings in connection with any claim against You. This includes the right to instruct lawyers to provide advice as to Your liability and to represent You.

You must give all information and assistance as We may require in the defence or settlement of any claim against You.

We reserve entirely Our rights under this Policy, including Our right to agree or deny indemnity while we assess a claim or conduct the defence of a claim against You. Our rights under this Policy are not affected if We do not conduct the defence.

### 5. Fraud or Misrepresentation

Subject to the provisions of the Insurance Contracts Act 1984 (Cth), We are entitled, as may be appropriate, to avoid liability to or claim damages from any of the Insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or breach of any warranty or condition of this Policy each referred to under this clause as a vitiating act.

### 6. Goods and Services Tax

Where We make a payment under this Policy for the acquisition of goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that You are, or will be, or would have been entitled to under A New Tax system (Goods and Services Tax) Act 1999, in relation to that acquisition, whether or not that Acquisition is actually made.

Where We make a payment under this Policy as compensation instead of payment for the acquisition of



goods, services or other supply, We will reduce the amount of the payment by the amount of any input tax credit that You would have been entitled to under A New tax System (Goods and Services Tax) Act 1999 had the payment been applied to acquire such goods, services or other supply.

## 7. Governing Law

This Policy shall be governed by and construed in accordance with the law of the State or Territory of Australia in which this Policy was issued. We and all Insureds agree to submit to the exclusive jurisdiction of the appropriate Court of that State or Territory in relation to all matters arising under or in connection with it.

## 8. Inspection by Us

8.1 We (or agents appointed by Us) shall be permitted but not obligated to inspect any Insured's property and/or Project Site at any reasonable time.

8.2 Neither Our right to inspect nor Our failure to inspect nor the making of any inspection nor any report of an inspection may be used by any Insured or others in any action or proceeding involving Us.

8.3 We (or agents appointed by Us) may examine and audit any Insured's books and records at any time during the Period of Insurance and within one (1) calendar year thereafter but such examination and audit will be restricted to matters which in Our opinion are relevant to this Policy.

## 9. Interpretation

In this Policy:

- 9.1 the singular includes the plural and vice versa;
- 9.2 the male gender includes the female and neutral genders;
- 9.3 a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision; and
- 9.4 the titles and headings are included solely for ease of reference and do not in any way limit or expand or otherwise affect the terms of this Policy.

## 10. Material Change

Every change materially affecting:

- 10.1 the facts or circumstances existing at the commencement of the Period of Insurance; or
- 10.2 the risk insured by this Policy;

must be notified to Us in writing as soon as practicable by any Insured after becoming aware of such change.

## 11. Payment of Limit of Liability

With respect to Section 2 or Section 3 of this Policy, We may at any time pay to You the appropriate Limit of Liability (after deducting from it any amounts already paid) or any lesser amount for which a claim or claims against You may be settled. In doing so, We will relinquish the conduct of, and shall be under no further

liability in connection with, such claim or claims except for costs and expenses incurred before We made such payments.

The maximum amount of Our liability will not exceed Limit of Liability as stated in the Schedule.

## 12. Payment of Premium

The Named Insured must pay the premium specified in the Schedule. If the Named Insured fails to pay the premium by the date the premium is due, We are entitled to cancel this Policy in accordance with the Insurance Contracts Act 1984 (Cth).

## 13. Premium Adjustment

Within thirty (30) days of expiry of the Period of Insurance, You shall furnish to Us a declaration and details of:

- 13.1 the actual turnover for the Period of Insurance; and
- 13.2 estimated replacement value of all Principal Supplied Materials incorporated into Contract Works during the Period of Insurance in connection with Covered Projects.

The final premium for this Policy shall be determined as specified below.

### A. In respect of Sections 1 and 2 of this Policy

By multiplying the sum total of amounts referred to in 13.1 and 13.2 by the agreed premium rates for each respective Section.

### B. In respect of Section 3 of this Policy

By multiplying the actual turnover for the Period of Insurance by the agreed premium rate for Section 3 of this Policy.

If the final premium exceeds the total of premiums paid by You for this Policy, You shall pay Us the amount by which the final premium exceeds the total of premiums paid by You.

If the final premium is less than the total of premiums paid by You, We shall refund the amount by which the total of premiums paid by You exceeds the final premium, provided that We shall not be called upon to refund more than thirty per cent (30%) of the Provisional Premium.

## 14 Reasonable Care

14.1 You must:

- (a) take all reasonable precautions to prevent:
  - (i) Legal Liability or Professional Indemnity Claims;
  - (ii) Personal Injury and Property Damage; and
  - (iii) the manufacture, sale or supply of defective workmanship, Products or Completed Operations;
- (b) comply with, and ensure that Your Employees, servants and agents comply with, all laws and bylaws, regulations and recognised standards for the safety of persons or property;

- (c) ensure that only competent Employees are employed;
- (d) take reasonable measures to maintain premises, fittings, plant and equipment in sound condition; and
- (e) take immediate action to trace, recall, repair, rectify or modify all construction works, Products or Completed Operations that You know, or have reason to suspect, contain a defect or deficiency.

14.2 If any provision of paragraph 14.1 has been breached or not complied with, subject to the provisions of the Insurance Contracts Act 1984 (Cth), We may reduce the amount of any benefit payable by this Policy by the amount that fairly represents the extent to which We have been prejudiced by such breach or non-compliance.

### 15. Subrogation and Allocation of Recoveries

Any corporation, organisation or person claiming under this insurance shall, at Our request and at Our expense, do and concur in doing and permit to be done all such acts and things that may be necessary or may reasonably be required by Us for the purpose of enforcing any rights and remedies, or of obtaining relief of indemnity from any other organisation(s) or person(s), to which We shall be or would become entitled upon Us paying for or indemnifying You in respect of any claim or legal liability under this insurance.

If We make any recovery as a result of such action, You may only recover from Us any amount by which the amount recovered by Us exceeded the amount paid to You by Us in relation to the loss.

### 16. Transfer of Interest

No interest in this Policy can be transferred without Our written consent.

### 17. Welding, Flame Cutting, application of Heat

All welding and flame cutting must comply with the Australian Standard "AS1674.1 – 1997 and AS1674.2 – 2003 Safety and Welding in Allied Processes" and its amendments. (This is a detailed Code, designed to protect persons and property from injury by fire or explosion in the course of cutting, heating or welding operations).

## Claims Procedures

### 1. Notification

Upon the happening of any Occurrence, Indemnifiable Event, accident or other event which may give rise to a claim under this Policy, You or Your legal representative must:

- 1.1 notify Us in writing as soon as possible with relevant details;
- 1.2 take all reasonable steps as soon as possible to minimise the loss or damage or liability and to prevent any further loss, damage or liability;

- 1.3 take all reasonable precautions to preserve any things which might prove necessary or useful by way of evidence in connection with any claim;
- 1.4 advise the nearest Police Station as soon as possible in the case of property lost, stolen or vandalised, and obtain a written Police report if requested by Us;
- 1.5 take all practical steps to recover any property; and
- 1.6 retain all damaged properly for inspection by Us.

### 2. Authority for Repairs, Replacement or Reinstatement

- 2.1 Where a claim arises, You must not repair or authorise repairs to, or arrange replacement or reinstatement of, any of the property relevant to the claim without Our consent, other than repairs or making good of minor damage, reasonably estimated at less than \$2,500, and You must give Us, Our employees or agents an opportunity to inspect the loss or damage before any repairs or alterations are effected.
- 2.2 If no inspection is carried out by or on behalf of Us within a period of time which is reasonable, having regard to the location of the risk, weather conditions and any other relevant factors, You may request Our written consent (which will not be unreasonably withheld) to proceed with such repairs, replacement or reinstatement.

### 3. Admission of Liability

Subject to the provisions of the Insurance Contracts Act 1984 (Cth), You or any person making a claim under this Policy must not make any admission of liability or payment or promise, or offer of payment in connection with any such claim, without Our written consent.

### 4. Verification of Claim

You will, at Your own expense, furnish Us with:

- 4.1 a statement in writing containing particulars of the property affected and its value; and
- 4.2 such books of account and other business books, computer records, vouchers, invoices, balance sheets, and other documents, proofs, information, explanations and other evidence and any statutory declaration as We may require for the purpose of investigating or verifying a claim under this Policy and You and Your accountants must cooperate fully in this regard.

### 5. Other Insurances

Upon the happening of any Occurrence, Indemnifiable Event, accident or other event which may give rise to a claim under this Policy, You must furnish Us with a statement giving details of the other insurances which may also provide cover on any Property Insured or legal liability insured against under this Policy.

*Insurer:* **TOKIO MARINE & NICHIDO FIRE  
INSURANCE CO LTD**

Incorporated in Japan  
**ABN 80 000 438 291**